The House of Lords

and the

British Political Tradition

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Dedication
to
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Abstract

This thesis seeks to develop a conception of the British Political Tradition as an idea of democracy and apply it to explain the constitutional development of the House of Lords. The British Parliament is one of the oldest Parliaments in the world and is characterised both by the stability of its governing institutions and its capacity to absorb change. Academic literature of the British Political Tradition offers a plethora of arguments aimed at explaining which idea(s) have underpinned governing institutions and sustained their longevity in the constitution. The objective of this thesis is to demonstrate how the stability of Britain's governing institutions and its history of strong authoritative government emanate from a dominant though contested idea of democracy founded upon a limited liberal idea of representation and a conservative idea of responsibility. The House of Lords is examined from the 1688 Glorious Revolution through to the modern day House of Lords Reform process (2012). The aim is to demonstrate through empirical practice how the British Political Tradition has been the dominant idea shaping the development the constitution and defining the powers of the Crown and the Houses of Lords and Commons.

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Chapter One: Introduction

National political institutions are one of the forms in which the national consciousness of the past has expressed itself, and in the study of the constitutional development of our own country we learn to understand what are the permanent instincts of our national mind. Masterman (1913:9).

The House of Lords, the Crown and the House of Commons are the three national governing institutions of the British constitution and provide the institutional pillars upon which the constitution has evolved. In *A History of the British Constitution,* Masterman, contends that British political institutions are an organic product of the values, beliefs and traditions that have shaped the constitution. Indeed, Britain's political institutions have an ancient lineage stretching back 700 years, with a constitution that is a product of historical evolution, rather than design, and, therefore, if we take Masterman's hypothesis a stage further, a detailed examination of national political institutions will help reveal the dominant ideas that have shaped the British Political Tradition.

This thesis focuses upon the House of Lords as a national political institution, but, obviously, it cannot be examined in isolation from the Crown or the House of Commons. Rather, the objective here is to show that the House of Lords, as the institution which, historically at least, represented the economic elite of the nation and the civic power and prestige of the landed aristocracy, was crucial in the development of ideas of strong and

elite-led government within Parliament and how these ideas were shared by both the Crown and the House of Commons. The aim is to explore the relationship of the House of Lords to the British Political Tradition, or, to put it in broader, and more abstract, terms, how particular ideas of democracy continued to dominate the processes in, and the discourses about the role of, Parliament, as the constitution evolved from a liberal to a liberal democratic one.

The Crown and the Houses of Lords and Commons first emerge as the principle governing institutions of the British constitution in the Thirteenth Century and, during that century, the word *Parliamentum* was first used to describe the trinity of institutions governing the nation. The House of Lords itself has a still longer lineage stretching back to the Norman invasion of 1066, when it began as an assembly of Magnates summoned by the Crown three times a year. As such, the House of Lords has maintained an unbroken and constant presence in the governing of the nation, either as an assembly of the Crown, or as one of the two Chambers of Parliament, for nearly a thousand years. The House of Lords longevity as a governing institution makes it an important institution to study for a greater understanding of the constitution and to establish the link between ideas of the British Political Tradition and the institutions they underpin. As such, this thesis examines the House of Lords as an element of the broader institution of Parliament by examining its constitutional links with the House of Commons, chronicling the constantly evolving relationship between the two Chambers throughout the centuries up to New Labour's reform of the House of Lords.

The House of Lords' long and illustrious history as one of the Chambers of the English Parliament, and a Chamber of aristocratic peers which ranked only beneath the Crown in prestige and social esteem, means that it has attracted a great deal of interest from historians. The historical literature on the House of Lords focuses mainly upon its relationship with the Crown. As an example, Clyve and David Lewis Jones' edited collection, *Peers Powers and Politics 1603–1911* (1986), probably the most extensive study of the House of Lords is a diverse compilation of essays from various historians which analyse the House of Lords during specific eras of Crown history, such as the Stuart Monarchy 1603–1688, or offer an assessment of its role during times of crisis, such as the Napoleonic Wars. This literature tends to concentrate primarily on the Peerage itself, presenting information on individual Peer's titles and estates, as well as providing an analysis of statistical records about the size and acreage of Peers estates, voting records or the number of peers created by the Crown.

Modern day studies of the House of Lords, such as Bromhead's *The House of Lords 1911–1957* or the various editions of Shell's *The House of Lords,* the most recent of which was published in 2007, are institutional in character and focus upon the functional role of the House of Lords. These studies examine the composition and powers of the Upper Chamber, assessing the wide array of rules, regulations and tacit conventions that determine the day to day functions of the Chamber and which define its relationship with the House of Commons.

Until 2009, the British Parliament was unique in having a central concentration of legislative and legal powers, with no distinction or separation between constitutional and legislative law. The House of Lords judicial function as the supreme court of appeal in the nation up until 2009, when the Supreme Court of the United Kingdom was created, meant that most of the constitutional studies of the House of Lords were undertaken by law academics, such as Dicey (1885), Bagehot, (1867) and Jennings (1934).

To summarise, studies of the House of Lords are traditionally either historical critiques by historians, such as Mc Cahill, *The House of Lords in the Age of George III, 1760-1811,* (2009), constitutional studies by legal theorists i.e. Blom-Cooper, *The Judicial House of Lords: 1876-2009, (2011)* or institutional studies by political scientists, such as Doney and Kelso, *The House of Lords Reform Since 1911: Must the Lords Go? (2011).*

The objective in this thesis is to offer an alternative examination of the House of Lords based on its constitutional position as a political governing institution, as opposed to the traditional critiques which are largely historical and institutionally based. Consequently, this thesis argues that the House of Lords should be assessed in a political context as one of the principle and sovereign law making institutions of the constitution. As such, it is crucial, as other historical and institutional critiques have done, to examine the House of Lords legislative powers to gain a greater comprehension of its political authority. So, this thesis examines how the House of Lords used its legislative powers and exploited its power and prestige as the Chamber embodying the interests of landed aristocratic elite to influence the work of the House of Commons. Consequently, it is argued that the House

of Lords is quintessentially a political institution which has always made a direct and powerful contribution to the governing of the nation.

The Peerage within the House of Lords represented an economic and political elite, which was powerful in both Parliament and civil society, and had a direct and vested interest in the efficient governing of the nation. However, while they focused on achieving effective government, they were also maintaining the existing social status quo in civic society. In a rural society where land was the main source of wealth, the landed aristocracy held a dominant economic position, which translated into political dominance and influence over Parliament.

An assessment of the political role of the House of Lords will reveal far more about the ideas, customs, practices and traditions that have underpinned it as a political institution. In addition, it is argued that these customs, practices and traditions enshrined in the House of Lords are the same ones that have shaped the British Political Tradition. Historians concentrate on the House of Lords constitutional relationship with the Crown, while Political Scientists focus almost exclusively on the House of Commons as the dominant institution of the Parliament. This thesis aims to redress this imbalance in the literature and address the House of Lords in its main guise as a political institution, examining how, initially, it used powers of patronage to control the House of Commons.

Overall, this thesis has two main objectives, Firstly, as already emphasised, it provides an exposition of the House of Lords in its political context. Secondly, it explores how it shaped, and was shaped by, the British Political Tradition. In effect, the argument is that the House of Lords and the British Political Tradition, to an extent, reflect different sides of the same coin.

The second objective involves the complex task of identifying the nature of the British Political Tradition as an idea of democracy and showing how it shaped institutions and defined their empirical practice. As Batters (2005:5:4) contends:

> The intellectual premises upon which argument about the British Political Tradition are grounded are not sound; instead accounts resort to contentious theoretical and conceptual assumptions found in conventional accounts. Furthermore, the additional hypotheses are not borne out in empirical terms and are poorly integrated into the analysis.

Consequently, Chapter Two examines the six main interpretations of the British Political Tradition in the literature. First, it assesses the contribution of Birch in *Representation and Responsibility* (1964), who argues that the British Political Tradition can be defined as an aggregate of ideas of representation and responsibility. Second, it focuses upon Beer's contribution in *Modern British Politics* (1965*)* where he argues, in a similar vein to Birch, that the British Political Tradition is shaped by ideas of representation, but also adds the concept of collectivism to the debate.

The third major contribution to the British Political Tradition examined here comes from Greenleaf in an epic three volume work the *British Political Tradition* (1983a, 1983b, 1987). He argues that dominant ideas of libertarianism and collectivism have shaped the British Political Tradition. Fourthly, the contribution of Marsh (1980) is assessed. He modifies and refines the arguments of the first three contributions, suggesting that there is a dominant idea of the British Political Tradition, founded upon ideas of representation and responsibility. Fifthly, Hall's *Political Traditions and UK Politics* (2011), the most recent contribution to debates on the British Political Tradition is analysed. He identifies and develops the ideational foundations which lie behind the British Political Tradition and adapts them to explain UK politics. Finally, Bevir and Rhodes' (2002; 2006) critique of this literature as reifying an unchanging understanding of tradition is considered. While, the thesis is critical of their conceptual approach, it does utilise the type of historical analysis which they utilise.

It is additionally argued in Chapter Two that the academic study of the British Political Tradition has itself undergone something of an organic evolution. This literature is based upon an understanding that ideas shape institutions; a view that originates with Birch and Beer, who argue that the British Political Tradition involves various ideas about representation and responsibility, which, in turn, shape institutions. Greenleaf (1983a; 1983b; 1987) builds on Birch and Beer's theory about the relationship between ideas and institutions to posit his own ideas-based contribution. He writes of ideas: 'Like Bacon these serve the office of bell-ringers, first up to call others to church'(1983a; 1983b; 1987:8).

This approach to the relationship between ideas and institutions took a major step forward with Greenleaf, who, instead of suggesting that a plethora of ideas shape institutions, argues that the British Political Tradition is rooted in a debate between libertarianism and collectivism. Greenleaf's contribution marks a defining moment in the study of the British Political Tradition as he is the first to show, through more detailed empirical examination, how that tradition, and the debates within it, shapes the institutions of British Government. Tant (1993), developing the work of Marsh (1980), takes that argument a stage forward arguing that the British Political Tradition is best conceptualised as an approach to democracy, rooted in a limited liberal notion of representation and a conservative notion of responsibility, which has shaped the institutions and processes of British Government.

Overall then, Chapter Two outlines the view that the British Political Tradition is the dominant idea of democracy underpinning the British political system and shows how this position derives from the existing literature on that tradition. The Chapter begins by acknowledging Birch's argument that the British Political Tradition is founded upon a theory of representation and responsibility. Subsequently, it outlines Beer's view that particular ideas of representation are widely accepted within British society and are influenced by the elitist and hierarchal nature of UK civil society. The Chapter then uses Greenleaf's work to argue that British Political Tradition is inscribed into governing institutions and directly translates into the empirical practice of government. Subsequently, the Chapter endorses Marsh, Tant and later Hall`s view that there is a dominant and reoccurring political tradition, which, historically at least, has underpinned,

and been underpinned by, elite and hierarchical power. The aim here is to establish a cohesive and coherent understanding of the British Political Tradition as a model of democracy and use that in understanding the development of the House of Lords and its relationship with the House of Commons. As such, the intention is to show how a dominant idea of elite-led power, underpinned by the British Political Tradition, which originated in the House of Lords, came to permeate democracy and the ideas of the executive within the House of Commons. More broadly, the thesis shows how these ideas about democracy became translated into empirical practice.

Consequently, the thesis argues, following Marsh, that the British Political Tradition is an idea of democracy founded upon a limited liberal idea of representation and a conservative idea of responsibility. The conservative notion of responsibility is particularly influential and produces strong, authoritative, governing institutions and an elite form of top-down government. As such, this conception of responsibility shapes the understanding of representation, ensuring that it is limited and designed not to disrupt the existing power structure of elite, top-down governing institutions and unequal distributions of power. Power in such institutions is concentrated in the upper echelons of government, with a limited focus upon public participation in government affairs. The attitude of *government knows best* prevails over the relationship between institutions and the governed and underpins the discourses and processes of Parliament.

Chapter Three introduces the House of Lords as the principle institution to be studied. It begins by briefly discussing its Norman origins as a Chamber of Magnates summoned by the Crown. The main objective of this Chapter is to analyse the constitutional theory of Mixed Government which emerged following 1688 Glorious Revolution and which defined the constitution up to the 1832 Great Reform Act. The theory of Mixed Government defined the constitutional relationship between the Crown, the House of Lords and the House of Commons. The argument here is that each of the trinity of institutions was seen as representing and symbolising a powerful vested interest in the nation. The Crown represented a symbol of the nation, the House of Lords the wisdom and experience of the aristocracy and the House of Commons the petitions and industry of the populous. The purpose here is to emphasise the importance of representation in the British Political Tradition and show how, in the doctrine of mixed government, Parliament was primarily a representative institution.

The years between 1688 and 1832 were known as the golden age of the aristocracy, as the House of Lords wielded enormous power and patronage over the membership of House of Commons, through the *rotten boroughs* system. Through its dominance of Parliament, it was also able to wield influence over the Crown. During the era of mixed government, initiated by the House of Lords, a conservative notion of responsibility became inscribed into governing institutions. Strong authoritative, elite-led government, emanating from the House of Lords, became the standard practice of government.

Throughout Chapter Three the aim is to show that ideas of representation and responsibility shaped the institutions of Parliament and became enshrined into discourse and processes. Birch's theories of representation are analysed and applied to the liberal constitution between 1688 to 1832, concentrating on Whig and Tory theories of representation which defined the constitutional relationship between Parliament and the Crown.

Chapter Three further examines the Whig concept of *virtual representation*, in which all of the nation's economic interests were said to be represented in Parliament. The objective is show both the significance of representation to the institution of Parliament and the fact that, once that model of representation was established, the question of responsibility came to the fore, with a focus upon the extent to which institutions are responsive to societal interests. Indeed, throughout this thesis, the concepts of representation and responsibility run like veins through the narrative of the House of Lords and the British Political Tradition.

Chapter Four examines the House of Lords between 1790 and 1832, analysing the development of political ideas and civil society, as Parliament completed a transformation from a liberal constitution, founded upon constitutional mixed government, to a liberal-democratic constitution, established by the 1832 First Reform Act. This Chapter chronicles the change in civic society, as during the industrial revolution the nation completed a transition from a rural agricultural society to an urban industrial one.

The argument here is that the House of Lords, as the institution representing the landed aristocracy, no longer represented what was now an industrial nation, so its hegemony over the House of Commons was untenable. This follows Birch's argument that Parliament was no longer representative of the nation and, as such, some semblance of democracy was necessary to avoid rupture and reconnect Parliament to the nation. However, the idea of retaining strong responsible governing institutions remained sacrosanct and the challenge was therefore to reconcile the new idea of representation, based on democracy, with the tradition of strong responsible institutions that had become ingrained in Parliament between 1688 and 1832. In this sense, it is clear that a dominant idea of responsibility shaped all ideas of representation and democracy.

The years between 1790 and 1832 can be classified as the age of radicalism, given a wave of new radical ideas swept across Europe and America. Radical ideas of popular sovereignty and the universal rights of man, advocating a more egalitarian form of government, threatened to undermine the authority of institutions and dispense with the status quo. Indeed, throughout Europe, a new age of radicalism and ideas inspired revolutions in Poland, Italy and, of course, France. The argument here is that Britain remained largely unaffected by the political turbulence on the continent in large part due to the British Political Tradition and, in particular, the stability of its institutions rooted in a conservative notion of responsibility. Although Parliament had to absorb some form of democratic ideal into the constitution, Chapter Three argues that the idea of democracy that emerged through the 1832 Reform Act was a top-down, hierarchical concept of democracy, designed to maintain elite-led government and the ultimate authority of

institutions. The British Political Tradition is a dominant, though contested, idea of democracy and this Chapter illustrates how, during the age of radicalism from 1790 onwards, it was challenged by a more egalitarian, participatory, view of democracy. Chapter Four concludes with the argument that the British Political Tradition`s concept of top-down, elite democracy triumphed over the ideas of participatory democracy to win the soul of Parliament and, subsequently, define the British idea of top-down democracy that emerged after the 1832 Reform Act.

The objective in Chapter Five is to analyse how the expansion of democracy impacted upon the House of Lords and the House of Commons. The House of Lords is examined from the 1832 First Reform Act through to the 1911 Parliament Act, identifying how the expanding franchise, and thus participation, instigated by the 1867 and 1884 Reform Acts, transformed the Parliament, by moving the pendulum of power away from the House of Lords and towards the executive within the House of Commons. The argument of this Chapter is that the rise of democracy, founded on a liberal idea of representation, should, in theory, have made the executive accountable to the House of Commons and heralded an age of Parliamentary ascendancy over government. However, the contention here is that no such process occurred because of the dominance of the British Political Tradition and the idea of top-down power. This Chapter argues that vestiges of government responsibility and elite-led power, inherited from mixed government, continued into the age of democracy and shaped representation and responsibility in the new democratic Parliament.

So, this Chapter demonstrates how this conception of democracy created disciplined, organised, political parties, which allowed the party with a majority in the House of Commons to command the executive and, consequently, dominate the House of Commons. This enabled the executive to almost monopolise power and wield strong authoritative control over both the House of Lords and Commons. The justification of such a system was that it produced responsible, meaning strong and decisive, government.

The argument here is that, after the 1832 Reform Act, the torch of strong responsible government, which had resided with the House of Lords from the 1688 Glorious Revolution, passed to the executive in the House of Commons. Government by the Crown's Ministers in the House of Lords was replaced by government by the executive in the House of Commons, but the idea of top-down government still shaped how the nation was governed; it was only the personnel who had changed. Despite this, the House of Lords still retained a residue of power in relation to the House of Commons as its consent was needed for all legislation and it retained a power of veto.

Towards the end of the Chapter, the events leading up to the 1911 Parliament Act are chronicled. The argument of this section is that the strong authority of the executive in the House of Commons was undermined by the House of Lords' older form of traditional authority. Chapter Five thus argues that the 1911 Constitutional crisis was a clash between property and democracy and between two traditions of strong government.

It is argued that, in the British Political Tradition, two institutions cannot share power, as this undermines the authority of both. The passing of the 1911 Parliament Act was a victory for democracy over property and ensured that the mantle of strong authoritative government was the exclusive preserve of the executive in the House of Commons. However, it was a victory for a limited form of democracy.

Chapter Six examines the new constitutional role of the House of Lords in the Twentieth Century, following the 1911 Parliament Act, assessing the role of the Upper Chamber between 1911 and 1951. The Parliament Act 1911 removed much of the House of Lords power to constrain the House of Commons and transferred the locus of political sovereignty firmly to the executive in the House of Commons. This made the House of Lords, for the first time in constitutional history, a junior and subservient partner to the House of Commons, with the torch of the British Political Tradition clearly passed to the executive in the House of Commons.

The aim of this Chapter then is to show how the British Political Tradition remained dominant, despite the movement of strong authoritative government from the Crown and the House of Lords to the Executive in the House of Commons. A conservative notion of responsibility, ingrained within the liberal constitution of 1688–1832, remained dominant in Twentieth Century democracy, ensuring that a strong and central concentration of power and authority resided firmly with the executive in the Commons.

This Chapter chronicles how, faced with the new constitutional climate of executive supremacy in Parliament, the House of Lords was forced to reinvent a new constitutional role for itself as a secondary Chamber which scrutinised and revised legislation.

The Chapter begins by analysing the Bryce Conference of 1918, which was established with the objective of establishing a new constitutional role for the House of Lords and whose recommendations established the parameters of the House of Lords powers as a secondary revising Chamber to the House of Commons throughout the Twentieth Century. The Chapter further analyses how the House of Lords adapted to its new constitutional role as a secondary, and clearly junior, Chamber for the revision and amendment of Commons legislation. The focus of the Chapter is specifically on the post-war Labour Government between 1945 and 51, which enacted a radical programme of nationalisation, to show how dominant the executive was over legislation and how the House of Lords adapted to its role as junior partner to amend and pass even that legislation which it opposed ideologically.

Chapter Seven focuses on the Labour Party and examines its approach to the House of Lords and the Constitution from 1951 to 1997. This Chapter analyses the Labour Party`s ideological foundations and how it interpreted the House of Lords' role in the post-war constitution. The Chapter examines both the Fabian and Syndicalist traditions of `Socialism`/Social democracy within the party and assesses how the British Political Tradition and its idea of omnipotent executive power presiding over a weak legislature ensured that the Fabian tradition became dominant within the Labour Party.

The Fabian tradition of ideas explains the Labour Party`s traditional conservatism towards the House of Lords and the constitution and how that tradition and those ideas provided the parameters for the post-war collectivist state which dominated Parliament from 1945 to 1979. Finally, Beer`s critique of the rise and fall of collectivism in the post-war state in *Britain Against Itself* (1982) is examined, assessing how the decline of collectivism and defeat over economic ideas forced the Labour Party onto to the new terrain of constitutional reform.

The final Chapter brings the constitutional development of the House of Lords up to date by examining the House of Lords from 1997 through to 2012. Chapter Eight focuses primarily on events following the election of New Labour in 1997, assessing the reasons for New Labour's constitutional reform programme and its motivation for reforming the House of Lords.

The Chapter begins with an examination of the Labour Party during its years of opposition in the House of Commons from 1979 to 1997 and assesses how its opposition to the Conservative Government`s statecraft motivated the Labour Party to formulate a programme of reform for the House of Lords. The implications of the House of Lords Act 1999 are analysed, in particular focussing upon the effects of the abolition of the hereditary Peerage on the Chamber and the subsequent reform process, concentrating on the arguments for and against an elected Chamber.

The Labour Party's traditional conservatism in relation to the House of Lords is examined and contrasted to New Labour's radical desire to totally reform the composition of the House of Lords by having an elected/nominated Upper chamber. This Chapter analyses the potential effects that an elected/nominated House of Lords would have on the power of the executive and how this strongly shaped ideas of reform. The Labour Party's 1997 General Election Manifesto is examined, focussing on the commitment to have a representative and democratic Upper Chamber and the implications of either an elected or nominated Upper Chamber. The argument here is that, after Labour Party formed a majority Government in the House of Commons, the British Political Tradition and the forces of conservatism re-asserted themselves, with the Government favouring a nominated chamber, as opposed to an elected chamber, to protect the position of the executive.

Following the passing of the House of Lords Act 1999, Chapter Eight analyses the reform process which is still unfinished through the prism of the British Political Tradition. The main argument is that the British Political Tradition continues to dominate the reform process, as the debate about how the House of Lords should be reformed oscillated between proposals for election and nomination.

Chapter Eight concludes by examining the implications of an elected House of Lords and its potential impact on the executive in the House of Commons. The Chapter examines the argument that an elected House of Lords would have a mandate of its own, and, consequently, be in a position to challenge the supreme authority of the House of

Commons. The main argument here is that the momentum for an elected Upper Chamber was circumscribed by the British Political Tradition, with the executive in the House of Commons fearing that an elected Chamber would undermine its near monopoly of power. For this reason, the Labour Government favoured a nominated Chamber to maintain dominance over Parliament.

The counter argument against a nominated chamber is also examined. This contends that, while a nominated Chamber might ensure responsible, that is strong and decisive, government, it does not provide for representation. A further analysis of the various arguments about election processes for the House of Lords is undertaken, arguing that these debates are also influenced by the British Political Tradition. The argument here is that all different election processes are designed to achieve a limited form of representation, which would confer legitimacy, but no real authority, on the House of Lords. All the different systems proposed seem designed to ensure that the Second Chamber has a weaker and inferior mandate to the House of Commons.

The Chapter concludes by emphasising that the cardinal idea underpinning the House of Lords reform process, and indeed the British Political Tradition more generally, is that to achieve strong authoritative, effective government one institution must have a virtual monopoly of power.

Chapter Two

The British Political Tradition

As the introduction emphasised, the key argument of this thesis is that a dominant idea of democracy in the UK, the British Political Tradition, has played, and continues to play, a significant role in the constitutional reform of the House of Lords. As such, in this chapter the British Political Tradition is conceptualised as a theory of democracy and, subsequently, throughout the thesis, the aim is to demonstrate how it has shaped the evolution of the House of Lords as a governing institution. Consequently, this Chapter begins with an outline of what is meant here by a Political Tradition, before tracing in more detail the origin of the position developed here, focusing on the work of the five authors who are crucial to the argument: Birch (1964); Beer (1965); Greenleaf (1983a, 1983b: 1987); Marsh (2003); Marsh, 2008a, 2008b, Marsh and Hall, 2007); and Hall (2011). Subsequently, Bevir and Rhodes' (2003) interpretist critique of this approach is outlined. Finally, the Chapter briefly outlines the understanding of the British Political Tradition which is used in the rest of this thesis and the method adopted to analyse the evolution of this tradition and the way in which it has affected, and was affected by, the House of Lords.

i) Tradition(s)

a) What is a Tradition?

The concept of tradition is not an uncontentious one. This section begins with a brief discussion of the literature, before following McAnulla (2007) in identifying four key understandings of the concept. The main aim here though is to outline the understanding of the concept utilised in this thesis.

Of course, 'tradition' is a word which is often used in popular discourse and in discussions of British politics. At a basic level, Finlayson (2003:664) defines tradition as: 'the way we do stuff'. It derives from the Latin word *tradere*, meaning to transmit, deliver or hand down (Young, 1988:95). So, Finlayson (2003:664) argues that a discussion of tradition involves a focus upon: '(what) has been delivered to us by our forebears'. Similarly, Shils makes essentially the same point: "it is anything which is transmitted or handed down from the past to the present' (Shils, 1981:1).

Hobsbawm's (1983a) discussion is particularly relevant to my concerns. He distinguishes tradition from custom, focusing on the invariance of the former:

> the past, real or invented, to which they (traditions) refer, imposes fixed (normally formalized) practices, such as repetition. Custom in traditional societies has the double function of motor and fly wheel. It does not preclude innovation and change up to a point, though evidently the requirement that it must appear compatible or identical with precedent imposes substantial limitations on it (Hobsbawm, 1983 a: 3).

Obviously then, 'tradition' is a contested term in Social Science. Society, politics and culture are clearly inscribed with traditions, reflected in ideas, institutions and cultural practices that persist over time. As such, it is possible to argue that traditions are part of political (as well as social and cultural) life and, consequently, if we want to understand how institutions and processes operate, we need to be aware of the traditions which underpin them.

It is surprising then that there has been relatively little discussion or conceptualization of 'tradition'. As McAnulla (2007) emphasises, while there are many observations about tradition, there is little attempt to develop a more systematic understanding and classification of it. In attempting to deal with this omission, McAnulla (2007) identifies four understandings of tradition:

- Conservative thinkers like Oakeshott (1991) view tradition as involving an unreflexive tacit knowledge which underpins a belief in the importance of continuity with the past , a continuity which is important for stability and for the good of society. Of the work considered later in this Chapter, this is clearly Greenleaf's position and, indeed, Greenleaf acknowledges his debt to Oakeshott.
- Macintyre (1984) and Popper (1989) see traditions (here there is a clear focus on contestation) as involving normative arguments about the scope and future of society. These traditions permeate the discourses within society and shape how people think and act. This position has most resonance with the work of Bevir and Rhodes (2003) discussed below.

- Giddens (1994) contends that tradition involves the idea that wisdom/knowledge underpins ideas or practices. Here, the crucial point is not the accuracy of the wisdom, but rather its repeated usage. McAnulla argues that this position informs the work of Hobsbawm and Ranger (1983), who suggest that traditions help legitimise actions, institutions and/or ideas. As such, the repetition of these traditions mean that they come to be regarded as 'givens' and, consequently, underpin institutions, ideas and practices over time and can help actors overcome crises and legitimate the decisions they take. Elements of this position can be seen in the work of Birch and Beer, while it is an important aspect of Marsh's position.

- Sztompka (1993) sees traditions as a source of change and continuity, which are rooted in, and reinforce, habits and, consequently, are often transmitted sub-consciously (this of course evokes Bourdieu's, 1984, conception of habitus). As such, they are often powerful constraints on choice and a source of path-dependency (see, for example, Pierson, 2000; Buckingham, 2000). However, Sztompka argues that they can also be a source of change, if agents challenge the status quo. He see traditions as transmitted through both material and ideational structures, although they can be modified (or endorsed) by actors. This is the understanding of tradition at the core of Marsh's and Hall's work and is the one adopted here.

b) The British Political Tradition

When discussing the British Political Tradition, this thesis follows most of the extant literature discussed in more detail below in focusing on the conceptualisation(s) of democracy which underpin the UK's institutions and processes. However, as McAnulla (2006:22) argues: 'Work on the British political tradition is sometimes criticised for being *idealist*, i.e. it gives too much importance to the role of core ideas above other factors in politics. At the same time, he points out that Bevir and Rhodes (2003) are very critical of the idea, which they associate with Greenleaf (and, in a later work, Marsh; see Bevir and Rhodes, (2008), that the dominant ideas associated with the British Political Tradition are reified and therefore unchanging. Of course, the relationship between institutions and ideas could itself provide material for a PhD, and there is not the space for a full discussion here (on this see Blythe, 2002; Marsh, 2003). However, it is crucial to sketch out the position this thesis adopts.

The position adopted here is not idealist and, indeed, neither are Marsh (2003; Marsh, 2007; Marsh and Hall, 2007), McAnulla (2005), Evans (1995; 2003), Tant (1993), Batters (2005) or Hall (2009 and 2011), whose position is closely aligned with the one adopted here, idealists. Rather, the argument here is that ideas have independent causal power, but so do institutions (and indeed material relations, although that is not a concern here; on this see Marsh, 2003). As such, the relationship between institutions and ideas is dialectical, that is interactive and iterative. So, institutions provide the context within which ideas arise, but ideas change those institutions, with those changed institutions providing the context within which ideas develop, either changing or being reproduced. The concern here is not to contribute to the theoretical debate about the relationship

between institutions and ideas; rather, the approach taken in this thesis relies on the argument developed by Marsh (2003) which justifies a dialectical approach. More specifically, following Marsh and others, this thesis argues that there is a dominant British Political Tradition, based on a limited liberal notion of representation and a conservative view of responsibility (see the section on Birch below) which underpins the institutions and processes of British politics and, in the case examined here, helps explain the evolution of the House of Lords.

ii) Six Views on the British Political Tradition

As mentioned in the introduction, the study of the British Political Tradition and of ideas and how they shape institutions has itself evolved; with each contribution identifying salient ideas and concepts that have been accepted and expanded upon by subsequent critiques (more generally on this issue see Blythe, 2002, Marsh, 2003). This process begins with Birch and Beer who bring ideas about representation and responsibility into the discussion of the British Political Tradition, while later Greenleaf focused upon the ideas of libertarianism and collectivism (for a related perspective on the links between Birch, Beer and Greenleaf, see McAnulla, 2006a, Box 1.4, p. 18). The originality of Greenleaf's contribution is that it demonstrates how a dominant idea can become inscribed into governing institutions and demonstrates how ideas are translated into empirical practice. Marsh, struck by Greenleaf's ability to demonstrate how a singular and dominant idea can underpin the discourse and processes of institutions, builds on Birch and Beer's ideas of representation and responsibility. He argues that a dominant idea of elite, top-down, power, reflected in a conservative idea of responsibility and a

limited liberal idea of representation, shapes the British Political Tradition. Hall (2011) develops Marsh's position in a recent important contribution to the material on the British Political Tradition.

Here, it is important to examine each contribution in some detail to establish which salient idea(s) from each can be incorporated into a coherent concept of the British Political Tradition. Of course, it is necessary to acknowledge that there are other contributions to this debate, particularly from Marsh's ex-PhD students who have utilised his broad approach (McAnulla, 2006a, Evans, 1995 and 2003, Tant, 1993, Batters, 2005 and Hall, 2009), and they are referred to at various points in this thesis. In addition, the next section of this chapter turns to Bevir and Rhodes' critique of the approach adopted here.

However, before moving on it is important to consider briefly one other body of literature. There is of course a great deal of work which points to the elitist nature of the British political system. A few examples should suffice to make this point: Moran (2003) emphasises the 'club ethos' and tradition of self-regulation that underpins Parliament; Vincent's work (1998) on the culture of secrecy in Britain indicates how this is underpinned by, and in turn underpins, the elitist nature of the British political system; and Marsh, Richards and Smith (2003) develop an asymmetric power model which emphasises the concentration of power within the British system and the structured inequality which results from, and reinforces, that centralisation. Of course, this literature fits very easily with the argument developed here, but, perhaps unsurprisingly, only

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Marsh. Richards and Smith discuss the British Political Tradition and their work relies heavily on Marsh's earlier discussions. Here, the focus is specifically on the work directly on the British Political Tradition, but it needs acknowledging that future work might examine the relationship between these arguments and broader arguments on the elitist nature of the British political system.

a) Birch: Representation and Responsibility

A.H Birch's book *Representation and Responsibility* (1964) examines how different ideas of representation and responsibility spanning centuries came to shape the British Political Tradition. Birch argues that knowledge of history and tradition is necessary to fully comprehend how various ideas inherent in representation and responsibility came to shape institutions and processes.

In his view, an idea of democracy directly underpins the governing institutions and establishes the institutional criteria and context within which political processes work. So, Birch writes: 'The way in which people behave in political situations depends very much on the values and political traditions of their society.' (1964:241) He further elaborates: 'These values and traditions are to a large extent, though by no means entirely embodied in the prescriptive theories of representation and responsibility.' (1964:241)

Birch uses the concepts of representation and responsibility as a framework for identifying the British Political Tradition. He begins *Representation and Responsibility* by writing: 'Everyone knows that the British Constitution provides for a system of

representative and responsible government' (1964:13). Birch identifies three meanings of representation: i) representation in a delegatory capacity, where the representative acts as a direct delegate on behalf of those who elect him; ii) demographic representation, where an elected assembly mirrors the electorate in demographic terms; and iii) electoral representation, where an electorate freely and fairly elects an assembly. He also identifies three categories of responsibility, distinguishing between: i) a government which is responsible to public opinion and the electorate; ii) a government which is accountable both to the electorate at election time and to Parliament between elections; and iii) a government which is strong, authoritative, governing for the benefit of the whole nation over and above sectional interests.

Birch argues that, throughout the development of the British Political Tradition, different ideas about representation, combined with strongly entrenched practices about the responsibility of government, shaped the British Political Tradition. However, he contends that no one idea of representation was dominant.

The ideas of representation advocated by Whig, Liberal, Neo-Benthamite and Radical theories were transitory entities which originated during specific historical periods in response to a specific set of circumstances unique to that historical era. New theories of representation tend to build upon, and then take their place alongside, existing theories of representation, rather than supplanting them. As such, ideas of representation, evolving within the political culture, have always maintained a strong element of continuity, ensuring that the idea of democracy produced is conservative in character, shaped by the

historical legacy and traditions of the past and crucially maintaining the authority of existing institutions.

For Birch, in the late-Eighteenth and throughout the Nineteenth Century the debate about the franchise and representation was a heated one, arousing strong passions on both sides of the argument. The extension of the franchise, first to the middle class, and later to the working class, provoked serious discussion about which idea and model of democracy should prevail. Democracy represented a potential challenge to the authority of existing institutions, such as the Houses of Lords and Commons. The idea of democracy that became dominant underpinned the governing institutions, such as the Houses of Lords and Commons. Birch, reflecting on the debate over the nature of the franchise in Nineteenth Century Britain, contends:

> It is fair to say that Victorian discussions about representative government were dominated by Liberal ideas, and that these ideas, at first held only by a minority of politicians and writers, gradually won widespread acceptance until by the end of the century they had come to constitute the prevailing constitutional doctrine (Birch, 1964:52).

Birch argues that the Liberal theory of representation is based on the individual and is the foundation of ideas about democracy. The influence of the British Political Tradition can be gauged from the fact that liberal ideas borrowed heavily from Whig ideas of hierarchical representation and a vertical diffusion of power through governing

institutions. The discrete individual was the basis of new ideas of democracy, but it was a democracy still based on traditional ideas of top-down power. Birch pinpoints the very kernel and genesis of the Liberal constitution when he argues (1964:230): 'what chiefly remains of the Whig view of the constitution is a concern for the independence of Members of Parliament. `

For Birch, throughout the evolution of the British Constitution, the idea has always prevailed that a Member of Parliament is an independent, autonomous, actor who is charged with the deliberation and responsibility for the governing of the nation. This conception of the role of a Member of Parliament remains a sacrosanct principle of British government and is underpinned by the British Political Tradition. This cardinal principle permeated, and indeed transcended all Whig, Tory and Liberal ideas of representation and democracy and established the power and authority of Parliament. This facet of the British Political Tradition underpins the role of Parliament as the supreme and sovereign governing institution which is established and secured by top-down democracy. Power and authority remains firmly ensconced in the higher echelons of Parliament and power diffuses downwards. Birch contends (1964:227):

> No serious politician has suggested that representatives should be bound by specific instructions from their constituents and subject to recall if they do not follow these instructions.

As such, the British political system's preference for autonomous and independent representatives, as opposed to representatives who are delegates of the electorate, is indicative of a dominant, top-down, idea of power evident in governing institutions. From this perspective, the preference for independent and autonomous representatives, who are largely free of the dictates of the electorate, helps ensure that top-down and elitist government prevails. Parliament maintains a monopoly of political power and perceives itself as the best arbiter and judge of the national interest and the best instrument for governing the nation. The British Political Tradition's idea of limited representation defined the nature and model of elitist democracy and provided the dominant discourse for the top-down governing institutions of Parliament. The British Political Tradition formulated the context for discourse and processes ensuring that power remained centrally concentrated within the sanctified corridors of Parliament.

The British Political Tradition also reinforces the traditional strength and authority of governing institutions, such as the House of Lords. Representative democracy was narrowly defined and limited to a means through which the interests of the masses could be heard, but never as the principle protagonists. The British Political Tradition's idea of democracy and linked adherence to strong institutions decreed that a Member of Parliament still maintained a position as an autonomous agent.

Throughout the Nineteenth Century, the debate over representation remained the central focus of attention regarding the reform of Parliament. The responsibility of government only became an issue for constitutional reform in the Twentieth Century. This is hardly

surprising as Whig, Tory and Liberal theories of representation all imply an implicit, and sometimes explicit, idea of responsibility applicable to governing institutions. The Tory concept of responsibility stresses the necessity for strong, authoritative government, which was symbolized by the Crown. The Whig view of responsibility also emphasized the need for strong authoritative government, but, in a variation to the Tory view, stressed this was the remit of the Crown and Parliament. Liberal ideas of responsibility involved an idealized model of government responsibility, stressing the ultimate sovereignty of Parliament, ministerial accountability and Parliamentary control over the executive.

Conservative ideas of responsibility permeated and shaped Whig, Tory and Liberal ideas of government responsibility, stressing the need for strong, responsible governing institutions with a hierarchical diffusion of power. All theories of representation and responsibility attempted to establish the constitutional relationship between the executive and the legislature. Birch reiterates the conservative notion of responsibility evident in the British Political Tradition when he writes: 'Another and most important tradition of British political behavior is the tradition that the government of the day should be given all the powers it needs to carry out its policy' (1964:243).

The British Political Tradition had a profound effect on shaping ideas of representation and responsibility and inculcating various hallowed principles. The first and foremost principle is that government should be armed with the writ and mandate to be singularly responsible for its actions; to achieve this government should have free reign to enact

policies. As Birch contends (1964:245): 'government should have both the powers and the ability to provide strong leadership'.

A conservative notion of responsibility has strongly shaped the strength and accountability of governing institutions and processes and influenced the idea of democracy that has underpinned institutions. The British Political Tradition creates strong governing institutions with the responsibility for policy and processes.

Lord Hailsham, speaking of the British political system's adherence to strong government, put the point succinctly when he said:

The British on the whole prefer to see a strong government of which they

disprove, rather than weak government whose political structure is more

complex and whose power to govern is limited (cited in Birch, 1964:244)

The British Political Tradition and its inherent, though contested, idea of top-down democracy produces strong governing institutions reflecting the view that strong government is an essential pre-requisite for efficient and effective government. From this perspective, strong government is only possible through a top-down, hierarchical democracy and centralisation of power. The British Political Tradition's top-down idea of democracy underpins strong, authoritative institutions where responsibility and authority resonates firmly from the governing institutions themselves. In this vein, Birch suggests that the three categories of responsibility inherent in the British system can be assessed

as: 'first, consistency, prudence and leadership, second, accountability to Parliament and the electorate, and third, responsiveness to public opinions and demands` (Birch, 1964:245).

The British Political Tradition's elitist idea of democracy aims to achieve strong government, ahead of any notion of accountability to Parliament and the electorate. Throughout Whig, Tory and Liberal ideas of representation and responsibility, the hierarchical ideals of the British Political Tradition have prevailed and there has never been any notion in Whig, Tory or Liberal ideas of democracy that government should be directly accountable to the populous, but rather that it should be accountable to Parliament, which represented the nation. This is a testament to the enduring and omnipotent influence of the British Political Tradition's elitist and top-down values over ideas and institutions.

b) Beer: Representation and Elitism

Samuel Beer in *Modern British Politics* (1965, 1982) offers a very interesting critique of the transitory and dialectical relationship between ideas and institutions shaping the British Political Tradition. He examined British politics from the perspective of various historical theories and ideas of representation spanning centuries. Beer begins *Modern British Politics* by asking the question: 'How is the community as a whole to be represented?' He further elaborates the point by asking: 'Who or what is to represent the common good or the public interest, as compared with the more particular interests of the component parts?' (1965:6).

Beer sees the British Political Tradition as being shaped by the evolution of various organic theories of representation, with each theory dominating a specific historical period and coming to shape governing institutions. Beer categorizes each theory of representation as synonymous with a historical period of civil society and seeking to articulate significant corporate and collective interests in society. Beer categorizes each representative theory in chronological order, so he distinguishes between Old Tory, Old Whig, Liberal, Socialist and Collectivist theories of representation. Each theory embodied a snapshot of the political culture at the time representing the values and beliefs of contemporary political culture. Each body of representative theory was a relic of contemporary political culture and left an enduring legacy that was built upon and surpassed by subsequent theories.

Beer is concerned with how political and civil society's values and emotional symbols shaped the political culture of the time and how a body of beliefs taken from organic tradition shaped ideas of representation. Beer defined representation as: 'the images and sentiments that function as operative ideals in a community, or section of a community' (1965: xi) He sees functional representation as the principle inherent in, and transcending, all Whig, Tory and Collectivist ideas of representation. Beer specifically defines functional representation as:

Any theory that finds the community divided into various strata, regards each of these strata as having a certain corporate unity, and holds that they ought to be represented in government (1965:71).

Beer places great emphasis on representation as being a corporate and hierarchical entity. Referring to the Old Tory view of society, he contends: 'The ideal of social reality was corporate and hierarchic' (1965:7). Later, after the Glorious Revolution and the halcyon days when Whig ideas of representation reigned supreme, he argues: 'Again, in the Old Whig as in Tory thought, the corporatist was inseparable from the hierarchical ideal' (1965:10). Overall, he suggests: 'The Old Whig conception of the good society, in short, retained many of the basic features of the Old Tory ideal of the hierarchical community' (1965:10).

The Old Tory idea of hierarchy embroidered into the social fabric and culture of the nation was also strongly evident in Whig ideas of representative democracy. The Old Tory view of representation stipulated: 'The purpose of authority, the function of hierarchy, is to foster the good of the whole' (1965:5). To Tories, the Crown symbolised the whole nation, but, to Whigs, the Crown and Parliament symbolized the authority and good of the nation. Conservative ideals of responsibility embodying strong, authoritative, government endured, as did ideas of hierarchy and corporate interests.

Beer argues that the various ideas of representation came to shape the political institutions of Parliament, defining political discourse, processes and the flow of power.

In the aftermath of the 1688 Glorious Revolution, ideas of hierarchy and corporatism engendered in Whig ideas of representation retained a stern grip over Parliamentary representation. The Glorious Revolution displaced the Crown with Parliament as the embodiment of the nation's interests. Whig ideas of hierarchy and corporate representation shaped the political discourse and the power structures of Parliament. A Member of Parliament was regarded as a rational independent actor vested with the responsibility and authority for the governing of the whole nation. Ideas of hierarchy and corporatism were pre-eminent as a Member of Parliament was regarded as a representative of the whole community and its component parts, but was not obliged to sacrifice: 'his unbiased opinion, his mature judgment, and his enlightened conscience' (Beer, 1965:16) to the dictates of the electorate.

Whig ideas of representation shaped political discourse and the nature of Parliamentary power structures. Parliamentary representation and processes were hierarchical, with the current of power flowing downwards from Parliament and the elected Members at the apex of the structure. This ruled out any notion of an authoritative mandate from the electorate. Beer argues (1965:17):

> The Old Whig view thus involved a definition not only of the mode of representation, but also of the nature of the interests that were considered legitimate. As compared with Liberal and radical ideas, it conceived representation being not of individuals but rather of corporate bodies.

A Member of Parliament (MP) represented the fixed and corporate interests of the locality and also the functional interests of groups, which were not only in the locality, but also across the nation. An MP might represent the interests of a fishing port in his locality, but he was also deemed to represent the interests of all fishing ports nationally. In this sense, an MP need not directly represent a locality or vested interest, because that interest or locality could be said to be *virtually represented* by a Member in another locality with similar corporate interests. The idea of virtual representation became a standard-bearer and pillar of the Whig theory of representation.

Beer shows how the Whig theory of representation, incorporating virtual representation, came to underpin and shape the governing institutions of the Houses of Commons and Lords. He contends: 'functional representation was a principal basis of the defense of the unreformed House of Commons' (1965:18). The Whig theory of representation was successful and endured because it gave an element of representation to a wide spectrum of corporate interests, while reinforcing the principles of hierarchy and corporatism.

Whig ideas of representation created strong governing institutions with a top-down diffusion of power and authority. Parliament was a strong autonomous governing institution and the principle holder of political power. Whig theories of representation and, in particular, the idea of virtual representation gave legitimacy and justification to the system of Parliamentary electoral *rotten boroughs*. The rotten boroughs were a time-honored system of well-oiled corruption, whereby, through a network of patronage, the House of Lords manipulated elections and membership to the House of Commons.

Rotten boroughs meant that high status MPs entered Parliament. The extension of the franchise, coupled with a growing demand for a more direct form of popular government that could more directly translate the will of the people, led to a challenge to the Whig theory of representation.

The extension of the franchise as a result of the 1832, 1867 and 1884 Reform Acts involved a reinvention of ideas of representation and a challenge to the dominant hierarchical ideas of the British Political Tradition. However, the Liberal idea of representation in the Nineteenth Century built upon the Old Whig ideas of hierarchy and a top-down diffusion of power. The Liberal idea of representation and democracy was based on the individual and, as such, represented a sharp rupture with traditional ideas of corporate representation.

Liberal ideas of representation were based on the individual as a discrete independent entity whose interests were not necessarily compatible with local or sectional interests. Victorian ideas of representation were underpinned by the concept of the individual and the progress of democracy entailed by the 1832 and 1867 Reform Acts was based on the view that, in the words of Ensor: 'the individual for the first time became the unit, and numerical equality (`one vote, one value`) the master principle' (cited in Beer: 1965:34). The evolution of democracy through the Reform Acts led to the creation of a democracy which, by 1885, was based upon constituencies of roughly equal size in terms of voters.

Liberalism's emphasis upon the individual as the basis for representation consigned the Old Whig idea of corporate representation to the annals of British political history. However, the influence of the British Political Tradition on ideas of representation was still clear. Liberals were as rigid adherents to the idea of hierarchical Parliamentary representation as their Whig predecessors and still retained many of the Whig ideas of a top-down dispersion of power and authority. As Beer writes (1965:33): 'The member of the legislature was not a delegate sent merely to reflect the will of the people; he was a representative charged with deliberation on the common good'. Throughout the transformation to mass participatory democracy, the Liberal idea of representation and democracy retained many of the hierarchical features and dispersions of power associated with Whiggism. The British Political Tradition's idea of democracy with a hierarchical dispersion of power bridged the divide and proved a common defining link between Old Whiggism and Liberalism, defining the scope and power of Parliament.

During the Nineteenth Century, when the Liberal idea of representation was at its zenith, Parliament was viewed as an arena in which a congress of opinions could be voiced, but, crucially, an MP, as in Whig times, was still seen as an independent autonomous agent making decisions based upon his own discretion and judgment.

Beer clearly shows how ideas of representation, in this case Whiggism and Liberalism, established a model of democracy that, in turn, shaped the political discourse of the governing institutions of Parliament. Liberal ideas of democracy created strong authoritative institutions with a top-down dispersion of power from the governing

institutions of Parliament down to the electorate. As such, the dominance of the British Political Tradition is evident in the fact that, despite the move towards mass, participatory, democracy, with implicit ideas of egalitarianism, there was no question of the electorate imposing its views onto Parliament. In the new, mass, participatory democracy, the British Political Tradition idea of top-down power held a dominant position shaping the discourse within, and the processes of governing, political institutions.

This is not to say that there was no contestation or change. As Dicey, writing in 1867 about democracy in Britain, contends: 'The aim of democratic theory, is to make the majority of the nation the arbiter of the nation's destiny' (cited in Beer, 1965:41). As such, one of the consequences of an expanded democracy was to introduce the possibilities of new alternative ideas of democracy designed to translate more directly the will of the people and lead to a more popular and direct form of government.

Joseph Chamberlain, speaking after the 1884 Parliament Act, declared: 'At last, we have a Government of the people and by the people' (cited in Beer: 1965:41). The cumulative effect of three Parliamentary Reform Acts was to introduce a new articulate and coherent electorate into the representative process. The introduction of a new sizeable electorate, ready to make demands upon governing institutions, introduced a new element of "market politics" into the political process, whereby political parties had to generate support from the electorate to govern with authority and legitimacy. Despite contestation and challenge from other ideas of democracy claiming more directly to translate the will

of the people, the British Political Tradition's idea of top-down democracy still retained a dominant position underpinning institutions and shaping political discourse.

Beer identifies collectivism as: 'government intervention with the economic and social system *as a whole*' (Beer, 1965:80). He argues that it had a major bearing and influence upon ideas of representation and democracy in late-Victorian Britain. He reflects on the effects of collectivism on the institutions and the discourse of Parliament when he writes: 'The major theme of this collectivist theory of representation is party government; its minor theme is functional representation' (Beer, 1965:70). Beer argues that a direct consequence of democracy and collectivism was a disciplining of political parties in Parliament. A Member of Parliament was no longer deemed to be a representative in the Whig sense, but was now a party delegate, constrained by the discipline of a new hierarchy, that of a political party. Beer writes (1965:87): 'In this view of democratic politics, the M.P. is no longer a representative in the Old Whig sense or Liberal sense. He is a party man, indeed a party delegate'.

So, Beer contends: 'The British Constitution embraces democracy. But which kind of democracy: Socialist or Tory?' (Beer, 1965:96). The idea of democracy that dominates British Constitutional government has a direct effect in shaping the governing institutions of the Houses of Lords and Commons, defining political discourse and processes and determining the nature of representation and diffusion of power.

The British Political Tradition achieves two objectives that are perceived as fundamental principles of British constitutional government: establishing strong, stable authoritative government by creating, through the representative process, a strong, energised, governing institution with a free reign to initiate and implement legislation; and achieving that strong government, while encompassing and representing the various estates, classes and interests that make up the nation.

Before the 1688 Glorious Revolution, the Crown was the institution charged with the representation of the nation and the responsibility for government. As democracy evolved and unfolded, so did the British Political Tradition, shifting the legacy of strong, responsible government away from the Crown to the majority party in the House of Commons. Parliament performed the traditional and allotted function of airing grievances and checking government by making it more accountable. As Beer contends (1965:95): 'Parliamentary government and the mass suffrage have been grafted onto and adapted to the ancient bipolar structure of authority'.

Consequently, it is argued here that the British Political Tradition has provided the dominant; though contested, and not unchanging, discourse of democracy underpinning ideas and institutions in the British political system. Though the British Political Tradition has been pre-eminent, it has always been contested by alternative ideas of democracy and was forced to evolve in the age of mass democracy. The extension of the franchise was linked to the development of different models of democracy, which advocated different distributions of power and, as a direct consequence, held very

different conceptions of the preferred shape and authority of governing institutions. Radicals and Socialists favoured a model of democracy that placed the electorate at the centre of political discourse, with the will of that electorate translated as directly as possible into government practice and processes.

This delegatory idea of democracy has a radically different conception of the shape of governing institutions, processes and discourse than the one inscribed in the British Political Tradition. In this alternative view of democracy, an MP is seen as a delegate who is mandated by the community he represents directly to implement their wishes. Parliament has a limited power of discretion; rather its fundamental task is to carry out the will of the electorate. The electorate is deemed to have a proactive role as principal initiators of legislation and the flow of power is from the electorate to the delegate.

However, the argument developed here is that, despite the various contested ideas of democracy, the British Political Tradition has remained the dominant discourse throughout British political history underpinning institutions and defining the nature of processes through a hierarchical diffusion of power and authority. The British Political Tradition idea of democracy is based around the premise that for the benefit and efficiency of civic society the national government must be strong and authoritative.

The British Political Tradition ensures strong government in which power is centrally concentrated within an executive authority, now the majority party in Parliament, vested with the latitude and authority to govern largely as it sees fit. This model of top-down

democracy enshrined in the British Political Tradition has crucially shaped the nature of governing institutions, creating strong government and a hierarchical diffusion of power through various political and civic strata of society, but maintaining the institutions as the prime architects of political power. As Amery, writing of British democracy, declares, the British system:

> has never been one in which the active and originating element has been the voter, selecting a delegate to express his views in Parliament as well as, on his behalf, to select an administration conforming to those views (cited in Beer, 1965:95).

Rather, the British Political Tradition's idea of democracy is hierarchical and top-down and ensures that the authority and responsibility for the initiation of political ideas and programmes belongs with Parliament and the political parties within it. In this vein, Beer argues that the voting public are restricted to an 'essentially passive' (1965:95) role in choosing between alternative political parties. The British Political Tradition, through a system of hierarchical and limited representation, seeks to consult the electorate, but is never mandated by the electorate.

As such, Beer writes (1965:95): 'British democracy therefore is democracy by consent and not by delegation'. The British Political Tradition created a top-down democracy with a graded diffusion of power and authority. The institutions it established were strong and authoritative, maintaining a central concentration of power. Strong government is a

core principal and objective of the British Political Tradition and seen as an essential pre-requisite for efficient government. Institutions themselves are regarded as the best instrument to be entrusted with the governing of the nation. Beer further reflects on the hierarchical nature of the British Political Tradition and its eminent position as the dominant model for political discourse when he writes that British government is: 'government of the people, for the people, with, but not, the people' (Beer, 1965:95).

In *Britain Against Itself (1982)* Beer provides a limited critique of his earlier ideas of representation and collectivism contained in *Modern British Politics (1965)*. Here, he focuses upon dominance of collectivism over post-war British politics from 1945 to 1982 and its eventual decline in the 1970's. Beer analyses how collectivism, which he defined as state intervention in the economic and social system as a whole, provided the foundation for thirty years of economic growth and further underpinned the stability of Parliament`s governing institutions. However, Beer argues that collectivism, paradoxically, contained the seeds of its own decline, leading to economic decline and eventual crisis in the 1970s. Chapter Seven examines how the decline of collectivism, which precipitated that economic crisis, stretched the credibility of governing institutions, and indeed the constitution, to breaking point. That Chapter analyses how new ideas of neo- liberalism came to replace collectivism and how this eventually evolved into a new wave of constitutional reform.

c) Greenleaf: Libertarianism and Collectivism

Greenleaf's mammoth three volume work *The British Political Tradition* (1983a; 1983b; 1987) is the most famous study of the British Political Tradition. It represents a panoramic narrative and a grand vision of the evolution of British politics from the Eighteenth Century onwards using a hermeneutic approach.[1] His work is an intricate study of the history of ideas in the British Political Tradition.

Greenleaf used the ideas of libertarianism and collectivism as paradigms for interpreting the British Political Tradition and posited the view that the British Political Tradition was shaped by a tension between these two, diametrically opposed, ideas. Greenleaf was struck by English constitutionalist A.V Dicey's (1835-1922) observation that political life in Twentieth Century Britain was being increasingly shaped by tides of collectivism. Greenleaf chronicled the ideas behind the rise of collectivism and examined the ideological tensions created by the growth of government as it impacted on libertarianism and traditional governing institutions.

Greenleaf defined political tradition(s) as:

> A unity in diversity: a complex amalgam of different and opposing choices, and therefore internal tensions, which is at the same time in a continual state of flux and development but which nevertheless constitutes an recognisable acknowledged whole (1983:a1983;b:1987:13).

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[1] Greenleaf's work has its epistemological basis in the theory of hermeneutics which examines the existential nature of understanding, acknowledging that it is embedded in tradition. Hermeneutics emerged within Biblical scholarship and was associated with interpreting texts, actions and behaviour; consequently, it often overlaps with an interest in the history of ideas.

Greenleaf utilized Halevy's model, developed in *Growth of Philosophical Radicalism*, to establish the criteria for assessing the effect of libertarianism and collectivism on political institutions and processes. He defines libertarianism as: 'the notion of natural harmony in society achieved without recourse to state intervention'. Collectivism is: 'the idea of an artificial identification of human interests resulting from legislative or other political regulation' (Greenleaf, 1983a; 1983b; 1987:15).

Greenleaf contends that economic and social forces created by the industrial revolution unleashed a great tide of collectivism that eventually eroded the traditional ideas and values of libertarianism which had previously underpinned governing institutions. In the second volume of the British Political Tradition, *The Ideological Inheritance,* Greenleaf offers a detailed exposition of the ideas inherent in the three ideological streams of Conservatism, Liberalism and Socialism flowing through the British Political Tradition. He posits a trans-ideological view, suggesting that each ideological stream contains facets of both libertarianism and collectivism and attempts to entwine these paradoxical and antithetical ideas into coherent ideologies.

Greenleaf's exposition of ideas and their effects on shaping institutions represents an interesting use of hermeneutic theory. He argues that the ideas are a product of the organic growth of political and civil society and that, within every political and civil society, there is a core set of customs, practices and beliefs intrinsic and inherent to the culture and history of the nation. Greenleaf highlights four ideas within libertarianism.

The first idea stresses the right of the individual to freedom from social provision and arbitrary political control. The second involves the protection of the individual's right to a free realm of self-regarding action. Central and crucial to this facet of libertarianism is the idea that government should be limited and intervene minimally in the affairs of the individual. The third idea emphasizes that an over-concentration of power is: 'likely to be dangerous to this sacrosanct zone of individual choice and activity' (Greenleaf, 1983a; 1983b; 1987:17). This idea within libertarianism reinforces the deeply ingrained fear in the British Political Tradition that an over-concentration of power in governing institutions leads to arbitrary government, which is to the detriment of the individual, and, by extension, society as a whole. To counterbalance centralized government and its potential for arbitrary political power, libertarianism stresses the need for a separation and diffusion of powers to local authorities. Greenleaf writes of institutions: 'Local or regional self-government is no mere administrative convenience but an essential principle of libertarian society' (Greenleaf, 1983a; 1983b; 1987:18).

Greenleaf quotes Spanish writer Jose Ortega: 'liberty and plurality are reciprocal' (1983a; 1983b; 1987:18). Greenleaf's analysis of the role of governing institutions echoes the Whig ideas of Edmund Burke when he declares that institutions should be counterbalanced by an array of groups and interests, such as churches, trade unions and associations, which can check the arbitrary power of government. As such, the diffusion and separation of powers was the means by which the constitution sustained the liberties of the people. The diffusion of power and authority to a wide array of local governing

institutions, reinforced by a spectrum of local civic and corporate interests, all conspired to protect the freedom of the individual.

Greenleaf identified the rule of law as the fourth facet of libertarianism. He was influenced by Dicey's contention that the rule of law was 'the distinguishing characteristic of English institutions' (Greenleaf, 1983a; 1983b; 1987:19) and argued that it defined the parameters of all government activity. The rule of law upheld all libertarian and anti-statist principles and ensured that a notion of equality, under the auspices of the law, was applicable to all.

Collectivism, in stark contrast to libertarianism, stresses the primacy of the common, or collective, good over the individual good. Greenleaf contends that the pressure of economic and social change derived from the industrial revolution created a tide of democratic and collectivist change that grew into a crescendo of collectivism.

Greenleaf argued that there was a direct correlation between the extension of democracy and the rise of collectivism. He argued that, as a consequence of the rise of democracy, there was a tension between the traditional ideas of libertarianism inherent in British governing institutions and the new ideas within collectivism. Greenleaf contends that, in the battle of ideas between libertarianism and its antithesis collectivism, the balance of power shifted irrevocably towards collectivism. Collectivism eroded and undermined the traditional ideas of libertarianism that had previously underpinned governing institutions.

Greenleaf makes reference to the unwritten nature of the British Constitution and the historical roots of Parliamentary sovereignty when he quotes Sir Thomas Smith writing in 1565 the: `most high and absolute power of the realme of Englande consisteth in Parliament' (1983a; 1983b; 1987:196). The idea of Parliamentary sovereignty is derived from ancient roots, being linked to Roman ideas of 'imperium' and the later related Papal claim of 'Plenito Potestatis', and offers a coherent theory of government power and responsibility. The idea implicit in these theories is that, to achieve strong government, executive power must be vested in, and be the sole preserve of, solitary governing institutions. Institutions must have authority over the entirety of their jurisdiction to achieve strong, authoritative government. Historically, in the ancient lineage of England, sovereignty and power moved from the Emperor to the Pope, then to the Crown and finally to Parliament.

Parliament is the supreme law-making body of the constitution and has a monopoly of legal powers, ensuring that no Act of Parliament can be rendered 'ultra vires'. Parliamentary sovereignty with the concentration of legal and legislative powers under its jurisdiction ensures a central concentration of power.

Since the Sixteenth Century, Parliament has been regarded as the essence of all government. The concentration of political and legal power in one all-encompassing Parliament ensures the Britain's governing institutions are not impeded by facets associated with Federal structures, such as the separation of powers between a regional and national assembly, or a separate legal authority ready to challenge the executive.

Greenleaf (1983a; 1983b; 1987:200) writes: 'The absence of a written constitution gives British politics a flexibility enjoyed by few nations'. The unwritten nature of the constitution means that Parliament is free from the dictates of a constitutional document, allowing it an: `evasive fluidity` (Greenleaf, 1983a; 1983b; 1987:196). He contends (1982:196) therefore: 'It follows that there is no legal or constitutional impediment to the use of this sovereign power for collectivist purposes'.

Greenleaf suggests that the pace of economic and social change created great economic and social problems that forced governing institutions to intervene in the affairs of the nation, using increasingly collectivist measures to remedy economic and social ills. The pressure of economic and social circumstances created the momentum for political change. Democracy in Britain was the catalyst for change, allowing government the mandate it needed to intervene directly in the governing of the nation. Greenleaf argues (1982:201): 'Parliamentary sovereignty was set to work in a collectivist direction not least because of the movement towards universal suffrage'.

The concentration of legal and political authority vested in Parliament meant that the idea and model of democracy used would have a crucial bearing on political discourse. The model of democracy used as the transition towards universal suffrage was completed would have a direct and profound bearing on the strength and authority and processes of Parliament.

Greenleaf's analysis of the British Political Tradition represents an intricate and detailed study of British political history using hermeneutic theory. He conceptualizes tradition as the outcome of various contested ideas and argues that, in the context of the British Political Tradition, successful ideas flourished and became dominant and inscribed within the institutions of government. As Bevir and Rhodes put it: 'He moves outwards from the intimations of a tradition to the practices and institutions it inspires' (2003:21). He examines the complex interplay between collectivism and libertarianism, the democracy it produced and the effects of that democracy on the nature of governing institutions. His paradigms of libertarianism and collectivism have, however, raised a number of analytical and interpretative questions relevant in studying the characteristics of the British Political Tradition.

Unfortunately, Greenleaf's use of the concepts of libertarianism and collectivism to explain the political discourse of the Nineteenth and early-Twentieth Centuries seems vague and inappropriate. Libertarianism and collectivism are diverse, all-encompassing, concepts that are too broad to explain the intricate patterns of economic, social and political thought that have shaped British politics since the Nineteenth Century. As such, Kenny writes (1999:280):

> Interpretations of political discourse in the Nineteenth and Twentieth Centuries through the push-and-pull of Libertarian and Collectivist expressions give rise to an inadequate intellectual history as these categories

are too starkly drawn to account for the unfolding of patterns of thought which straddle and undermine the divide.

The philosophical ideas and patterns of thought that have been used to interpret economic, social and political institutions are complex, interchangeable entities and this is exemplified by the fact that many collectivists, such as the New Liberals of the early-Twentieth Century, can, on closer scrutiny, be identified as strident libertarians. Greenleaf's categories of libertarianism and collectivism are perhaps too starkly drawn to account for this blurring at the edges and his analytical framework obscures the way in which various political theories connected with the aspirations of the individual dovetail with the needs of the community.

More importantly, Greenleaf's interpretation of democracy in Britain in terms of a tension between libertarianism and collectivism pays scant regard to traditional ideas of representation and hierarchical democracy that are perceptible in the British Political Tradition and emphasised in the work of Beer and Birch. Despite examining ideas and how they impact on institutions, Greenleaf pays relatively little attention to the institutions themselves. He concentrates primarily on the impact of collectivism on legislation emanating from the House of Commons and pays minimal attention to the effect of collectivism on party discipline and executive power in the House of Commons. Greenleaf's pre-occupation with democracy also leads him to regard the House of Commons as the only relevant governing institution worth examining and he fails to address the influence of either the Crown or the House of Lords over democracy.

Greenleaf approaches the House of Commons as a discrete institution, separate from the Crown and the House of Lords, which means he neglects two of the three major governing institutions of the British Constitution. As a consequence, he fails to comprehend the contribution of either the Crown or the House of Lords to ideas and, crucially, he does not allude to how democracy altered the House of Lords.

As Marsh and Hall (2007:22) contend: 'Greenleaf's approach is deeply normative and in our view badly underplays the importance of conservatism'. Although Greenleaf alludes to the dominance of ideas over institutions, he fails fully to acknowledge the significance of the conservative idea of responsibility, with its clear defence of elitism and hierarchy, ingrained in British political institutions and evident in civil society. Indeed, Greenleaf's failure to address either the Crown or the House of Lords is indicative of his tendency to downplay the conservatism within the British Political Tradition.

d) Marsh: A Dominant British Political Tradition

Marsh (2008a: 6; see also Marsh 1990, Marsh and Hall, 2007) examines the relationship between ideas and institutions throughout the British Political Tradition and argues that a dominant narrative of democracy, already enshrined in the values and culture of tradition and ingrained in civil society, came to shape governing institutions. Marsh builds upon Birch's classificatory schemas of representation and responsibility to establish a framework for analysing the British Political Tradition and attempts to identify what underpins the hierarchical, top-down democracy that has so permeated and dominated governing institutions and processes.

He contends that, while Birch, and indeed Beer, place great emphasis on various prescriptive theories of representation and responsibility, they fail to acknowledge that there is a dominant narrative and discourse of representation and responsibility which underpins the institutions and processes of British government. Marsh (2003: 6) contends:

In my view, the British Political system is based on a Conservative notion of responsibility (which owes much to Hobbes and especially Burke) and a limited Liberal notion of representation.

Marsh argues that the British Political Tradition is a dominant idea of democracy, based upon a limited liberal idea of representation and a conservative notion of responsibility, which has been the dominant discourse permeating governing institutions. The British Political Tradition's idea of top-down democracy has conditioned the nature of institutions and processes, establishing strong institutions and a hierarchical dispersion of power.

However, the British Political Tradition is not sacrosanct, nor cast in constitutional stone, but has always been open to contestation and challenge from alternative schools and ideas of democracy. Radicals in the late Eighteenth Century proposed a purer, more egalitarian and delegatory, idea of democracy that aimed directly to translate the will of the people into government practice. This form of democracy would have produced

radically different governing institutions and a vastly different context for discourse and processes. Despite contestation, Marsh (2003:7) argues that the British Political Tradition's elitist idea of democracy has provided the dominant narrative of British politics underpinning institutions and defining the parameters for discourse and processes:

> It is crucial to my argument here that this dominant political tradition, which stresses a limited notion of representation and a Conservative notion of Responsibility, has underpinned U.K political institutions and processes.

The British Political Tradition's conservative notion of responsibility directly creates strong, authoritative, governing institutions with a central concentration of power. This objective remains a pillar of British constitutional government. Conservative notions of responsibility also influenced the thorny and complex issue of representation and the extension of the franchise. During the turbulent years of the Nineteenth Century, when debate over the franchise was at its most fervent, both Whigs and Tories cited the maintenance of strong and stable government within existing institutions as a priority to be maintained at all costs with the extension of the franchise. Throughout the Nineteenth Century, and in the three Reform Acts that extended the franchise, Whigs and Tories allied, and linked by a commitment to the values of the British Political Tradition, combined to defend top-down, hierarchical democracy and the governing institutions that it created. Marsh (2003:4) contends: 'the point here is that both Whigs and Tories, despite their differences, shared a common antipathy towards popular sovereignty'.

The model of democracy that emerged in the Nineteenth Century reflected the antipathy towards participatory democracy and, instead, endorsed the classical hallmarks of the British Political Tradition. An elite, top-down idea of democracy, producing strong, stable governing institutions and a hierarchical dispersion of power and authority, still prevailed, even in an age of mass participatory democracy.

The British Political Tradition incorporates a limited idea of representation in which the participation of the masses in the democratic process is not regarded as an essential pre-requisite of democracy. Democracy creates elitist institutions with a top-down distribution of power and with the contribution of the electorate restricted to periodic participation during elections. Elite democracy also produces a strong concentration of power in the executive, enabling it to wield power over a subservient legislature. As such, Marsh argues that the idea of liberalism, which in its purest form envisaged the executive as accountable to Parliament, was diluted by the British Political Tradition, as the dominance of the executive diminished the participation of representatives in the governing process to an essentially passive role. In this sense, it can be seen that, far from the liberal ideal of an executive becoming responsible to Parliament, the executive established supremacy over the legislature. As such, the argument here is that, although a liberal idea of representation prevailed, it was limited by an essentially elitist and top-down system of government which ensured the dominance of the executive over elected representatives.

Marsh contends (2003: 6): 'The stress in the British political system is on strong government, rather than responsive government, on elite or leadership democracy, rather than participatory democracy.' So, the British Political Tradition has been shaped by ideas about representation and responsibility which produce elitist top-down governing institutions. In particular, Marsh argues that a conservative notion of responsibility, with its stress on producing strong governing institutions, underpins the authority of those institutions, establishing an elitist, top–down government practice and ensuring that the dominant ideas of representation also reflect a hierarchical model of power. As Marsh (2003: 5) writes:

> The British notion of representative democracy is a limited one. In fact, in the British system the stress has constantly been upon strong, centralized, efficient government, rather than responsive government.

e) Hall: Political Traditions and UK Politics

Hall in *Political Traditions and UK Politics* (2011) provides the most recent contribution to debates on the British Political Tradition. He examines the concept of tradition analysing how ideas contained within traditions have shaped the British political system. He writes (Hall, 2011:7): `The British Political Tradition (BPT) is a concept that has been utilised by a number of authors to explain the nature of British politics and the ideas that underpin political practice in the UK .` Hall`s objective is to provide greater theoretical clarity to the British Political Tradition and develop its ideational foundations as a way of explicating UK politics. His work is clearly influenced by Marsh's position.

The originality of Hall`s contribution to the British Political Tradition lies in the conceptualisation of political tradition(s) specifically focussing upon how ideas contained within tradition(s) shape the discourses and practices of institutions. Hall illustrates the significance of tradition when he writes: ` In recent years, there has been renewed interest in the concept of political tradition and its application to the study of British politics` (2011:51). He argues that, throughout the recent literature of the British Political Tradition all authors, although from differing methodological and normative positions (Bevir and Rhodes 2003; Marsh and Hall 2007; Marquand 2008), have emphasised the centrality of tradition within the British political system. Hall (2011:51) further contends that: `those utilizing political traditions as explanatory variable focus explicitly on ideas that underpin political practice.` He also acknowledges that the increasing interest in ideas compliments what Hay (2004) refers to as an `ideational turn ` in Anglophone Political Science generally.

Hall acknowledges that Bevir and Rhodes (2003), arguably pioneers of the new ideational approach to tradition, define the BPT as being composed of Tory, Whig, and Liberal and Socialist traditions. Similarly, Marquand in *The Strange of British Democracy* (2008), also focuses upon multiple traditions, arguing that the British Political Tradition is comprised of four key ideas, which are: Whig Imperialist,; Tory Nationalist; Democratic Collectivist; and Democratic Republican. In contrast, Hall argues, following Marsh, that there is one all-encompassing dominant, though contested, idea underpinning the institutions and processes of the British political system.

Although Hall argues that the British Political Tradition is a dominant idea, he acknowledges that ideas do not exist in isolation, but are influenced by other contemporary ideas. He writes (Hall, 2011:41): `We need to recognise both the resonance of certain ideas and the way in which they are influenced by other ideas.` So, Hall argues that although the British Political Tradition is a dominant idea, its shape has been influenced by an historically-rooted process of ideational conflict: ` We should recognise the centrality of ideational conflict over time to any developed understanding of the process of continuity and change ` (Hall, 2011:41: Kerr, 2002; 2003). In his view, the conflict between concurrent traditions, reflecting differing ideas about democracy, shapes continuity and change in the British Political Tradition. Finally, Hall argues that the resonance of ideas within the political system is further influenced by contingent change in society, writing: `contingent events lead to a predominant and competing traditions resonating at differing intensities at different times ` (2011:219).

Consequently, the resonance of ideas within the UK political system is asymmetrical and dependent on prevailing institutional, contextual and discursive environments. He writes: `An integral facet of the asymmetrical political landscape in the UK is the asymmetrical resonance of ideas and traditions within that landscape` (219:2011). As such, he acknowledges that the dominance of the BPT may ebb and flow depending on institutional and contextual factors.

Although the BPT is a dominant tradition it has always been contested by other traditions reflecting alternative ideas about democracy and power. Hall argues that a participatory tradition advocating an egalitarian distribution of power and a 'bottom up' conception of democracy, has always existed, parallel to the BPT. In this vein, he contends that in the late twentieth and early twenty first centuries the ideas proposed by pressure groups such as Charter 88, Campaign for Freedom of Information, (FOI), Electoral Reform Society, (ERS) and Unlock Democracy continue the participatory tradition of power and provide modern day contestation to the British Political Tradition.

In *Political Traditions and UK Politics* (2011), Hall begins by analysing the traditional conceptualisation of British politics, the Westminster Model (WM), emphasising that: 'the WM has been the dominant prism through which the British political system has been viewed' (Hall, 2011:37; see also Kerr and Kettell 2006; McAnulla 2006a). However, in recent years the Westminster Model and its conception of Parliamentary sovereignty has come under sustained criticism and increasing contestation from new models such as the `Differentiated Polity` (DPM) (Rhodes ,1997) and the `Asymmetrical Power Model` (APM) (Marsh, Richards and Smith, 2001). In particular, Marsh, Richards and Smith argue that the principle problem with the WM is that it presents an inaccurate picture of how British politics works (Hall, 2011:10)

Hall further builds on Marsh, Smith and Richards assertion by suggesting that major flaw of the Westminster Model is that its ideational foundations, which he argues have presented a particular view of the operation of the institutions and processes of British

government, have never been developed. Hall argues that this remains a glaring weakness of the WM, because these ideas have historically resonated within the discourses and processes of institutions and remained at the: ` core of the theory and practice of British government for (over) three hundred years` (Miliband, 1982:20, cited in Hall, 2011:8,)

This concern with ideas and how they shape institutions is further developed by Hall, who argues that, although the British Political Tradition and the Westminster Model are frequently conflated, what undermines both is the absence of any theoretical foundation which can explain the ideas which underpin them. Despite the longevity of the Westminster Model (WM) as the dominant prism through which British politics has traditionally been explained, most authors who advocate it have taken its ideational basis for granted and, as a consequence, failed to provide a coherent explanation of which ideas have underpinned and informed it and how those ideas have shaped the institutions of the WM. In a similar vein, he contends that those advocating the BPT have never fully offered a cohesive theory of how its ideas have underpinned institutions. Birch (1964) paid minimal attention to institutions, while Beer (1965) and Greenleaf (1982a; 1983b; 1987) fail to explain how the BPT came to underpin institutions. Only Evans (1995; 2003) offers an explanation of how the BPT ideas directly translated into the discourse and processes of institutions.

Hall argues that a detailed understanding of the development of ideas is required to understand how they shape institutions, writing: ` As such the relationship between institutions and ideas in British politics requires greater consideration than it has been

thus afforded to date ` (Hall, 2011:45).   He continues (2011:45): `Political traditions

helped to shape institutions and practices, whilst these institutions and practices provide

the context within which both dominant and competing traditions operate and develop

over time. `

Hall argues that a crucial element of such an approach involves acknowledging that the

relationship between ideas and institutions is dialectical, that is interactive and iterative.

He contends that, once such an approach is accepted: `One key point follows: that the

ideas of the BPT helped inform and shape institutions and structures within British

politics narrated by the WM` (Hall, 2011:43). He continues (2011:43): `Thus the WM

should be viewed as a narrative of the British political system`. He also contends that a

further weakness of the WM is its inability to explain the elitism evident in the

institutions and practices of government, nor, in his view, does the WM offer an account

of the asymmetrical power relations or structured inequalities within UK society, which,

he argues, have been instrumental in shaping the British political system.

For Hall, the British Political Tradition offers an analysis of the development of the

British political system which focuses on the significance of ideas and how they shape

institutions and practices of British politics. Hall (2011, 37) writes: `Indeed the focus on

ideas supports a historically rooted approach to understanding contemporary politics.

This allows us to more fully explain change and continuity over time`.

Overall, Hall expands the theoretical foundations of the British Political Tradition established by Marsh and others (Marsh and Tant, 1989: Tant, 1993; and Evans, 1995, 2003). He concurs with their argument that the British political tradition is comprised of a limited liberal idea of representation and a conservative idea of responsibility, but argues that these are further supplemented to two related discourses. Hall`s two additional discourses revolve around gradualism and national distinctiveness.

The discourse of limited liberal representation emphasises an elitist, top-down view of government, which rejects a participatory view of democracy. The limited liberal idea of government provides a top-down view of government in which politicians and the political system are seen as the best guardians and executors of the national interest. A conservative discourse of responsibility further consolidates the elitist view of government by stressing the virtues of strong decisive government, which is seen as necessary for efficient and effective government. The discourse about change emphasises the virtues of stability, continuity, gradualism and flexibility as institutions inevitably develop and evolve. Throughout this discourse gradual and mediated change creates developmental pathways which further consolidate the stability of institutions. This discourse has ensured the longevity and success of British governing institutions and makes them distinct from the institutions of other Western democracies. The stability and longevity of British governing institutions, in stark contrast to their continental counterparts, gives rise to a fourth discourse, involving a self perception of national exceptionalism accompanied by a sense of superiority

Hall contends that much of the BPT literature still remains under-theorised, suggesting this may reflect what McAnulla refers to as `the poverty of theory on British politics` (McAnulla,; 2006a:3). There remains insufficient consideration of the structure-agency debate, the ideational-material debate and cultural factors. Hall suggests that the failure of the BPT literature to develop the causal relationship between material and ideational factors has ramifications for the study of the BPT. There is consensus in the literature that ideas of elitism, structural inequalities and asymmetries of power operate within institutions, but it remains unclear if this elitism and hierarchy is linked to socio-economic interests. Hall suggests that the contributions of Marsh and Tant (1989), Tant (1993) and Evans (1995; 2003) open up the possibility of a socio-economic dimension to the BPT, but they fail to develop it. Hall contends that there is a direct correlation between socio-economic interests and the British political system. He writes (Hall, 2011:45) that: ` Indeed an exploration of the socio-economic interests at the root of the BPT is required if we are to fully understand the elitism that pervades the British political system` He argues that advocates of the BPT need to address the question of whether there is an socio-economic dimension to the BPT and ,crucially: ` whether the continued resonance of the core ideas that underpin British politics have helped to serve or foster the interests and dominance of certain groups or institutions ` (Hall, 2011:45)

Hall`s main objective in *Political Traditions and UK Politics* (2011), is firstly the conceptualisation of tradition(s) and secondly the analyse of ideas and how ideas emanating from tradition(s) have historically shaped the discourses and processes of institutions. Hall aims to develop the work of Marsh and concentrates primarily on

expanding the ideational foundations of the BPT illustrating how these ideas have underpinned governing institutions and UK politics.

Hall acknowledges the consensus in the BPT literature that elitism is a characteristic of UK governing institutions and refers to the possibility that this elitism is linked to dominant economic interests. In doing so Hall makes the link between the material context and the ideational but does not establish who these economic interests are or how they specifically shaped the BPT. Instead he uses the material context and the alleged link between socio-economic interests and the BPT as another added dimension to the development of ideas, suggesting that future critiques of the BPT will need to examine it in more detail. Hall by entwining the material and the ideational is opening up another front for future critiques of the BPT to explore.

f) Bevir and Rhodes: Interpretism and the British Political Tradition

Bevir and Rhodes offer a strong critique of the view of the British Political Tradition adopted in this thesis. In *Interpreting British Governance* (2003), Bevir and Rhodes develop an interesting, innovative, and epistemologically different, approach to the study of the British Political Tradition. In a departure from what they term the modernist empiricism and positivist epistemology that prevails in much of Political Science, Bevir and Rhodes use an ontologically anti-foundationalist and epistemologically interpretivist approach (on this see Marsh and Furlong, 2002 and Furlong and Marsh, 2010) to unpack and de-centre ideas and institutions and come to a radically different conclusion about

how ideas shape institutions, than the one drawn by most other people who invoke the British Political Tradition.

As against a positivist epistemology, which examines political ideas, actions and institutions as atomised units and establishes facts from theoretical contexts, the interpretivist approach maintains that, in order to understand ideas and institution, it is necessary to comprehend the prior web of beliefs and preferences that assembled ideas, actions and institutions. In this vein, Bevir and Rhodes (2003**:** 3) write: 'In contrast, anti-foundationalists stress interpreting political actions and institutions to reveal how prior webs of beliefs informed by traditions construct them'.

They continue (2003:17): 'Interpretative approaches to political science focus on meanings that shape actions and institution, and the ways in which they do so'. The interpretative approach is thus based on the central premise that we can only study ideas, actions and institutions by discerning the beliefs and preferences of individuals involved in constructing ideas and institutions.

Bevir and Rhodes (2003:1) write:

> Interpretative approaches begin from the insight that, to understand actions, practices and institutions, we need to grasp the relevant meanings, the beliefs and preferences of the people involved.

Bevir and Rhodes' anti-foundationalist approach leads them to a radically different definition of a tradition than that adopted in most of the literature (2003:33): 'When unpacking the idea of tradition we must not reify tradition. Tradition is a starting point not something that fixes or limits future actions'. As such, they reject the idea of a reified political tradition instilled with normative values against which variations and deviations can be measured. To interpretivists, tradition is a starting point, rather than a standard or normative value against which progress can be measured. So, to Bevir and Rhodes (2003: 33): '(traditions) are contingent, produced by the actions of individuals.'

As such, the interpretative approach utilizes a different definition of what constitutes a tradition and a different idea about how ideas underpin institutions. Bevir and Rhodes (2003:20) contend that: 'to appeal to a tradition is always explicitly or implicitly to make claims about the beliefs of particular individuals'. The interpretative approach conceives of tradition as being composed of a group of ideas, perhaps even core ideas, shared by several individuals, but with no one idea dominating. Tradition is an aggregate and accumulation of ideas, beliefs and preferences, but ideas that are contingent and never autonomous from the beliefs of individuals. So, they write (2003: 33): 'the carriers of tradition bring it to life. They settle its content and variations by developing their beliefs and practices, adapting it to new circumstances when passing it on to the next generation' Tradition is an accumulation of various ideas passed from generation to generation, organically evolving, but with no single idea dominating across the generations and never autonomous from the beliefs of individuals.

Bevir and Rhodes interpretist approach has profound implications for the traditional perception of ideas, and how they underpin institutions, which is inherent in studies of the British Political Tradition. Bevir and Rhodes anti-foundationalist approach leads them to reject the Westminster Model of government that Birch and Beer take for granted and which they naturally assimilate into their studies of the British Political Tradition.[2] In Bevir and Rhodes' view (2003), the Westminster model of government is complemented by a Whig histography and tells the story of a single, unilinear idea of government evolving and underpinning institutions and processes. The Westminster model focuses on ideas, institutions, rules and procedures as the foundation for governing institutions. In stark contrast, interpretivists reject the traditional idea of a monolithic, all-embracing, model of government against which ideas and institutions can be assessed. Rather, Bevir and Rhodes (2003:25) contend: 'we think the Westminster model refers to a set of ideas with strong family resemblances'.

Bevir and Rhodes offer four narratives of governance, or traditions, in the UK, Tory, Whig, Liberal and Socialist, although they offer no justification as to why they identify these traditions and exclude others; for example, they don't discuss Greenleaf's view about the importance of collectivism (for more on this point see Marsh and Hall, 2007 and Smith, 2008). They claim that the beliefs and actions of individuals are formed by one or other, or a combination of, these narratives. Bevir and Rhodes argue (2003: 6; my addition in brackets): 'Governance has arisen out of these contingent and contested

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[2] Instead, they advocate a Differentiated Polity model, later a Differentiated Polity narrative. See Marsh (2008) for an exposition and critique of this model which focuses, in part, on its ontological and epistemological underpinnings.

narratives (or traditions)'. As such, they suggest that the concept of governance developed out of these competing narratives.

Bevir and Rhodes argue that the diverse set of beliefs, concepts and traditions associated with each narrative have affected institutions and behaviour at varying times, but with no one idea, or British Political Tradition, being dominant. So, they contend (2003: 4):

> Although our interpretative approach resembles those of Beer (1965), and Birch (1964), we deploy it to study governance and thus highlight the growing limitations of the Westminster model which their studies take for granted.

As such, the interpretative approach critiques the Westminster Model of government and the idea of a British Political Tradition, rejecting the idea that one dominant and, as they would see it, monolithic, idea or mode of government could possibly embrace the diversity and complexity of networks, ideas and institutions that characterise the British political system. Ideas derived from Tory, Whig, Liberal and Socialist traditions run concurrently, but with no one idea dominant. Their assertion of this position is partly epistemological (and indeed ontological), given that they assert (2003: 25): 'We reject all absolute truth claims, accepting there are no grounds for conclusively asserting the superiority of one interpretation over another'. However, it is also empirical, given that they defend, although presenting little evidence to support, the idea that the attitudes and actions of agents are differentially affected by the four narratives.

It is acknowledged here that Bevir and Rhodes' interpretivist position represents an interesting approach to the British Political Tradition. It poses a variety of challenging questions, as they argue (2003:3):

The interpretative approach (…) relies on an alternative epistemology to both modern empiricism and positivism. It represents a challenge to this dominant or mainstream tradition'.

Certainly, Bevir and Rhodes interpretivist approach represents an epistemological challenge to the dominance of positivism in the study of British politics. They write (2003:200): 'we prefer an interpretative approach with its governance narrative to the positivism lurking in most accounts of the Westminster model'. However, they do not deny the worth of all work in the British Political Tradition literature, arguing (2003:3):

Although we defend an interpretative approach by appealing to an anti-foundationalist epistemology, there are other reasons for doing so. We are sympathetic to the historical and philosophical approach to British politics found in the work of Beer (1965) and Birch (1964)

The point is that Bevir and Rhodes' view of Birch and Beer is affected by their interpretivist approach, which is not shared by Birch and Beer, or indeed Marsh. It is true, as we saw, that Birch and Beer acknowledge that ideas of representation, responsibility and collectivism evolve, but no one in the literature would deny that point, despite what

Bevir and Rhodes claim. Certainly, it is acknowledged in this thesis that traditions, and indeed even a dominant tradition, are/is not reified; it evolves. Indeed, a key argument in this thesis is that the British Political Tradition has evolved, as has the role of the House of Lords within it. However, the major point here is that the claim that there are different conceptualizations of democracy/different traditions is not inconsistent with claiming that there is a dominant, if evolving, British Political Tradition that, largely, underpins the institutions and processes of British politics. Crucially, the argument here is that, this question cannot be resolved by the assertion of an ontological and epistemological position, (as Hay, 2008, argues, ontological and epistemological positions cannot be proved), which is Bevir and Rhodes' strategy. Rather, it is an issue which needs to be examined empirically, as it is in this thesis.

Overall then, and in contrast to Bevir and Rhodes, the contention here is that there is a dominant, but contested, British Political Tradition, which consists of a conservative notion of responsibility and a limited liberal idea of responsibility, which underpins UK political institutions and processes. As such, this work sits within a perspective shared by Marsh, McAnulla, Evans, Tant, Batters and Hall.

iii) The Position Adopted Here

In broad terms, this thesis adopts Marsh's approach to the British Political Tradition, which, as we have seen, builds upon a critique of the work of Birch, Beer and Greenleaf.

It is a position which a number of others have applied to various aspects of British politics:

- Tant (1993) examines both how the Labour Party came to endorse the British Political Tradition, despite its social democratic origins, and the effect that the British Political Tradition has had on the Freedom of Information issue in the UK[3]

- This latter issue has also been explored by Batters (2005), who examines how the Blair Government's initial commitment to radical Freedom of Information was undermined, by both ministers and senior civil servants who saw it as threat to the British Political Tradition.

- In a similar vein, Hall (2009) shows how the ideas of the British Political Tradition affected both the form and the operation of Scottish devolution.

- More broadly, Evans (2003) focuses on New Labour's democratic reform agenda, arguing that its inconsistencies and disappointments owe much to the continued influence of a dominant British Political Tradition. [5]

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[3] Tant argues (1993, 6): 'government and only government was the arbiter of the "national interest" sustained through the tradition of strong centralised, independent and initiatory government.'

[5] Evans argues (2003: 16) 'The characterisation of an elite democracy based on free and fair elections and the rule of law, closely resembles the British tradition with its emphasis on a 'top-down', 'government-knows best' view of democracy' This 'all-party' elite tradition which is founded upon a conservative view of responsibility and a limited liberal view of representation underpins the institutions and decision-making processes of the British political system and has survived primarily due to the historic failure of radical British parties in the last century, such as the liberals and the Labour Party, to successfully challenge the established political order and create a more pluralistic society.'

- Finally, McAnulla (2007) use this broad approach as a way of framing an 'alternative' textbook on British Politics.

All the above critiques provide a specific analysis of how the British Political Tradition dominated ideas for institutional reform and eventually defined the discourse and processes of governing institutions. An argument of this thesis is the British Political Tradition`s ideas of representation and responsibility are shaped by ideas of elitism. Tant in *British Government: The Triumph of Elitism* (1993) illustrates the significance of elitism over the British Political Tradition when he writes:

> The basic argument upheld here is that traditional British governmental
>
> practices are underpinned by a (pre-democratic) elitist concepts of
>
> representation, and the notion of `responsible` (rather than responsive)
>
> government. (1993:2)

Tant argues that an ideal of elitism was instrumental in shaping conceptions of representation and responsibility as the constitution evolved from government by absolute Monarchy to a liberal and later liberal democratic constitution. He argues that from the 1688 Glorious Revolution elitist ideas of representation shaped the idea of government responsibility. During the Whig Constitution the idea of representation was narrowly defined and designed not to usurp the authority of centralised governing institutions. Tant argues that the British Political Tradition`s idea of responsibility is

rooted in historical origins when he quotes Beer`s (1964) description of responsibility during the Whig Constitution:

> Beer stresses the importance of the transfer of previously Monarchical power to the ministry as an important development both in terms of the shift from Old Tory to Old Whig thought and practice, and in establishing the strong, decisive `responsible` (rather than `responsive) governmental tradition surviving to this day. (Cited Tant: 1993:64)

Tant illustrates how a limited idea of representation was designed to consolidate responsible government when he writes:

> Given that M.P`s were to be representative of the whole nation, as were the old Tory Kings, seeking through debate and deliberation to establish the `national interest`, rather than being there to `re-present` particular views and interests, a narrow and elitist concept of representation also became institutionalized. (1989:7)

Tant remarks that in the transformation from an old Tory to a Whig constitution ` if the `how` of representation had changed, the `who` had not;` (1993:65) During the transformation from absolute monarchal power to a liberal constitution in which the Crown governed in conjunction with Parliament; the Crown and the same clique of esteemed aristocrats still dominated government. Tant contends that the introduction of

democracy through the 1832 Great Reform Act involved a significant change in the basis of representation but not responsibility. Tant contends that when the Whig idea of *virtual representation* was abandoned in favour of the Liberal idea of representation based on the individual: `the assumption of `who` (or what) was to be represented changed, whilst the `how' of representation was maintained; Liberals upheld parliamentarianism ` (1993:74) Although representation was expanded it remained limited to an elite few and a limited liberal idea of representation prevailed. Tant argues that during the development of democracy representation was limited to ensure the dominance of responsible government writing: ` the historical debate has focused on **who** should govern, and on **what basis of authority** they should, rather than **how** we should be governed. ` (1989:9) Tant argues that elite ideas of representation have always shaped responsibility.

In contrast to Tant`s argument, this thesis argues that the British Political Tradition`s idea(s) of responsibility are dominant over ideas of representation. As such, an aim of this thesis is to illustrate how British Political Tradition`s conservative idea of responsibility programmed to produce strong authoritative governing institutions, was strongly influential in shaping ideas of limited representation.

Evans in *Constitution-Making and the Labour Party* (2003) was the first to directly illustrate how the British Political Tradition directly shaped the discourses, processes of governing institutions in the British political system. Batters (2005) illustrated how the British Political Tradition curtailed Freedom of Information legislation while Hall (2009) demonstrated how ideas of elitism shaped the development of the Scottish Parliament.

As such, the view adopted here is shared by a number of authors. The aim in the remainder of this thesis is to show how the development of the House of Lords has been influenced by the British Political Tradition. However, before moving on it is important to outline how this question will be addressed empirically; that is the methodology which is adopted.

iv) Methodology

As we saw, Bevir and Rhodes argue (2003:33) that traditions are inscribed in the beliefs and actions of individuals. However, they do not follow through on that assertion by a detailed analysis of how the different traditions they identify, Tory, Whig, Liberal and Socialist, play out in the narratives of individual, or groups of, agents. At the same time as already indicated, they are positive about the historical approach and method used by Birch and Beer. This thesis, like most work on the British Political Tradition, adopts that approach/method.

The thesis adopts this approach in large part because, while it views a political tradition as a set of ideas about democracy, initiated by individuals, it crucially sees that tradition as underpinning the shape, operation and development of political institutions. From this perspective, the instantiation of this political tradition in the institutions and processes of government underpins the stability of institutions in large part because it helps shape the values of the next generation of actors. Of course, this political tradition changes, but, most often, that change is gradual. As such, while it is acknowledged, with Bevir and Rhodes, that agents interpret ideas within an institutional framework, the further

contention is that they do so in a way which is constrained, but not determined, by institutional structures, which themselves are underpinned by a dominant political tradition, and, in addition, by the continued dominance of those ideas in the discourse of politicians.

Overall, the objective of the thesis is to show through a historical narrative how the British Political Tradition has shaped development of the House of Lords, as well as the role that the House of Lords played, particularly in the earlier periods examined here, in the reinforcing of that tradition. As such, the thesis adopts a narrative approach, which Bevir and Rhodes would appreciate because the aim is not the reify either the institution or the tradition. Rather, the aim is to show how both the institution and the tradition have evolved, while arguing that the major features of the British Political Tradition remain in place and, indeed, provide the context within which attempts to reform the House of Lords since 1997 have occurred.

For this reason, the evolution of the House of Lords is examined chronologically. A key objective of each chapter is to illustrate how the idea of the British Political Tradition consistently reinvented itself; as such, it is certainly not reified. Consequently, Chapter Three introduces the House of Lords by examining it from its origins following the 1066 Norman Conquest and charting its development up to 1790. This Chapter focuses upon the way in which the English Constitutional Theory of Mixed Government shaped the House of Lords and its constitutional relationship with the Crown and the House of Commons. The Chapter illustrates how the Theory of Mixed Government established

elite, top-down, conception of government responsibility and an embryonic idea of limited representation which underpinned the Liberal constitution between 1688 and 1790.

Chapter Four chronicles the House of Lords from 1790 to the passage of the Great Reform Act 1832. The Chapter examines the reasons for the passing of the Great Reform Act 1832, which introduced the first semblance of limited democracy into the British constitution. It details how, during the age of radicalism which swept across Europe in the late Eighteenth Century, new ideas of participatory, `bottom up` government emerged, but were resisted with a much more limited idea of democracy inscribed in the 1832 Great Reform Act. This Chapter demonstrates how the House of Lords and the British Political Tradition borrowed heavily from the Liberal constitution and its ideas of elite top-down government to underpin the Great Reform Act 1832.

Chapter Five follows the House of Lords from the Great Reform Act in 1832 to the Parliament Act of 1911. This chapter demonstrates how democracy moved the pendulum of power away from the House of Lords towards the House of Commons. It details how the British Political Tradition and its idea of elite, top-down, power shaped discourses and processes ensuring the disciplining of parties and the dominance of the executive over Parliament. The Chapter charts the concord between the House of Lords and Commons governing as two, almost equal, governing institutions and highlights the tensions between them which culminated in the passing of the Parliament Act (1911).

Chapter Six charts the development of the House of Lords from 1911 to 1951 and details the effects of the Parliament Act (1911) over the House of Lords and the House of Commons. The Chapter illustrates how the Parliament Act (1911) was shaped by the British Political Tradition and how its enactment established an almost unicameral system of government, dominated by the executive in the House of Commons. The Chapter details how from 1911 to 1951 the House of Lords reinvented itself as a junior secondary Chamber for the revision of government legislation under both Conservative and Labour Governments.

Chapter Seven examines the House of Lords from 1951 to 1997, concentrating on the Labour Party and its traditional approach to the House of Lords and the Constitution. The Chapter focuses particularly on the Labour Government between 1945 and 1951 and how it established the parameters for the post-war, collectivist state which endured until 1979. It examines the Labour Party's ideology, focussing upon the competing ideas of Fabians and Syndicalists. The Chapter illustrates how the ideas of the Fabians became dominant within the Labour Party because they dovetailed with existing institutions and supported the constitutional status-quo. It shows how Fabian ideas fitted with the dominant idea of the British Political Tradition and account for the Labour Party's traditional conservatism on the House of Lords and constitutional issues.

Chapter Eight examines the Labour Government`s reform of the House of Lords from 1997 through to 2010. The chapter also chronicles events following the 2010 General Election assessing how the Conservative/Liberal Coalition Government has continued the

House of Lords reform process up to 2012. The chapter begins by assessing reform of the House of Lords as a part of New Labour's Constitutional Reform programme. It examines the effects of the House of Lords Act (1999) which abolished the hereditary Peerage and assesses the ideas for a reformed Upper Chamber. The chapter analyses the ideas for an elected/nominated House of Lords by examining the plethora of White Papers which Parliament produced between 2000 and 2008 proposing ideas for reform. The Chapter illustrates how, throughout the debate about House of Lords reform, the British Political Tradition continued to constrain ideas for an elected/nominated Upper Chamber. It concludes with an analysis of the 2008 White Paper and argues that it provides the foundation for a successful future reform of the House of Lords.

Chapter Three

The House of Lords and the Constitution

In the previous Chapter the British Political Tradition was conceptualised as a dominant idea of democracy founded upon a limited liberal idea of representation and a Conservative notion of responsibility, which, had inscribed ideas of elite government into the discourses, processes and institutions of Parliament. It was argued that such ideas are formulated through the beliefs and preferences of individuals and as a direct consequence shape institutions. However institutions, as the medium through which ideas are translated into practice, also have a degree of influence on the implementation of ideas. Institutions temper ideas by providing a framework which constrains but not determines the pathway of ideas and how they become traditions. The aim of this thesis is to demonstrate how the British Political Tradition and the principles of elite, top-down, government came to shape the governing institution of the House of Lords, but also how the House of Lords as the governing institution representing a political and social elite inscribed its values of elitism to shape the British Political Tradition. This thesis demonstrates through the constitutional development of the House of Lords how ideas shape institutions but also how institutions such as the House of Lords further develop and reinforce ideas of elite, top-down government into the British Political Tradition.

The House of Lords is analyzed as one of the three traditional governing institutions, which have, alongside the Crown and the House of Commons, governed over the nation

since Norman times. As such, the House of Lords is not considered as a discrete institution, but, is instead, approached it as one of the two chambers of the English Parliament, alongside the House of Commons, and one of the three governing institutions of constitutional mixed government, with the Crown. An argument of this thesis is that an adequate study of the constitution cannot be achieved by studying each governing institution totally in isolation. Consequently, the Crown and the Houses of Lords and Commons are approached as interdependent entities, with change in any one institution strongly impacting on the other two institutions and directly altering the balance of constitutional power. This thesis analyses in detail how change in the House of Lords altered the whole balance of constitutional power between the Crown and the Houses of Lords and Commons.

The main objective in this thesis is to demonstrate how the elitist and top-down values of the British Political Tradition shaped the constitutional development of the House of Lords, creating and reinforcing an elite tradition of power. The objective is to illustrate how the elitist principles inherent in the House of Lords strongly affected the constitution, shaping the role of the Crown and the nature of representation in the House of Commons. The Crown and the Houses of Lords and Commons represent the three institutional pillars of the British constitution and, because, as is argued, they are interdependent, the objective of theorising the House of Lords could also be construed as an attempt to theorise the constitution. Ridley defines a constitution as: 'the whole system of government of a country, the collection of rules, written and unwritten, which regulate government' (cited Evans (1988, 17). The evolutionary nature of Britain's

unwritten constitution has meant there are no formal guidelines or regulations governing

the constitutional relationship between the Crown and Houses of Parliament, but, instead,

a plethora of tacit codes and conventions have tended to emerge organically to regulate

Government. The organic development of Parliament and the absence of a written

constitution have meant that attempts at defining constitutional doctrine are not binding,

nor cast in constitutional stone, but could only be purely theoretical exercises without the

binding authority inherent in a written constitution. As a consequence, attempts at

conceptualising the British Political Tradition are also contentious and complicated.

The main attempt at theorising the House of Lords, and indeed the constitution, is

contained in the *Classical Theory of English Government*. The *Classical Theory of

English Government* is of crucial importance when defining constitutional theory and

provides a benchmark against which subsequent theories of the constitution can be

assessed. It marked the genesis of the theory of mixed Government which prevailed over

the liberal constitution from 1688 to 1832 and later the liberal-democratic constitution

from 1832 to 2012.

A.V Dicey's seminal text *Introduction to the Study of Law and the Constitution* (1885), in

which he identifies the characteristic of the: 'Westminster Model: 'remains the definitive

text of constitutional studies' (Evans, 2003:17). Dicey defined the composite elements of

the Westminster Model as: i) the unwritten constitution; ii) the unitary state; and; iii)

unlimited Parliamentary sovereignty. This chapter examines the historical development

of the House of Lords to question Dicey's definition of a 'Westminster Model' and show

that it is not really reflected in historical and constitutional practice. A further aim is examine the link between the 'Westminster Model' and the British Political Tradition.

As Evans contends (2003, 17): 'The ambiguity that surrounds the explanation of what Britain's unwritten constitution actually involves, is the most telling illustration of the elite tradition at work'. An historical study of the House of Lords demonstrates how an unwritten constitution has allowed a tradition of elitism to dominate over Parliament and; so Evans' argument can be supported by historical evidence. However the Westminster Model is also limited because it refers exclusively to the notion of responsibility inherent in UK constitutional government and neglects representation, the second aspect of the British Political Tradition.

This thesis argues that the three traditional governing institutions of the constitution, the Crown and the Houses of Parliament, are essentially representative institutions. The Crown symbolically represented the unity of the nation while the House of Commons represented the will of the nation and the House of Lords represented an economic and social elite. The House of Lords, as the institution which initially represented and embodied the power and prestige of the landed aristocracy, after the Glorious Revolution (1688), exerted greater power than either the Crown or the House of Commons and, consequently, in some ways, contributed most to the evolution of the constitution. Most broadly, in many ways the House of Lords symbolises and epitomises the values of elitism, which have shaped the British Political Tradition. As such, the House of Lords' historical power and influence over both the Crown and the House of Commons meant it

played an important role in developing and reinforcing the British Political Tradition and the principles of elitism which are inscribed into it and other governing institutions.

Section one analyses the role of the House of Lords and the constitution beginning with an examination in some detail, of the House of Lords during the Constitutional Theory of Mixed Government which entered England in the Sixteenth Century and endured to the 1688 Glorious Revolution. The Classical Theory of English Government provides an excellent platform from which to uncover a theory of the constitution and defines the empirical practice of the Crown and the Houses of Lords and Commons from Tudor times to the Glorious Revolution (1688), before evolving into the constitutional mixed government system which prevailed from the Glorious Revolution (1688) to the Great Reform Act (1832). The objective is to demonstrate the importance of the House of Lords to the development of the constitution and to illustrate how ideas of representation and responsibility have been crucial in shaping the House of Lords and the British Political Tradition.

The beginning of Section One examines the origins of the House of Lords as a Chamber of elite Magnates, summoned by the Crown for the governing of the nation in Norman England. This section chronicles the House of Lords constitutional development throughout the centuries by examining its relationship to the Crown and the emerging House of Commons. The aim is to establish the argument that Parliament was primarily a representative institution, with the Crown symbolising and representing the nation's interests; the House of Lords representing the landed power of the Magnates and the

House of Commons representing the interests and petitions of the boroughs and shires. The aim is to further demonstrate how ideas of representation and responsibility shaped the relationship between Parliament and the populace and also decreed the constitutional relationship between the Crown and the Houses of Lords and Commons. This section chronicles how the Crown and the Houses of Lords and Commons gradually evolved and merged to form the *Parliamentum* of the Thirteenth Century and provide the foundations for a cohesive system of constitutional government. The objective is to establish the constitutional authority of the Crown and the Houses of Lords and Commons as discrete governing institutions and then seek to establish a coherent explanation of how they coalesced together to form the rudimentary elements of a Constitution, with the House of Lords as a key institutional pillar of the British constitution.

Section Two examines the Glorious Revolution of 1688 assessing how it defined a new, more equitable, constitutional relationship between the Crown and the Houses of Parliament. This section charts how the Glorious Revolution (1688) and the accompanying Bill of Rights (1689) established the Crown and the Houses of Lords and Commons as three equal governing institutions, governing concurrently over a mixed constitution, and how this, in turn, prompted the Whigs and Tories to polarise and produce two distinct and separate ideas of representation and responsibility to shape constitutional government.

Section Three analyses the Whig constitution which emerged as the victorious and dominant idea of constitutional government, following the 1688 Glorious Revolution.

The Whig ideas of representation and responsibility are assessed, concentrating specifically on the idea of *virtual representation* which underpinned the relationship between Parliament and the populace. The Whig constitution is assessed in detail, examining ideas about the unitary state, the central concentration of executive, legislative and judicial powers in Parliament and the independence of elected representatives. A further aim of this section is to examine how the Whig theory of the constitution shaped the discourses and processes of Parliament, creating two parallel administrations within Parliament and ensuring that government was divided between the executive and Parliament itself.

The final section examines in detail how the House of Lords used its power and prestige to dominate both the Crown and the House of Commons during liberal constitution of mixed government between 1688 and 1832. This section examines ideas of representation in the Eighteenth Century Constitution by analysing the archaic electoral system which determined elections to the House of Commons. The mosaic system of limited franchises that existed is analysed and used to explain how, through the system of rotten boroughs, the House of Lords gained hegemony over the House of Commons and the Crown.

Section One: The Origins of the House of Lords - An Elite Council

The precise origins of the House of Lords cannot be traced, but it seems to originate in the Norman Conquest of 1066. The Norman Kings ruled England in association with Magnets. The Magnets were the most powerful landed men in England who owed their

land directly to the King. In return for the land given to them by the King, the Magnets provided feudal services, which were mostly military. Three times a year it was the custom for the Norman King to summon an assembly of magnets to the Court to discuss the issues of the day and the governing of England. The Anglo Saxon Chronicle describes the Council, as it became known, as: ' all the great men of England, Archbishops, bishops, abbots, Earls, thegns and knights' (Bromhead, 1958:5). The Council reflected a perceived need to assemble the most powerful and most able people in England to govern England efficiently and effectively.

The need for a Council of the most powerful men in England was partly based on the Old Saxon idea of government called *Witenagemot*. Witenagemot involved a meeting of the wisest men in the Saxon state and the place where the formal authority of the Saxon state resided. In Norman England, the day-to-day work of government was performed by Barons, initially chosen by the King, and a great deal of this work was judicial in character. By the time Henry III succeeded to the throne, the advisers chosen by the King could effectively be regarded as a Council and it is from this that the House of Lords evolved.

The relationship between the King and the Magnets and the Magnets' self-perception of their role in the Council was to establish custom and practice and define the work of the new Parliament. The Magnets perceived themselves as having a sense of responsibility that extended not only to representing themselves, but to representing the good of the whole community. The relationship between King and Magnets was not one of total

subservience by the Magnets to the King; rather, it was reciprocal and consensual. So, the Magnets were loyal to the King and provided feudal services, but, in return, the King must consult them in the government of the country. The Magnets felt that they had a moral obligation to ensure that the King did right by the whole country

In the Thirteenth Century, ideas about the role of the Magnets and their relationship with the King in the functioning of government diversified into two schools of thought. The first school of thought suggested that the interests and objectives of the Magnets were identical and synonymous with the interests and objectives of the King. The advice that the Magnets gave the King was beneficial to themselves, the King and the whole community. The second theory conceived of the Magnets as representatives primarily of the whole community, rather than as representatives of the King. In this view, the Magnets had an identity quite separate and distinct from the King and their objectives and interests did not necessarily correspond to, and might even contradict, the interests of the King. The idea that objectives of the Magnets and the King could be conflicting led to the idea that a forum was needed whereby Magnets could meet and attempt to resolve conflicts of interests.

In 1258 the word '*Parliamentum*' was firmly established to describe the meeting of the Magnets. The Magnates met together to discuss the issues that faced the country. The Parliamentum was headed by the King who had the arbitrary right to issue a `writ of summons ` (Bromhead, 1958: 7) to any Baron he wished to see in attendance at the Council. Through custom and practice, rather than law, it became established that, once a

man had not received a writ of summons, he, nor his heirs, should in future be excluded from the *Parliamentum*. This created a very important precedent for the shape and complexion of the Upper House. It introduced the notion of primogeniture and made the writ of summons permanent and hereditary. Membership of the Upper House, and subsequent participation in government, would be the exclusive preserve for a circle of well-favoured, aristocratic families.

In the Thirteenth Century there were already hierarchical distinctions in the ranks of the Baronage. The personal writ of summons was issued only to the greater Barons, while the lesser Barons were summoned through the Sheriff. The summoning of the lesser Barons was irregular and they were only occasionally represented at the *Parliamentum*. The Council of the greater Barons was the foundation for what would eventually be the House of Lords. The meetings of the lesser Barons, the representatives of the boroughs and the shires was the seed that would later germinate into the House of Commons. The King would rule with the co-operation and consent of greater Barons, while only summoning the lesser Barons of the boroughs and shires when he needed their co-operation to raise money. During the Fourteenth Century, the representatives of the shires and boroughs began the practice of meeting separately from Magnates to discuss the issues for which they had been summoned. The representatives of the shires and the boroughs became known as 'the Commons'; in full Parliamentum meetings the Magnates sat and were allied with the King, while the Commons appeared in the role of petitioners.

The social composition of the Upper House consisted of various hierarchical ranks of aristocracy and nobility. The most powerful and prestigious Lords were the Barons and Earls. The word 'Earl' is an Anglo Saxon term that survived the Norman Conquest and means Chieftain or Nobleman. An Earl was in control of great lands that stretched across several Shires and, as a consequence, the name was linked to the name of a county. Barons were simply known as Lords and, in tandem with the Earls, represented the elite ranks of the Magnates. The title 'Duke' first appeared in 1337 when it was bestowed by the Monarch on members of the Royal family and, later; it became a rank given to Magnates. The lower ranks of the Baronage were represented by the creation of the titles of 'Marquis' and 'Viscount` in the Fifteenth Century. The appearance of new and distinct ranks of nobility led to firmer foundations to receive a writ of summons from the Monarch. In 1625 it became enshrined in law that once a writ of summons had been issued to a nobleman it was permanent and hereditary and subsequent generations of that family were entitled to membership

The term 'Peer' to describe members of the Upper House became common in the Fourteenth Century and denoted the belief that an accused Nobleman should only be tried by people of equal social standing or 'Peers' as they would be known.

The Upper House of the *Parliamentum* was firmly established as an institution where the most powerful and influential men in England gathered. The Upper House was an organic institution; its development was natural and unplanned and its institutional arrangements, such as the writ of summons, evolved from custom and practice, rather than any defined

constitutional agreement. During the reign of Henry VIII, the designation of the term House of Lords was commonly applied to the Upper House and, from that time onwards, it was always known as such.

The House of Lords from its Norman origins consisted of the most powerful forces of state and church. The House of Lords membership can be divided into the Lords Spiritual and the Lords Temporal. From Norman times, the Church has always participated in the House of Lords through the Lords Spiritual. The Lords Spiritual consists of Twenty Six senior Bishops, the most senior of whom are the Archbishops of Canterbury and York and the Bishops of Durham, Winchester and London. The next most senior Twenty One Bishops were appointed by the Church to the Lords on the basis of the date of their first appointment. The Lords Temporal was the bulk membership of the House of Lords and consists of the various ranks of the Peerage entitled through primogeniture to inherit the writ of summons.

The House of Lords was an elite institution which symbolised the power and prestige of landed aristocratic families, but there were several pre-requites to receiving a Peerage and subsequent membership of the House of Lords. Land ownership was the first and most essential requirement to receive a Peerage. Land ownership necessitated financial wealth and esteem in the community. The wealth from land ownership was needed to finance the lavish lifestyle that was expected from members of the Peerage. Pedigree was also very important for membership of the House of Lords. An established family line going back

several generations, along with ownership of large tracts of land, was deemed necessary for the King to grant a Peerage to an individual.

During the Fourteenth Century, the basic rudiments of a British Parliament with Parliamentary procedure began to be established. The House of Lords, the Upper House, represented the power and wealth of the aristocracy, while the Lower House, the House of Commons, represented the petitions and interests of the shires and the boroughs. Parliamentary procedure to produce legislation began to involve both Houses and, by the middle of the Fifteenth Century, statutes were passed 'by the advice and assent of the Lords and Commons' (Bromhead, 1958: 9), although the old system, 'by the advice of the Lords and request of the Commons', was still sometimes used. This reflected the growing importance of the House of Commons and the necessity that its consent be given if any legislation was to be passed. The House of Commons was taking a firm and expanding interest in legislation, especially in the field of finance.

Throughout the centuries between 1066 and 1640, a tripartite form of British government began to be established involving three institutional pillars, the Crown and the Houses of Lords and Commons. The development of government over these centuries was an organic and naturally evolving process, using the existing institutions of the Crown and Parliament. Because change was organic and naturally evolved from existing institutions, there was no need for recourse to a constitution. Throughout the history of Parliament, change was gradual and mediated, involving existing institutions and, for this reason, there has never been the motivation to draw up a written constitution.

In 1454 the number of Temporal Peers in the House of Lords was 56, falling to 28 in 1485 and then rising to 60 by 1600. At the time of Queen Elizabeth I death in 1604, due to her parsimony with Peerages, there were only 55 male Peers of the realm. Elizabeth I deliberately restricted the Peerage in an attempt, according to Lawrence Stone: 'to maintain the Peerage as a caste of men of ancient lineage' (cited: Jones, 1989:4). Under the Stuart Monarchs James I and Charles I, there was a large growth in the number of Peers, but a decline in the actual value of a Peerage. The Stuart Kings heralded in an era of corruption, selling Peerages in return for cash. In the first years of Stuart rule the number of Peers rose to 81 by 1615 and expanded still further to 104 in 1625, until in 1630 Charles I finally ended the undignified scramble. The years 1603–1642 saw the Stuart Monarchs create 121 Peers, which, allowing for 38 extinctions, produced a net gain of 83 Peerages. So, the Stuart dynasty oversaw a doubling in the size of the House of Lords.

The activities of the Stuart Monarchs in the early Seventeenth Century reflected the close relationship between these two branches of English Government's `holy trinity`. The Lords were ranged with, and allied to, the Crown. The Crown, in return, attempted to exert strong influence over the Lords and allied with it to provide a strong counter-balance to the growing strength and importance of the House of Commons. The Lords, although they disliked the growth in numbers during Stuart rule, remained loyal to the Crown and opposed the attempt by the Commons to restrict the power of the Crown.

The mid-Seventeenth Century saw the Commons achieve a notable victory over the House of Lords. In 1661 the Lords attempted to exert the right to originate, amend or reject legislation relating to financial matters. The House of Commons firmly slapped down the challenge by passing legislation in 1671 declaring: 'in all aids given to the King by the Commons the rate of tax ought not to be altered by Lords' (Bromhead: 1958:10)

In 1677 the Lords attempted again to meddle in financial legislation. The response of the Commons was to pass further, more stringent, legislation asserting the House of Commons': 'sole right to grant aids and supplies and to determine the purposes for which they were to be used; financial bills were not to be altered or changed by the Lords' (Bromhead, 1958:10).

The House of Commons control over aids and supplies gave it, in theory, a great deal of power at the expense of the Lords. It became an unwritten constitutional rule that it was the prerogative of the Commons that held precedence over the Lords in matters of finance and supply. The control of the House of Commons over supply shaped the nature of the relationship between the Commons and Lords. In theory, the balance of power shifted markedly to the Commons. In practice, the effects of an unwritten constitution and the dominance of elite ideals allowed a great deal of interpretation of what finance and supply legislation and the Lords was still able to retain a measure of influence over financial legislation.

In the Fifteenth and Sixteenth Centuries the foundations of Britain's system of government began to be laid. The institutional pillars were the Crown and the Houses of Parliament. However, with an unwritten constitution, it was difficult to identify the ideals that could be said to underpin constitutional convention. To establish a theory of the constitution and give the unwritten constitution some clarity and legitimacy, it is necessary to examine the Classical Theory of the Constitution.

i) *The Classical Theory of the Constitution*

The Classical Theory of the Constitution entered England probably from the Continent during the reign of the Tudor Monarchs in the late Sixteenth and early Seventeenth Centuries. The theory owed much to the writings of Classical scholars such as Aristotle and Polybius (Cited: Weston 1965:11) and received its modern interpretation in the late Fifteenth Century from Sir John Fortescue (Chimes: 1936:309).

Aristotle, in his book , *Politics,* classified governments according to the number of rulers involved, so his three main forms of government were Monarchy, the rule of one, Aristocracy, the rule of a few, and Democracy, the rule of many. The acid test for the legitimacy of each type of government was whether the ruling incumbents acted for the good of the whole community or whether they acted purely to promote their own interests and benefit. In a pure state, each type of government acted for the public good, but, in a corrupt state, they acted for their own benefit. Each form of pure government had the

potential for a corresponding vice. The vice of Monarchy was Tyranny, the vice of Aristocracy was Oligarchy and the vice of Democracy was Licentiousness.

Polybius, in his famous book *Histories*, classified governments in much the same way as Aristotle. However, he offered a way of avoiding the vices of each form of government. So, Polybius was convinced that efficient governments and constitutions operated through Monarchy, Aristocracy and Democracy, but, to avoid the vices of each form, what was needed was a system of checks and balances. Inspired by the Roman Constitution, Polybius suggested that the three pure forms of government should be combined, as in the Roman Republic where the Consul, Senate and Assembly governed Rome. The three government branches represented the Emperor, the Aristocracy and the people of Rome. The three composite parts of the Roman Republic were dependent on each other and, if one part attempted to encroach on the power and authority of the other two branches, those two would ally to restrict its activities.

The entwining of three interdependent components of government meant that there was a built-in mechanism for correcting any abuses by any one branch of government. If one branch attempted to dominate the spheres of government, then, in the words of Polybius: 'the possibility of the pretensions of any one being checked and thwarted by the others, must plainly check this tendency; and so the proper equilibrium is maintained by the impulsiveness of the one part being checked by its fear of the other' (Weston, 1965:11).

The Classical Theory of Government was widely read and admired in the Middle Ages in England and its ideas permeated both the Reformation in England and the Renaissance on the Continent. Interest in the classical theory in England was attributable to the fact that its definition of three pure forms of government neatly corresponded with the three English government institutions. The application of Classical ideas to the English system of mixed government meant that the King represented the Monarchical element, the House of the Lords represented the Aristocratic element and the House of Commons represented the Democratic element. The Classical Theory of the English Constitution involved blending and balancing this trinity of institutions. In the English Constitution, the virtue of Monarchy was power, but its potential vice was tyranny. The virtue of Aristocracy was wisdom, but its vice was division. The virtue of democracy was morality and legitimacy, while it's vice was turmoil and violence.

The ideas contained in the Classical Theory of English Government was an attempt to link the Monarch and Houses of Lords and Commons and mould their positive traits into one, all-embracing, system of government. The theory aimed to achieve the individual virtues of strong leadership, wisdom and the common good prevalent in each institution and to combine them into one form of constitutional government. The theory claimed that the blending of the three forms of government would reproduce the positive elements of each, while also eliminating the individual vices of tyranny, division and mob rule.

The translation of the English Theory of Mixed Government into empirical practice meant that the three key institutions already existing in English Government, the King,

the House of Lords and the House of Commons, all participated in the government of the nation. Each branch of government was considered equal, but autonomous from each other, with each retaining distinct and individual powers. The system had checks and balances, whereby each branch had an independent veto over legislation, and the consent of all three branches was necessary for legislation to pass. Each branch had sufficient powers to check the encroachments of any one other branch. This could be achieved by an independent veto or in combination with the third branch of government. The three branches of the trinity had separate powers and performed separate functions. The King named Ministers, created Peers and dissolved or summoned Parliament. The House of Lords had supreme judicial power and the House of Commons had the powers of supply and impeachment.

The English Theory of Government was a balanced and finally weighted mechanism involving a trinity of powers. Each component had distinct powers and the power of veto and the consent of all three entities were necessary for legislation to pass. A consequence of power being diffused between the Monarch, Lords and Commons was that there must be a broad agreement, or consensus, between the three branches for legislation to pass. There was a clear antipathy to the concentration of power in any one branch, with an ingrained belief it would lead to the vice of tyranny. Despite the diffusion of powers to separate branches, it was still felt that strong decisive government in Parliament was necessary, and, as was argued in the last chapter, strong decisive government is a key feature of the British Political Tradition.

ii) The English Constitution: Attempting to Theorise an Unwritten Constitution

The English Theory of Mixed Government shaped English constitutional thought and influenced the functioning of governing institutions, but remained a vague idea, given the unwritten constitution. In the Fifteenth Century, Sir John Fortesque (Cited Weston: 1965:9) attempted through his writings to define the legal parameters of mixed government and give clarity and credence to its function in English Constitutional Theory.

Fortesque was Chief Justice in the Court of the King's Bench during the reign of Henry VI. He was the first legal writer to crystallise the theory of mixed government and apply its rhetoric to constitutional law. Central to Fortescue's definition of a constitutional mixed government was the role and power of the Monarch. He distinguished sharply between two different types of Monarch. The first type of Monarch was called *'Dominium regale'* and here power was concentrated solely in the hands of the Monarch, who wielded absolute power in all the affairs of state. This kind of Monarchy occurred in Continental Europe, particularly France. England was distinct from Continental Europe because it was in the second category of *dominium, 'politicum et regale'*, with a form of mixed government. Under the English system of 'politicum et regale', the Monarch had limited powers and could not make laws, nor levy taxes, without the assent of his subjects.

The Monarch had to negotiate and win the assent of the Houses of Lords and Commons to pass legislation. English government was a mixture of Monarchy, aristocracy and democracy and agreement had to be reached between them if England was to be governed efficiently. The theory of mixed government gained credence and legitimacy during Tudor times and came to be seen as an inalienable and axiomatic component in theory and practice of the constitution. Mixed government became a fundamental of English government.

The Monarch, the House of Lords and the House of Commons were the three intuitional pillars that underpinned Britain's unwritten Constitution. The theory of mixed government was the constitutional cement that bound them together for the operation of government. The interdependency of the three branches meant that there needed to be harmony between them if the balance and equilibrium of the constitution was to be maintained. The House of Lords occupied a pivotal role in maintaining a balance between the three branches. The House of Lords brought to government the wisdom, experience and talents of the Peerage. The key central position of the Lords between the Monarchy and the Commons ensured that it could help keep each branch within its own spheres of power, while also acting as a bridge between all three branches in maintaining harmonious relations necessary for smooth government. Weston (1965:3) writes of the role of the House of Lords in the mixed government: 'For the maintenance of this equilibrium credit was commonly given to the House of Lords which served as the equipoise of the constitution'.

iii) The Unwritten Constitution: The Elitist Tradition at Work

The existence of an unwritten constitution allowed a tradition of elitism and hierarchy to become inscribed into governing institutions. English government reflected the social hierarchy of the nation. At the pinnacle of society were the palaces of the court underneath were the mansions of the wealthy and at the base were the cottages of the lower classes. All three social layers had a representative say in the government of England, however elitism prevailed. As Weston (1965:3) contends: 'Here again it was easy to name the mansion as the most important member of the trinity'. The Aristocracy were the representatives of the most powerful economic interests in the nation. Their economic power was derived from their ownership and control over land. So, Weston (1965:3) writes: 'For ever since the appearance of James Harrington's book *Oceana,* in 1656 it had become commonplace to say that political power went hand in hand with property ownership.' Throughout the history of Parliament, the most powerful economic interests in the country have had a dominant influence over the discourse of governing institutions and this has contributed towards instilling values of hierarchy and elitism into government. In the Seventeenth Century the landed aristocracy controlled the main source of wealth through their ownership of land. The institution that represented the interests of the landed wealthy was the House of Lords. The House of Lords embodied the political power of the landed aristocracy and gave them a powerful and distinct voice in the government of England.

The theory of mixed government became the established theory of how English government should work throughout the Seventeenth Century. Although mixed government was widely discussed and written about, under an unwritten constitution it remained no more than a theory and could not be cast in constitutional stone. The powers and relationship between the three estates was not clearly defined and was open to interpretation. The vagaries of mixed government and the blurring of the boundaries between the estates was one of the major causes of the English Civil War.

iv) The House of Lords and the Constitution

Weston (1965:5) writes: 'The cardinal document in the history of the theory of mixed government in modern England and the document of the first importance in the constitutional conflicts in the Seventeenth century was the answer to the Nineteen propositions issued by King Charles I in June 1642'. In this decree, Charles I finally set in constitutional stone the English theory of mixed government and gave it a credence it had hitherto not enjoyed. Charles I abandoned the divine right of Kings and set out the exact functions of Monarchy, Lords and Commons in a nation with mixed government.

The nineteen propositions were sent to Charles I by the Long Parliament and included demands that Parliament should appoint the Kings ministers, councillors and judges and control the military and church. The demands would have made Parliament the master of the state's affairs. Charles I rejected the nineteen propositions, citing in his defence the custom and practice of mixed government enshrined in the spirit of the constitution.

Charles wrote of mixed government and the constitution being: `the ancient, equal, happy, well poised, and never enough constitution of the government of this kingdom' (Weston, 1965:24).

Charles I emphasised the virtues of Monarchy, Aristocracy and Democracy in English government. The virtue of Monarchy was that it was able to unite the nation in a time of crisis. Monarchy was able to unite the nation against invasion from abroad and civil insurrection at home. The weight and burden of government fell on the shoulders of the King, whose responsibility it was to raise an army and negotiate treaties of war and peace on behalf of the nation. On the domestic front, the King's responsibility was to choose Ministers, councillors, judges and create Peers. The House of Lords brought to government the wisdom and experience of the aristocracy. They were the ablest and wisest members of the state who could harness their talents for the public good. The House of Commons brought democracy to government and through that the courage and industry of the people that liberty begets.

King Charles I definition of mixed government came to be known as the 'King's Constitution'. Government consisted of three estates, with power shared between all three. In Charles I definition, mixed government was a delicately balanced mechanism and could only work as long as the relationship between Monarchy and Houses of Parliament remained at a finely-tuned point of equilibrium. Charles argued that the nineteen propositions would make Parliament supreme over the Monarch, thus destroying the finely-tuned mechanism of mixed government. The power of the Monarchy and its

potential to decay into tyranny was already held in check by the separate powers of the

Lords and Commons. The House of Commons had particularly powerful weapons in its

armoury because it had the power to raise money and also to impeach for illegal actions.

Indeed, Charles I described the House of Commons as: `an excellent conserver of liberty

` (Weston, 1965:25).

Charles I ascribed to the House of Lords a prominent and significant role in the theory of

mixed government and the constitution. He described the House of Lords as: 'an

excellent screen and bank between the prince and people' (Weston, 1965:25). The House

of Lords is seen by Weston as the equipoise of a balanced constitution which had a key

role in ensuring that excesses of Monarchy and Commons were held in place and that

each estate stayed within its broadly defined boundaries. The House of Lords, as the

estate that held supreme judicial power, was also the guardian of the legal process.

In the period leading up to the Civil War in 1642, there was agreement between the

Monarchy and Parliament that mixed government was the ideal way of governing

England. However, there were widely divergent views between the Monarch and

Parliament on the power role of the King.

In Charles I ideal of mixed government, the Monarch was elevated above the role of

Parliament and held ultimate power. Although the Monarch was checked and balanced by

the Houses of Lords and Commons, Parliament wanted the right to appoint the King's

Ministers and control over administrative and judicial appointments. These demands

were eventually diluted in response to the King's argument that it made Parliament a supreme authority and was, therefore, against the grain of mixed government. Parliament came up with a new and radical idea of mixed monarchy. Mixed monarchy differed from mixed government because it did not elevate any one of the governing estates above any other. The Monarchy, Lords and Commons were seen as three coordinating powers, governing concurrently, each with equal though different powers. Mixed Monarchy was the blending of three estates into one collective governing entity. The checks and balances that Parliament should hold over the Monarch weren't specifically defined, but the general ideal was that the three estates combined together to form a corporate identity. Mixed Monarchy had the advantage of reducing the power of the Monarch to the satisfaction of Parliament, while simultaneously maintaining each estate's individual powers and right of veto.

In the second half of the Seventeenth Century the theory of mixed government, and the closely related theory of mixed Monarchy, became enshrined in the theory and spirit of the Constitution. Mixed monarchy or government was seen as a fundamental principle of the English Constitution, even surviving the Puritan Government between 1642 and1660.

The Seventeenth Century was a key Century for Parliament, as the institutions of government and the principles that underlay them became firmly established. The institutions of Monarch, Lords and Commons became the machinery of government, with centralized, but distinct, executive, judicial and legislative powers. The theory of mixed government/monarchy became the theory that bound the machinery of government to the

Constitution. The foundations of government and the constitution became established

and, like so much in Parliamentary history, began to unfold in a natural, organic fashion,

using the existing institutions of the day. Charles I, speaking in 1642 about mixed

government, said:

> The experience and wisdom of your ancestors hath so moulded
>
> this [government] out of a mixture of these [monarchy, aristocracy
>
> and democracy], as to give the kingdom the conviences of all three,
>
> without the inconveniences of any one (cited in Weston, 1965:25).

Charles, speaking of the relationship between the three estates, argued that government

could only work: 'as long as the balance hangs even between all three Estates [the King,

the House of Lords, and the House of Commons], and they run joyntly in the proper

channell' (cited Weston 1965:25). Throughout the history of Parliament, constitutional

government evolved on the basis of custom, practice and tradition, given the absence of a

written constitution.

A very significant pillar in the Trinity of powers was the role of the Monarch. As already

mentioned, Britain diverged sharply from continental monarchies because the King was

'dominium politicum et regale' a limited monarch sharing power with Parliament, as

opposed to a monarch who had absolute power. The Monarch had to govern in

conjunction with Parliament which, as argued in this thesis, introduced the principle of

consent into constitutional government. John Ponet in his book *Shorte Treatise of*

Political Power (1556), (cited Weston 1965:15) wrote of government in England being a:

'mixte state': for their people participated in law making in that they had a Parliament in

which all sorts of people assembled and nothing could be done without the knowledge

and consent of all` (cited in Weston, 1965:15). Ponet is illustrating the fact that, under

the English Constitution, the Monarch's powers were not absolute, but needed the

consent of Parliament to govern. However, more significantly, he is also demonstrating

that, under the constitution, Parliament is a forceful and ultimately representative

institution whose consent and participation in government is essential if the Monarch is to

govern. This again illustrates the importance of representation within the British Political

Tradition.

In 1649, after the English Civil War and the victory of the Puritans, the House of

Commons famously declared: 'The House of Lords is useless and dangerous and ought to

be abolished' (cited in Bromhead, 1958:10). The Commons abolished the Lords and, for

the next eleven years, it did not meet. During the years 1649–1660, the House of

Commons was the sole governing estate in England. In the absence of estates to check

and balance it, government by the Commons was cumbersome, inflexible and inefficient,

even stretching the patience of the Lord Protector Cromwell. The restoration of the

Monarchy and the House of Lords in 1660 was a testament to the legitimacy of mixed

government in Parliament. Restoration was a victory for Conservative ideals in British

government. Government in England was best achieved when the higher echelons of a

hierarchy, such as the Monarch and Lords, administered it. Change was gradual and

mediated, harnessing existing institutions, and those institutions needed to be counter-

balanced by other institutions to avoid an over concentration of power. The Monarchy and House of Lords had proved themselves indispensable pillars of the Constitution.

v) Classical Theory of English Government: Representation and Responsibility

This thesis argues that ideas of representation and responsibility are key features of the British Political Tradition and shape the constitution. Indeed, Birch (1964:246) in *Representative and Responsible Government* contends that the Constitution: 'cannot be adequately described unless some account is given of the people who engage in politics, [and] the patterns of communication between them'. Birch's description is quite apt for describing the constitutional relationship between Parliament's governing institutions of the Crown and the Houses of Lords and Commons and how the relationship between them determined the governing of the nation. Throughout the period under discussion in this chapter, and particularly between 1600 and 1790, it is argued that elitist ideas of representation and responsibility emerged and provided the foundations of modern constitutional government.

Parliamentary government consisted of an elite alliance between the Crown and House of Lords, who dominated over a subservient House of Commons. The constitutional relationship between the House of Lords, supplemented by the Crown, and the House of Commons, was hierarchical, with the Crown and House Lords axis firmly in the ascendancy. This hierarchical relationship between the Crown and the House of Commons over the House of Commons defined constitutional government and further

reflected and cemented an ultimately hierarchical, top-down relationship between Parliament and the nation. Birch argues (1964:13) that Parliament was above all else a representative institution and as a direct consequence ideas of representation strongly shaped the constitution; but it was a very narrow understanding of representation.

Representation, in its broadest sense, means the degree to which the representatives of the people share in the political decision making process and, thus, in what sense(s) government is representative. As illustrated in Chapter Two, Birch distinguishes between three types of representative. First, a representative can be an agent or delegate whose function is to directly represent the interests of a principal. Secondly a representative could be freely elected or thirdly a representative could be a microcosm of a larger demographic group in the nation. This Chapter concentrates on the pre-democratic nature of Parliament and the constitution and, so, in this context, Birch's second and third concepts of representation are superfluous, because freely elected representatives are a feature of democracy and this chapter pre-dates democracy.

Birch's first conception of a representative, as an agent or delegate whose objective is to represent a principle, is the one most relevant to the pre-democratic era of Parliament. The relationship between the agent and principal crucially involves consent. The agent represents the interests of the principal with the principal's agreement. As Birch (1964:14) argues:

The House of Commons owes its origins to the Kings need to secure the

consent of the Commons to financial exactions: the Knights of the shires were

assumed to be able to consent on behalf of the residents of the shires, and the

citizens and burgesses to be able to do the same on behalf of the townsfolk.

In its essence, the House of Commons is a representative institution whose main purpose

is to represent the petitions and interests of the people. However, ideas of representation

inscribed in the House of Commons have always been guided by principles of elitism and

hierarchy, with power flowing downwards from the House of Commons through different

layers to the people. Each layer represented the interests of the people directly beneath it.

At the pinnacle of the hierarchy, the Commons represented, indirectly, all of the people.

The King needed the consent of Parliament to raise revenue and to make law. The

relationship between the two estates had to be reciprocal and based on consent for the

smooth running of government.

Historically, ideas of representation and power in Parliament were shaped by elitist and

top-down ideals with a hierarchal dispersion of power flowing downwards from the

higher echelons of Parliament through to the lower echelons of shires and boroughs.

Although power and representation flows downwards, it is not unconditional, but needs a

degree of consent from below to function properly. The Crown needed the consent of the

Lords, the Lords needed the consent of the Commons and the Commons needed the

consent of the electors.

Birch also identifies three meanings of responsibility. First, one can view a responsible government as one that responds to public demands, second, responsible government may be conceived as a government commitment to a moral and greater good or, third, responsibility reflects the accountability of government to Parliament. In the context of the pre-democratic constitution, the second meaning of responsibility, that of a government obligation to a greater good, takes on major significance determining the authority of Parliament, ideas of representation and the ultimately hierarchical relationship between Parliament and the nation. The second meaning of responsible government rests on the view that a government has a duty and moral obligation to achieve the greater, collective good of society. In this sense, government's obligation to the collective good overrides all specific, vested interests. Government is charged with a moral responsibility to ensure that policy is prudent, wise and consistent with the greater and long term, good of society.

As argued in the last chapter that the British Political Tradition is inscribed with a conservative notion of responsibility, with strong and efficient government taking precedence over responsibility to citizens. This conservative idea of responsibility created strong, elite-led, governing institutions in which power was concentrated in the upper echelons of the government and a hierarchical dispersion of power occurred. In practice, this meant the Crown and Parliament at the top of the hierarchy perceived themselves as guardians of the nation's affairs and monopolised power in the interests of the public good. As a consequence, this elite-led, top-down government, which knew best what was for the public good, was best served by restricted representation.

Section Two: The 1688 Glorious Revolution: The House of Lords and the Mixed Constitution

In this section the implications of the Glorious Revolution (1688), are examined which defined a new constitutional relationship between the Crown and Parliament. The Revolution should in theory have heralded a more equitable constitutional relationship between Parliament and the Crown. However, as demonstrated by this section a new form of elitism emerged within Parliament, with Crown and the House of Lords remaining dominant over the House of Commons. The 1688 Glorious Revolution was led by a clique of esteemed Peers in the House of Lords. The Lords Devonshire, Shrewsbury, Marlborough and Halifax were instrumental in wresting sovereignty away from the Crown and making Parliament the supreme law making body in government. The success of the Lords heralded a golden era of aristocratic influence and control over government throughout the Eighteenth Century. The Revolution was triumph for the theory of mixed government and it meant that power was no longer exclusively in the hands of the Monarch, but was devolved between the estates of Parliament and the Crown. The relationship between the Crown and Parliament was crucial to governing and, within Parliament; the influence of the Lords was of great significance.

Williams's (1960:68) writes: 'The Revolution settlement had left the Monarch in a very strong position and during most of this period he was truly the head of   the executive

government'. The Glorious Revolution, designed to limit the power of the King, had the net effect of leaving him in a good position to exercise strong executive power. The difference was that the power exercised by the King could be checked and balanced by an equally forceful Parliament. The King had to account for his actions to Parliament. Weston (1965:87) writes: 'It was the theory of mixed monarchy expounded by the Parliamentarians in the civil-war period, not Royalist theory of mixed government, that triumphed either in the Revolution of 1689 or very shortly afterwards'. The legal position was that the regime of 1642, not 1640, lay at the heart of the restoration of the Monarchy and the: 'King's Constitution, not the divine right of Monarchy, lay at the basis of Restoration' (Weston, 1965:89). At the centre of the 1689 Revolutionary settlement was the premise that the King should play a positive and leading role in strong executive government, but, in conjunction with, and ultimately responsible to, the people's representatives in Parliament. The 1688 Revolution was a triumph for the theory of mixed government and established it as the basis for the constitution. Government was a delicate balancing act between the three estates and any change to the power and sphere of any one estate would disrupt the balance of the constitution.

The second corollary of the 1689 settlement was the importance that the constitution vested in the House of Lords for the maintenance of mixed government and a balanced constitution. Sir William Holdworth, writing in the Eighteenth Century, highlighted the significance of the House of Lords to the constitution: 'all the leading, statesmen and thinkers agreed that the House of Lords was useful as a check – a check upon the people in the interests of the King and upon the House of Commons in the interests of the King

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and people.' (Weston, 1965: 88). In the post-1689 Constitution, the House of Lords continued to play a prominent role, linking the Crown and House of Commons together to achieve the ideal of mixed government. Leading dignitaries of the time assigned to the Lords the role of: 'mediators between the Crown and the Commons' (Weston, 1965:88). The House of Lords was usually allied to, and identified its interests firmly with, the Crown, but it also had an important constitutional role in ensuring that the House of Commons, as the representatives of the people, did not impinge on the power or sphere of the Monarch. George III summarized the constitutional role of the Lords in the Eighteenth Century when he described it as: 'that respectable corps, established by the wisdom of past Englishmen to prevent either the crown or the Commons encroaching on the rights of each other' (Weston, 1965:88). Weston (1965:113) further writes: 'Thus Charles doctrine of the three estates triumphed after the revolution of 1689'.

The 1689 Glorious Revolution invested sovereign executive power in the King and ensured that the relationship between the Crown and Parliament would be the very essence of government and define constitutional theory. As such, Whig and Tory theories of the constitution were based around the relationship between the Crown and Parliament and these defined ideas of representation and responsibility and, ultimately, the nature of government.

The Revolution laid down guidelines about what the King could not do, but what he could do was open to interpretation. The King had strong executive power, but had to negotiate with Parliament for the means of using that power. The potential for conflict

was inherent and could only be avoided by the King and Parliament coming to a mutually beneficial agreement. The King had the right to appoint Ministers and draft policy, but both these needed the consent of Parliament. The King could gain agreement by effective oratory, but, more significantly, by attempting to directly influence both Houses of Parliament.

The extent of the King's power in Parliament depended upon a number of varying factors. The House of Commons did not have a disciplined party structure, but, instead, was a complex interplay of groups and factions constantly ebbing and flowing. The strength of the King depended on the extent to which independent members supported Government Ministers and their measures. Crucially, it also depended on the degree of unity that forces of opposition could muster when they were opposed to the King. The King needed influence in the House of Commons and for this he needed a skilled and powerful First Minister capable of harnessing support for his measures.

The relationship between the King and Parliament could become negative in two distinct ways. The King might appoint a Minister who did not have Parliament's support, in which case the situation could not last, because Parliament had the right to force the resignation of a Minister of which it did not approve. In the second negative scenario, Parliament might force on the King a Minister whom he found intolerable. In this context, it was by no means established in convention and practice that Parliament could force a Minister on a King, and, indeed, this was unlikely. The groups and factions in Parliament were forever shifting allegiances and, although they could unite long enough

to force the resignation of an unpopular Minister, they could never unite long enough to sustain a Minister in power who the Monarch did not want.

i) 1688 – 1832: The Constitutional Theory of Mixed Government

The years 1688–1832 were a golden era for the theory of mixed government, as the three estates of Crown and Houses of Parliament governed Britain and the ideal of mixed government became enshrined in the constitution. Crucially, principles of elite government and a hierarchical and top-down dispersion of power came to dominate the processes of government. The relationship between Crown and Parliament was at the centre of the axis, with the Crown and House of Lords ascendant over the House of Commons. Again, the idea of elite and hierarchical government remained dominant in the constitution and shaped all notions of representation and responsibility in the political system. Whigs and Tories polarized into two discreet camps with different theories of representation and responsibility to define the constitution; however both theories were shaped by principles of elitism.

Tory ideas of representation had their origins in medieval notions of society and Tudor ideas about government. The medieval conception of society was that the nation was a collective unity whose total was greater than the sum of its parts. The nation was an organic whole whose identity could be personified by the Monarch. The Monarch was a symbol of nation and his authority had divine sanction. The experience of Tudor

Government instilled in the Tories the value of strong executive government concentrated in the Monarch's hands.

The relationship between Crown and Parliament was hierarchical, with an elevated position for the King. The King would summon Parliament when he needed their consent to raise tax or introduce law, but it was the King who took the initiative in drafting legislation and making law. Parliament had a subservient position, merely representing the issues and grievances of the people to the Monarch. In was best equipped to deal with the issues of the nation. Parliament, as representative of the people, had an essentially limited role in presenting the grievances of the nation, but played no active role in initiating legislation.

Whig ideas on representation and responsibility also had their roots in the past and were drawn from medieval doctrines of contractual obligation and ecclesiastical doctrines of representation. In addition, the Whigs had a negative view of Monarchy that harked back to the arrogance and corruption of Stuart rule. In stark contrast to the Tory idea of Monarchy, Whigs believed that the authority of the Monarch should be limited. Whigs believed that the nation's representatives in Parliament should play an active and positive role in governing the nation. The gulf between Tory and Whig positions is best illustrated in the role each ascribes to Parliament. In the Tory conception, the role of Parliament is limited to representing the interests of the constituency, but not participating in deliberations. The Whig attitude to representation was that Parliament should have a significant stake in the governing of the nation. Members of Parliament should represent

various sectional interests, but also be involved in the debating and deliberations of government. Whigs conceived society as made up of a wide variety of groups; all with vested, and often competing, interests. A great many groups had interests that were opposed to each other and many other groups were not represented at all. To attempt to harmonize interests and strike a balance, Whigs emphasised the two concepts of virtual representation and the independence of Members of Parliament as necessary for efficient representative government.

The Whig theory of representation was shaped by its perception of the composition of society. Whigs believed that society was made up of a wide variety of groups and interests combining together to form a collective community. In this view, it was not the individual who needed to be represented, but the community as a whole. The community took on an identity of its own and, within its umbrella; it represented all the spectrum of interests. Society came together to form a single whole, with the sum total being greater than the parts.

Section Three: The Whig Constitution

In the Eighteenth Century the function of Parliament was to represent all the various communities and economic interests of the nation. The concept of representation and democracy in the Eighteenth Century was unique to the time and indefensible by modern standards. In Eighteenth Century Britain, all citizens were said to be represented either directly in Parliament or through what was termed virtual representation. Citizens were

directly represented 'through the land on which they lived' (Birch, 1964:23) by the Member of Parliament for their county or borough. The idea of virtual representation emphasized by the Whigs was the most influential and far-reaching idea and had a profound effect on representation and the nature of democracy in the Eighteenth Century.

i) Virtual Representation

Virtual representation was an idea that was applied to those who did not enjoy the privilege of direct representation through the franchise. The citizen was said to be virtually represented by the Member for the area in which he lived, even though he did not vote. The idea of virtual representation was also applied to the wide tapestry of trade, industry and agricultural interests in the economy. A Member of Parliament with a particular trade or industry in his constituency had an obligation to protect and promote that particular trade's or industry's interests in Parliament. In this sense, the citizen and economic interests could say to be virtually represented.

As such, a Member of Parliament for a cotton-making town not only represented the interests of that town, but all cotton making towns in Parliament. Burke wrote of virtual representation: '(it) is that in which there is a communion of interests, and a sympathy in feelings and desires, between those who act in the name of any description of people, and the people in whose name they act, though the trustees are not actually chosen by them' (cited in Birch, 1964:24). The Whig idea of virtual representation was highly influential in Eighteenth Century democracy. Virtual representation was an all-embracing idea that

gave the illusion at least that all individuals and economic interests had some form of representation, if not directly then virtually.

The Whig theory of representation specified a particular role for the Member of Parliament, both in how he represented his constituency and in his deliberations in Parliament. Whigs emphasised that a Member was not a direct delegate of the constituency, but should be free to use his own judgment.

Whigs believed that, for Parliament to be effective as a deliberative body, Members of Parliament needed to have autonomy of action and judgment. This objective was shaped by the Whig idea that Parliament was a symbol of the political unity of England. Algernon Sidney highlighted the idea that Parliament represented the one unified body of England in his book *Discourses Concerning Government* (1698) (cited Birch 1964:28). Sidney contrasted the federal nature of governments in countries such as Switzerland and the United Netherlands with the political unity of England. Sidney writes that in England: 'every county does not make a distinct body, having in itself a sovereign power, but is a member of that great body which comprehends the whole nation' (cited in Birch, 1964, 28-29). In Whig terminology, a Member who is sent to Parliament by his electorate is a representative of the whole nation, not just the locality. This supports one facet of Dicey's theory of the Westminster model, that of the unitary state governing for the whole nation.

Birch writes (1964:30): 'The Whigs believed in responsible government in the sense that all the institutions of the national government were held to be involved in the process of ensuring that state policies were as responsive to public demands as was consistent with the welfare of the nation'. Whigs believed that the job of Parliament was to act as representatives of the people and also to harmonize popular demands into achieving a common good. All the institutions of government were harnessed for this purpose and once again the goal was the common collective of the nation, which Burke termed that "happiness of the whole "(cited in Birch, 1964, 30).

The Whig notion of representation, as developed by Burke, significantly did not thrust the whole burden of representative government on the shoulders of the House of Commons. Burke writes of the House of Commons: '(it) could and should play a central part in the government of the country, together with the Lords, the King and the Kings Ministers' (cited: Birch: 1964:30). Whig theory assigns a prominent role for the House of Lords in the governing of England. Burke continues (cited in Birch, 1964:30): 'the King is the representative of the people, so are the Lords; so are the judges'.

ii) *The Triumph of the Whig Constitution*

The Whig view of government became the established practice of government throughout the Eighteenth Century. Government was about the major institutions, namely the Crown, Parliament and the Judiciary, participating in the deliberative process and harmonizing popular demands to achieve a general good for the welfare of the nation. Eighteenth

Century Parliaments were not so much partners with government administration as parallel institutions running side by side. Parliament was a sounding board for private, local and specific interests who wished to promote their interests by legislative means. The vast majority of legislation passed by Eighteenth Century Parliaments was Private Bills dealing with issues such as the enclosure of land and the acquisition of rights to build roads and canals, to protect game or to administer divorce. They were to do with local interests, rather than national ones, and were frequently opposed by rival interests (Private Bills are usually promoted by organisations, like local authorities or private companies, to give themselves powers beyond, or in conflict with, the general law). Private Bills only change the law as it applies to specific individuals or organisations, rather than the general public. Groups or individuals potentially affected by these changes can petition Parliament against the proposed Bill and present their objections to committees of MPs and Lords.

Parliament had the job of resolving such conflicts with legislation. However, the legislation passed did not affect the policies of the Administration, nor were they subject to Ministerial decisions. Parliament worked side by side with the Administration as a partner in national government. Parliament was not subservient to the Administration, as the Tory theory favoured, nor master of it, as the later radical theories would demand. The ties between Parliament and the localities were far stronger than between Parliament and the central executive. As Smith (1992:3) writes: 'The ties between Parliament and the localities were stronger than those between it and the central executive and its

atmosphere was more of a club for aristocrats and country gentlemen than of an institution of government'.

Smith (1992:2) argues that: 'The Glorious Revolution of 1688–9 subordinated the independence of the Monarchy to aristocratic dominance'. The Glorious Revolution led to an age of aristocratic dominance over the institutions of government. Britain was a predominantly rural society, where wealth was invested in landownership. Landownership was concentrated in the hands of a few select aristocratic families and the landownership conferred great power and influence, at local as well as national level, on this select band. A consequence of this was that the institution that embodied the power and prestige of the aristocratic landowners, the House of Lords, was afforded great political, as well as social, power. The Glorious Revolution (1688) initiated a new era of elite, top-down government, with the House of Lords representing the social and political elite and a circle of aristocratic families wielding great power over the constitution.

The House of Lords monopolized political and social power during the Eighteenth Century Constitution. The ties between the Monarch and Lords were close and the Lords nearly always supported the King in legislation. The Lords mediated between the Crown and Commons and had an important constitutional role in maintaining the balance of the constitution between Crown and Commons. As such, the theory of mixed government served to disguise the reality of executive power in the British system of government. The King exercised great power in choosing the Ministers who would govern in his name. The strength and influence of executive power ensured that a substantial court and

administrative group existed in both Houses of Lords and Commons and any Minister the King favoured almost inevitably exercised significant power.

The reality of Eighteenth Century British government was that, instead of the holy grail of mixed government, a covenant existed between elites in the Crown and the House of Lords who dominated the constitution. The House of Lords supported the Monarch, but the Monarch also possessed various powers of discipline and coercion over the Lords. The Crown could use the Bishops and Scottish Peers to force through measures, but, more significantly, the Crown had the power to create new Peers and confer promotions, as well as using the Crown patronage for offices and pensions. The Crown still needed the support of the Commons for government to be efficient and harmony needed to exist between the three estates. Consequently, the House of Lords had a pivotal role to play in calming the waters and ensuring that harmony existed between the Crown and Lords. The House of Lords was the ballast of the constitution, ensuring stability in government. Certainly, the relationship between Lords and Commons was of crucial importance for achieving good government.

The House of Commons, due to its democratic and representative nature and its control of finance and supply, was in theory the stronger House, but the Lords still retained huge power. The House of Lords assent was necessary for all legislation and it retained the power of veto over legislation it did not favour. The Lords were usually in tune with the Commons and could provide a useful `longstop` to legislation that the Government could

not kill, or did not wish to be seen killing. The House of Lords power and influence was extensive and far-reaching and went beyond the corridors of Parliamentary power.

Cabinet Ministers were usually aristocrats who sat in the House of Lords and were entitled to offer advice to the Crown, whether or not they were in government. The vast majority of offices and departments of political, military and civil state were staffed by members of the nobility. Foreign Affairs were a specialty of the aristocracy, as their education and breeding allowed them to negotiate on equal terms with the leaders of other nations. The leaders of the army, navy and civil departments, church and local government sat in the House of Lords. Junior and subordinate positions in state and civil society were usually dispensed by the power of patronage of the aristocratic families to junior nobility who did not directly inherit the family estates. Here, Williams (1960:136) writes of the aristocratic web of influence: 'The leaders of the army, the navy, the civil departments, the church and local government sat in the Lords, and thus their influence was felt in all aspects of government throughout the length and breadth of the kingdom' . The House of Commons constituted the representative and democratic element in government. But, here as well, through the power of patronage, the Lords exercised power and influence over the representatives and the electoral process.

Section Four: Elections -The Eighteenth Century Constitution

The aim of this Chapter is to show that Parliament is first and foremost a representative institution and illustrate the significance of representation to the British Political

Tradition. However it is also important to state that ideas of representation were strongly inscribed by ideas of responsibility. As such, ideas of representation are shaped by a conservative notion of responsibility aimed at maintaining the authority of elite governing institutions and resulting in representation that is limited and hierarchal. The objective of this section is to demonstrate how the embryo of limited and hierarchical representation became inscribed into British Political Tradition during the period of liberal constitution between 1688 and 1832.

Elections and the process of representation in Eighteenth Century Britain was, like so much in the British political history, a product of custom, tradition and even caprice. No changes had been made to the electoral laws since the Fifteenth Century and many anomalies and peculiarities existed in the electoral system. The Septennial Act of 1716 ensured that elections took place every seven years and this happened until 1784.

The choosing of Representatives was different to the choosing of Ministers. The electorate chose their Member of Parliament according to local issues and voted according to personal choice. The electorate did not vote according to national issues or for a programme of government. Left to its own devices, the House of Commons would have produced a wide and diverse spectrum of entirely free and independent Members and the practicalities of government would have been nearly impossible. To achieve organised and disciplined government, Magnates needed to impose a pattern for influencing elections to make government possible. The electoral system based the franchise on property and land ownership and afforded the nobility great opportunity to

influence elections. As the largest landowners, they were in an advantageous position to influence the vote in the great estates and, as a result, were able to influence the shape and complexion of the House of Commons by creating an elitist form of election.

Electoral districts were divided into Borough and County seats. In the Eighteenth Century House of Commons with 558 Members, 432 sat for the Boroughs and 122 sat for the Counties. Boroughs were the most numerous and five different categories of boroughs existed. The franchise in the Boroughs was not uniform and depended on the ownership of land or housing, or on payment of the local rate, either through the church or the poor rate. In the Scot and Lot boroughs the franchise went to those who paid the church or poor rate or its equivalent. In the Burgage boroughs the vote went to those who owned a parcel of land. In the third category of borough, the Corporation borough, the local municipal corporation elected members to the Commons. The most numerous of all were the Freeman boroughs. In the freeman boroughs an individual qualified to be called a freeman either by apprenticeship, inheritance, marriage or the purchase of land. Once achieving the status of freeman, the individual was entitled to vote. In the Counties the Franchise was more uniform and went to those who held a freehold to the annual value of 40 Shillings. The definition of freehold was broad and encompassed leasehold for life, annuities, mortgage and life offices in the church and state. Each County had two seats and each was usually in the sphere of influence of the great aristocratic landowning families.

Weston (1965:145) writes: 'The King and his government directly controlled some thirty seats, but for the managing of the House of Commons they relied primarily on royal patronage to win the support of peers who had greater direct influence in the constituencies'. The King needed the support of the House of Lords to control the House of Commons. The key to harmonious relations between the three estates of government was the power and influence that the House of Lords had over elections and members to the House of Commons. Clearly, an elite form of top-down government already existed.

The Parliamentary system in Eighteenth Century England required harmony between the House of Lords and Commons. This was achieved by the control through patronage and social influence that the Lords exercised over elections and Members of the Commons. The influence that peers in the Lords exercised over Members of the Commons was oil for the machinery of government and reflected the huge influence of the House of Lords in the social, political and economic fabric of the nation.

Elections in the Eighteenth Century, in the absence of a secret ballot and with the standards of public morality of the day, provided for a well-oiled system of honest corruption. The Peers exerted huge influence over elections and candidates. The numerical superiority of the boroughs meant that it was the manipulation of the borough vote that was crucial in manipulating the House of Commons.

The boroughs had a relatively small number of voters, so it was possible for a candidate to attempt to entice voters to vote for him through bribery or other inducements. In

Potwalloper boroughs, there was evidence of candidates attempting to persuade voters by providing money, hogs and tin. In Scot and Lot Boroughs, a candidate might offer favours in the navy or army that would benefit the whole town. In a Freeman borough, the electorate might be suddenly swamped by a large number of non-resident freemen solely for the election. Namier describes the election in one freeman borough as: 'a system of organised bullying which worked from the top downwards' (cited in Williams, 1960:153).

In the Corporation boroughs, the Major or the local nobility directly chose the candidate. The Earl of Bristol nursed this control over Bury St Edmunds for a number of years. In Burg age boroughs the franchise was given to those who had what was called the burg age tenure. The Burg age tenure was land given to a tenant through the ancient custom of Burg age. The franchise really belonged to the land, rather than the individual. In the case where the land was occupied and the vote was with the tenant, then the landlord merely bought up the land. The land would become a pocket borough of the landowner and the votes that went with it would revert to the landowner.

In the County elections the landed gentry and aristocracy exercised influence over candidates and elections. The vulgar and cynical acts of bribery found in the boroughs were deemed inappropriate for the counties. Instead, the landed gentry exercised a more subtle form of influence over the electorate, that of a Lord over the tenants, shop keepers and services who were resident on his land. In the counties social relations were hierarchical from the aristocrats and landed gentry downwards. The Lords had authority

over the Justice of the Peace and, through the power of patronage, had authority over the tenants. The size of the electorate spread over the County made it ruinously expensive to hold an election. Measures were usually taken by leading interest to avoid a seriously contested election-taking place. A compromise was usually reached between Lords and gentry or rival families or between Tories and Whigs, so that one or other candidate would not stand.

Weston writes (1965:145): 'The personal influence of the Peers because of their large estates and individual prestige was the chief factor in securing to their interest members of the House of Commons'. The Peers' power of patronage ensured control over the candidates and their personal standing in the community guaranteed control over the vote. At the accession of George III it was estimated that 55 Peers and 56 Commoners influenced the return of approximately 205 Members of the House of Commons. In 1792 The Friends of the Earth group calculated that 164 English MP s were returned by direct nomination or powerful influence by just 72 members of the House of Lords. T.B Oldfield added that 30 Scottish MP s were elected through the influence of Scottish Peers and that, of the 100 Irish Members added to the House of Commons by the Act of Union in 1800, 51 owe their election to Peerage influence. One third of those elected were sons of Irish Peers.

Disraeli coined the term 'Venetian Oligarchy' (cited in Turberville, 1958:397) to describe the aristocratic control of British government in the Eighteenth Century. Drawing an analogy with the closed mercantile aristocracy that ruled Venice with such distinction,

the term neatly sums up the elitism and, in particular, the power of landed aristocracy in the social, economic and political fabric of the nation. The House of Lords symbolized elitism and was the institution that represented the aristocracy's social and economic power at a local level, which was the engine for political control of government at a national level.

Overall then, the Glorious Revolution of 1688 opened up an era of aristocratic dominance of British government. Britain was governed by an Oligarchy of the landed aristocracy and their web of influence spread to all sectors of social, civil and military life. The House of Lords was the institution at the centre of the complex web of power.

The House of Lords reflected the dominance of elite government in the social and economic fabric of a rural agricultural England. Social structures were hierarchical and power and influence cascaded downwards from the Lord and Squire at the top, through to the Lord Lieutenant and Justice of the Peace and eventually down to the tenants and shopkeepers at the base of the pyramid.

The liberal constitution between 1688 and 1832 established the foundations for elite and hierarchical governing institutions who governed through a top-down dispersion of power. During the liberal constitution of 1688–1832, the idea of elite governing institutions and hierarchical dispersion of power became inscribed into institutions and became accepted in civil society. This view underpinned both Tory and Whig ideas on representation and responsibility, stressing the necessity for strong, ultimately elite,

government, with a hierarchal flow of power downwards. Parliamentary power also reflected the idea of top-down government. So, Smith (1992:3), writing on the role of a Member of Parliament, argued: 'neither Peers nor members of the Commons saw themselves as delegates of, or even responsible for their words or actions to, any wider constituency'. A Member of Parliament had autonomy and acted according to his own best judgments on issues that affected the whole nation and whole populace. As such, from this perspective, the extent of the franchise, the extreme inequalities of the constituencies and the existence of rotten and corrupt boroughs did not constitute any defect in the representative system. The whole population was thought to be represented through virtual representation, either directly by a member they had voted for, or indirectly by a member who spoke in the interests of a trade, industry or community. The use of patronage by the Peers in the House of Lords helped to keep the House of Commons pliable to the interests of the House of Lords and, thus, keep the harmony necessary between the two houses for efficient government.

Smith emphasizes the elite nature of aristocratic government in the Eighteenth Century, arguing: 'Legislation was in the hands of men of the same class and background' (1992:3). Government was deliberately non-interventionist and limited to the minimum necessary for the smooth running of affairs. Members of the nobility at the top staffed the departments of political and civil authority, while the power of patronage was used to fill junior positions. The day-to-day running of government was restricted enough to be run on a non-professional basis.

The machinery of national government mirrored the mechanics of local government in England, As Smith (1992:3) writes: 'In national, as in local government, the services of social elite, fulfilling its obligation to the country which accepted its primacy, providing all that was necessary for the effective running of the machine.' The social elite were the Peers and the machinery of national government was the House of Lords. The power and prestige of the House of Lords prevailed in all vestiges of government and made the Eighteenth Century a truly 'aristocratic century'(Smith, 1992:2).

In Conclusion

This chapter has examined a long period of constitutional history, focusing on the changing relationship between the three pillars of the British constitution, the Crown, the House of Lords and the House of Commons. The argument here is clear. Although the relationship between the three pillars changed, it still remained a relationship characterized by a particular view of democracy and government. These views and ideas became developed throughout the ages by the beliefs and preferences of individuals before becoming inscribed within governing institutions. The focus was on the need for strong decisive government and that was best preserved, so the Crown and the House of Lords thought, by retaining close relations between the Crown and the Lords, even if over time the power of the Lords, in relation to the Crown increased. The House of Commons had a role, but, even in 1832, it was a limited one, with the Lords remaining the dominant Parliamentary Chamber. During the liberal Constitution it was clear that the responsibility of government was deemed more important than its representativeness.

This did not mean that the concept of representation was not important, but, even in 1832; it was a limited conceptualisation, which fitted very well with the dominant conservative notion of responsibility.

However, the Nineteenth Century saw three extensions of the franchise for the House of Commons, so there was much more focus on representation. Consequently, the next chapter focuses on the period between 1790 and 1832, which marked first moves towards the extension of the franchise in the 1832 Reform Act.

Chapter Four

The House of Lords 1790 – 1832

This Chapter examines the House of Lords from 1790 to the passing of the Great Reform Act in 1832. The aim is to illustrate how pre-democratic ideas of elite government contained in the Liberal constitution of mixed government were influential in shaping the model of democracy contained in the Great Reform Act 1832. The chapter demonstrates how the House of Lords was influential in inscribing its elite ideals into the embryonic model of democracy contained in the First Reform Bill.

The democracy introduced by the 1832 Great Reform Act transformed the balance of constitutional power between the Crown and the Houses of Lords and Commons, however despite the transition, pre –democratic ideas of elite top-down government continued to dominate the operation and development of government.

 The move towards democracy ended constitutional mixed government and oligarchic government by the Crown and the House of Lords and replaced it with a new constitution founded upon democracy and the authority of the House of Commons. Democracy ended the hegemony of the Crown and the House of Lords over the House of Commons and ensured that the locus of sovereign power would begin to gravitate towards the House of Commons and the democratic branch of the constitution.

Section One analyses the House of Lords during the liberal constitution of mixed government from 1790 onwards, as Parliament began a process of transition from a liberal constitution, dominated by mixed government, to the beginnings of democratic constitution. This section assesses the reasons for the transition from mixed government to liberal democracy and argues that democracy was necessary for Parliament to be representative of, and responsible to, the nation. However, as the constitution completed its inevitable transition to democracy, it was faced with two distinct ideas of democracy, with the elite conception of democracy, associated with the British Political Tradition, triumphing.

The main objective in this chapter is to demonstrate how the British Political Tradition came to be the dominant idea of democracy overcoming the challenge of radicalism and shaping the nature of the 1832 Great Reform Act. This thesis argues that tradition (s) are ideas of democracy initiated by individuals which once accepted, shape the operation and eventual development of institutions. Once an idea becomes instantiated into an institution it becomes accepted by agents and becomes a tradition by providing the framework within which future generations of actors work. As such, the argument of this thesis is that the British Political Tradition is a dominant, though contested, idea of elite democracy which produces elite, top-down, governing institutions. The beginning of this chapter focuses upon how the House of Lords and mixed government incorporated ideas of elite and top-down government into the new democracy. Although the British Political Tradition embodied much of the traditional elitism associated with mixed government, it faced stern contestation from the ideas of

radicals, who supported a more participatory idea of democracy, advocating a more egalitarian distribution of power. However, despite the challenge of radicalism, the elite ideas of the British Political Tradition proved more complimentary to existing institutions and more amenable to the wider populace and, thus, shaped the emerging democracy.

Section Two analyses the ideas of radicalism which spread across Britain and Europe from 1790 onwards with the objective of assessing their potential impact on the development of democracy. This section analyses in detail the radical ideas of popular sovereignty supporting a more participatory and egalitarian form of democracy, with a 'bottom up' distribution of power, and assesses its potential challenge to the elite and top-down ideas of mixed government. The initial purpose here is to show that the British Political Tradition has always been a contested idea and that the radical idea of participatory democracy provided a credible alternative and challenge to it.

It is argued in this thesis that ideas of representation and responsibility are composite elements of democracy reflected in the empirical practice of Parliament. In advocating this view, it is necessary to demonstrate firstly, how Parliament exists as a representative institution and, secondly, that responsibility determines the degree to which Government responds to the needs of the governed. An objective of this thesis is to show how a conservative idea of responsibility aimed at preserving the elite and hierarchical authority of governing institutions strongly shaped the idea of representation in the emerging democracy. As such, the idea of representation that

emerged through the 1832 Reform Act was limited and hierarchical designed primarily to preserve an elite tradition of government.

The argument here is that the Crown and Parliament are representative institutions, with the Crown being a symbol of the nation, the House of Lords representing the elite power of the aristocracy and the House of Commons representing the petitions of the people. During the liberal constitution period between 1688 and 1832, Parliament reflected and was representative of a rural agricultural nation. The Crown and the House of Lords, as the institution which represented the political power of the landed aristocratic elite, dominated the constitution and used their political and economic power through the system of *rotten boroughs to* dominate the House of Commons. Moreover, the Crown and the House of Lords' dominance over the House of Commons reflected a constitution dominated by principles of elitism with a, hierarchical dispersion of power between the Crown/House of Lords axis and the House of Commons. Under the liberal constitution, the balance of constitutional power resided firmly with the Crown and House of Lords, not the House of Commons, and this reflected an elite tradition at work, with a hierarchal, and obviously unequal, distribution of political power within Parliament and throughout the civic fabric of the nation.

Although the constitution reflected the values of elite and hierarchical government, it remained a balanced constitution in the eyes of contemporary observers, because each institution adequately represented the interests of the nation. The Crown and the House

of Lords represented the political and social elite while the House of Commons represented the interests of the people. The hierarchical relationship between Crown and Parliament reflected the ideas of elitism and hierarchy evident, and accepted, in the civic and political fabric of the nation.

Section Three assesses the pressures for Parliamentary reform and greater democracy. The aim is to illustrate how the industrial revolution of the late Eighteenth and early Nineteenth Centuries transformed the civic and economic fabric of the nation and created a situation whereby a Parliament dominated by landed interests was no longer representative of the nation. It is argued that a rupture occurred between Parliament and the nation and contends that representation through democracy was necessary to reconnect Parliament to the new industrial nation. However, this involved a transformation in the balance of the constitution as power gravitated away from the Crown and House of Lords towards the democratic pillar of the constitution, the House of Commons.

Section Four chronicles how the Whig Government under Lord Grey began the process of introducing democracy to Parliament. This section analyses in depth events that culminated in the passing of the Great Reform Act (1832) and examines the idea of democracy which emerged. The implications of democracy over Parliament are assessed, as it created the move from a liberal to liberal-democratic constitution, suggesting that the tradition of elitism and top-down government evident in the constitutional mixed government continued to shape democracy. This section argues

the minds of the Whig reformers the conservative idea of responsibility evident in the liberal constitution should continue to shape ideas of representation, ensuring that, even with the extension of the franchise, the elite top-down authority evident in liberal governing institutions was retained.

Section One: Elections and Representation - The Liberal Constitution of Mixed Government

In the Eighteenth Century House of Commons with 558 Members, 432 sat for borough seats, with 122 for county seats and 4 seats for the Universities of Oxford and Cambridge. The county electorate was numerous and had a standard 40 shilling franchise, which enabled it to be independent enough not to be manipulated. However, the borough vote was not so numerous and no uniform franchise existed. The relatively small electorate in the boroughs, in some cases amounting to a mere handful of voters, made manipulation of the vote for an election relatively easy. Indeed, Masterman (1913, 197) writes: 'It is said that in 1780 six thousand electors returned a majority of the House of Commons'. The sparse nature of the electorate and the economic dependence of the voters on land, afforded the great landowners, the majority of whom were Peers in the House of Lords, great opportunity to manipulate the electoral process.

The landed aristocracy in the Lords shaped the membership and fabric of the House of Commons. Masterman (1913, 197) writes: 'At the end of the century it was computed that two thirds of the House consisted of nominated members'. In the annual Register of

1783, statistics showed that 71 Peers were responsible for 163 Members of the House of Commons, while in 1788 the *Morning Chronicle* newspaper declared that 243 members of the House of Commons were under the patronage or influence of Peers in the House of Lords.

In Eighteenth Century rural, agricultural Britain, Parliament governed the nation through the Crown and a clique of esteemed Peers in the House of Lords. An oligarchy of the Crown and the aristocrats in the House of Lords provided strong, elite-led, government and held direct, hierarchical power and authority over the democratic arm of the constitution represented by the House of Commons. Government was elite and hierarchical, with power diffusing downwards from the Crown and Lords through to the Commons and the nation. The classical theory of mixed government was the constitutional cement that bound a hierarchical form of government together.

The idea of Constitutional mixed government underpinned the power and authority of Parliament and defined the boundaries between the Crown, Lords and Commons. Mixed government, and in particular the power of the House of Lords, reflected the economic and social power and prestige of the landed aristocracy in a rural agricultural nation. The House of Lords, as the governing institution, composed of great landowners, mirrored and represented the economic and political power of the aristocracy and was dominant in Parliament, as against the relatively weak democratic arm of the constitution, the House of Commons. As long as Britain remained an agricultural and rural nation, the Crown and the House of Lords could govern the nation efficiently and effectively and

adequately represent the nation's interests. However, in the last quarter of the Eighteenth Century economic and social changes were afoot that would render mixed government ineffective for the governing of the nation and lead to the emergence of the first shoots of democracy in Parliament.

Representation: Dislocation between Parliament and the Nation

Historians such as Briggs in, *Victorian Cities* (1990) and Thompson, *The Making of the English Working Class* (1980), agree that the Industrial Revolution which swept the nation in the late-eighteenth century radically transformed the economic and social fabric of the nation. The creation of new industrial centres led to a wholesale shift in population from the agricultural South and East to the new urban areas in the North and the Midlands. Towns in the South and East declined in population to the size of villages, but still continued to return members to Parliament, while, paradoxically, the new urban towns, such as Birmingham, Manchester and Leeds, with huge swathes of population, were totally unrepresented in Parliament. The creation of a new industrial society with a large urban-based population forced a reappraisal of Britain's governing institutions.

As such, a Parliament, underpinned by a constitution of mixed government and dominated by landed elite in the House of Lords was no longer representative of the economic and social fabric of the nation. The constitutional cement of mixed government could no longer govern the nation effectively. To modernise and govern the new industrial society, Britain's tripartite governing institutions had to be transformed from a liberal form of government, dominated by an oligarchy in the Upper Chamber,

into a liberal democracy, led by the House of Commons, which could be politically representative of the new urban population.

Consequently, the introduction of democracy was necessary for Parliament to be representative of the new industrial nation and reconnect to the nation. Democracy was necessary to modernise governing institutions and ensure that they had the capacity to govern for the needs of a changed nation. The advent of democracy entailed a change in the existing balance of the constitution, as democracy would sweep away the classical theory of mixed government and shift the centre of political power away from the Crown and the House of Lords towards the democratic arm of the constitution in the House of Commons. The model of democracy adopted would have a crucial bearing on the power and authority of governing institutions and define the nature of political representation and government responsibility.

In late-Eighteenth Century, Georgian, Britain, the debate about the nature of the inevitable democracy polarised into two distinct theories. Radicals favoured a more participatory, popular, form of democracy, which would create institutions shaped by an idea of egalitarianism and ensure a 'bottom-up' distribution of power. In contrast, Whigs supported the more elitist and hierarchical form of democracy already inherent in mixed government, involving an elite, top-down distribution of power. The debate over democracy would define the nature and soul of Parliament.

Section Two: Radicalism: A Participatory Form of Democracy

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Radicalism occupies a distinct and discrete place in the annuls of British political history because its egalitarian values stand in stark contrast to the British Political Tradition and its inherent elitist values. As demonstrated in the previous chapter,, Britain's governing institutions of Crown, Lords and Commons have traditionally been shaped by a conservative notion of responsibility, which creates an elitist political system and a top-down distribution of power. The idea of elite governing institutions concentrating power and displaying limited responsibility or accountability to the nation has also shaped the ideas of representation. Ideas about representation inherent in the liberal constitution were limited and hierarchical, designed to consolidate the dominance of elite institutions and maintain a top-down distribution of power. Throughout the evolution and development of Britain's governing institutions, ideas of elitism and hierarchy have remained dominant and inscribed into the institutions themselves shaping the development of the Crown and the Houses of Lords and Commons.

Radicalism diverges sharply from the existing values inherent in the British governing institutions, because it challenged the view, so eloquently expressed by Edmund Burke, that political institutions are rooted in the custom, practice and tradition of the nation. In conservative thought, political institutions are a constant, permanent and enduring legacy that should not be subjected to sudden change. This view is reflected in the way in which constitutional mixed government shaped the development of the Crown and Parliament. Radicals rejected this view and proposed: 'to reform society anew, without reference to special traditions and beliefs by which it [had] been hitherto bound together` (cited in Birch, 1964, 32). To radicals, existing institutions, such as the House of Lords,

and ideas, such as mixed government, were not sacrosanct, but reflected an existing hierarchical status quo, which should be swept away in order to create a new, more equitable society.

Radical thought embraced ideals such as popular sovereignty, participatory democracy, natural rights and equality and believed that these principles should be applied universally. French philosopher Jean Jacques Rousseau inspired the idea of popular sovereignty in his book *Contract Social* (1762). Rousseau suggested that the citizen should give up part of their natural freedom to obey government. In return for this sacrifice, the citizen would be entitled directly, or through representatives, to participate in the policy decisions which govern him and his nation. The natural effect of popular sovereignty would be manhood suffrage, but the real jewel in the crown of Rousseau's ideals was the idea that government should not govern without the consent of the governed.

i) Radicalism: The History of Ideas in Britain

Throughout the history of Parliament, radicalism has found expression through four main movements. The first radicals were the Levellers (and Diggers) in the aftermath of the English Civil War, during the Puritan rule of England 1648–1660. The next radical movement in England was created after the expulsion of John Wilkes from Parliament in 1769, which led to a spate of political societies demanding reform. Subsequently, the influence of the American and French revolutions added fresh zest to the campaigns of political societies between 1790 and 1800, before, finally, the ideas of Utilitarians, such

as Jeremy Bentham in his *Plan for Parliamentary Reform in the form of a Catechism* (1817) and James Mill in *Essay on Government* (1820) added clarity and maturity to the ideas of radicalism between 1800 and 1832.

The Levellers (cited Birch 1964:35) adhered to a moral principle that all men were created naturally equal as men and citizens. A consequence of this principle was that sovereignty should reside, not with Parliament, but with the people, and a representative should be a servant of the electors. The Levellers promoted the principles of universal suffrage, popular sovereignty and equality and suggested that the only moral basis for government was the consent of the ruled. This could only be achieved by the citizen's direct participation in the election of representatives. This view of democracy and representation directly challenged the elitist and hierarchical, top-down, view of representation already inherent in Parliament through mixed government and, instead, promoted an egalitarian, participatory form of democracy. The Levellers did not enjoy much success with these egalitarian values even during the Long Parliament and the torch of radicalism lay dormant until it was re-ignited in 1769 by John Wilkes.

C.B.R Kent, writing in 1899 about the radical movement that emerged in England after 1769, argues: 'One of the most remarkable facts in English history, that the efforts of the earliest Radicals were directed, not against the House of Lords, not even primarily against the Crown, but against the House of Commons' (Weston, 1965:159).

ii) Radicalism and Ideas: Participatory v Elite democracy

Movements for Parliamentary reform evolved, significantly, outside Parliament and with two groups advocating two distinct ideas of democracy to underpin the reform of the House of Commons. The most moderate were the Whig reformers led by Edmund Burke who sought no constitutional re-organisation or change in existing institutions. Whig reformers identified closely with the traditional, top-down values of the British Political Tradition already inscribed into the governing institutions. They aimed to restrict the power of the Crown and the House of Lords by limiting pensions, sinecures and the offices of patronage, the instruments by which the Crown and the House of Lords influenced the House of Commons. The second group of radicals were the reformers who took their ideals from the doctrines of the French and American revolutions. This group supported a more egalitarian, participatory, form of democracy, in direct contrast to the elite and top-down nature of power already inherent in governing institutions. This form of radicalism demanded wholesale changes to governing institutions, such as the Crown and the House of Lords, and decreed that the House of Commons should be more directly representative and accountable to the people.

The shared view of all radicals was that the power of the Crown and the Lords was excessive and dangerous and needed to be counter-balanced by making the democratic branch, the House of Commons, stronger and more representatives. The early radicals stayed within the sacrosanct boundaries of mixed government and Parliamentary reform and the new democracy was to be achieved using the existing institutions of Crown and Houses of Parliament.

iii) The Wilkes Agitation

This section analyses the effects of the Wilkes agitation beginning in 1769 on Parliament and the cause of radicalism. The Wilkes affair unleashed an important new element into the practice of constitutional politics, namely the influence of extra-Parliamentary pressure groups over Parliament. The creation of just such extra Parliamentary groups provided an avenue through which public opinion could be voiced and radical groups could promote their ideals of egalitarian, participatory government to challenge the elitist and top-down values inherent in mixed government.

The Wilkes agitation in 1769 (cited Birch 1964:38) gave rise to a move to reform Parliament by popular pressure through the creation of the first organised movements for Parliamentary reform. Wilkes was a Member of Parliament for Middlesex when in 1769 he was arrested and, subsequently, ejected from Parliament on a charge of seditious libel.

Seven years earlier, as Editor of a Newspaper called the *Northern Briton*; Wilkes had published a vehement attack on the King's speech. The Grenville Ministry decided the publication represented a seditious libel and issued a warrant for the arrest of Wilkes. The House of Commons entered the quarrel by voting that Wilkes should be ejected from Parliament. Wilkes stood for re-election in the Middlesex constituency three times and three times was re-elected. Parliament refused to recognise the vote and readmit Wilkes to the Commons and in the third election even declared the losing candidate, Colonel Luttreli, the elected member for Middlesex.

The Wilkes affair challenged the traditional hierarchical relationship between Parliament and the voter, questioning the view that Parliament had the moral right to ignore the democratic choice of the people. The protracted struggle between Parliament and Wilkes led to the growth of the first extra-Parliamentary pressure groups dedicated to the reform of Parliament. Wilkes and Horne Tooke founded the Society of Supporters and campaigned for the re-admittance of Wilkes to Parliament. The Society also campaigned for a raft of measures, including electoral reform, equal constituencies, annual Parliaments and the prevention of Placemen and Members of Parliament receiving salaries and pensions from government. The Society unleashed a radical new idea of democracy in the British political system when it decreed that Members of Parliament should follow the instructions of the voters.

The Wilkes agitation was the first serious attempt to reform the democratic branch of the Constitution, the House of Commons. Wilkes was significant and radical because of the claim that an elected representative should be bound and subservient to the demands of the electorate. Wilkes ideas ran directly counter to the dominant idea inscribed in Parliament that a representative was independent of the electorate. The Wilkes agitation created a situation that was to have an enduring legacy. The Bill of Rights Society was later joined by the Constitutional Society, which later became the parent body for such societies as the Friends of the People and the London Corresponding Society. The Wilkes affair gave rise to major extra political societies and showed how public opinion could be enlightened and mobilised to support an alternative idea of democracy and exert pressure on Parliament for reform. In 1774 Wilkes was finally allowed to take his

seat in the House of Commons and in 1782 all records of his expulsion were expunged from Parliamentary records.

In 1776, two years after Wilkes resumed his Parliamentary position, he re-affirmed his belief in popular sovereignty, equality and the right of each citizen to 'fair and just share of power' (Weston, 1965:150) through the electoral process. Wilkes supported the ideals of universal suffrage, equal representation and the disenfranchisement of the rotten boroughs. Wilkes ideals represented a new participatory, more egalitarian, idea of democracy which was a direct challenge to the House of Lords control over the House of Commons, through patronage and election, and a challenge to the idea of virtual representation.

In 1780 another political reform group called the Sub-Committee of Westminster issued a report joining the clamour for universal manhood suffrage, equal representation and annual parliaments. The report was more radical than the Bill of Rights society because it also demanded single member constituencies, secret ballots, the payment of members, the exclusion of office holders and office pensioners from Parliament and the abolition of property qualification.

Similarly, the Yorkshire Association, led by Anglican clergyman Christopher Wyvill, aimed to restrict the power of the aristocracy over elections. The Association suggested reform of the County representation to counterbalance aristocratic control of the boroughs. In 1783, Wyvill`s plan for Parliamentary reform consisted of expanding the

County representation in the House of Commons by 100 and extending the franchise to all rate- paying householders, alongside the introduction of triennial Parliaments.

Wyvill`s alternative idea of democracy was based on the premise that representation should be expanded in proportion to population, not on a commitment to equality. Wyvill believed that, if seats were allocated regardless of population, the aristocracy would be dominant in the least populace areas. The plan was to diminish the power of the aristocracy by giving more representation to the most populated counties, where the aristocracy could not so easily manipulate the vote. The plan aimed to strengthen democracy and the House of Commons at the expense of the House of Lords.

It was a testament to the strength and durability of the idea of Constitutional Mixed government that late-Eighteenth Century radicalism was constrained within its boundaries. So, in 1782, even Wilkes relented and praised the English Constitution of Mixed government conceding:

> The British constitution of Kings, Lords and Commons is the most perfect theory of Government in the world, and may be rendered as perfect in practice, if the House of Commons is so Reformed as to be independent and uninfluenced by, the other two branches of the Legislature (cited in Weston, 1965, 155).

iv) Radicalism: The Spread of Ideas Across Europe

During the period 1760–1800 a wave of radical ideas was followed by revolutions throughout Europe. There were revolutions in Poland in 1794, Milan 1796, Rome 1797 and Naples 1798. The most famous and influential revolution was, of course, the French Revolution of 1789. The new radical ideals rejected the traditional political ideas of monarchic and aristocratic rule and, instead, supported democratic ideals and building a new political society based on popular sovereignty and equality.

Weston (1965:179) argues: 'After the outbreak of the French Revolution in 1789 a sharp change occurred in the nature of English political Radicalism'. The success of radical ideals in Europe and America had the effect of galvanising the ideals of English radicalism. Earlier English radicalism had limited aspirations to reform only the House of Commons, but, buoyed by the success of the French Revolution, radicals began to attack the whole constitutional basis of mixed government and the institutions of Crown and House of Lords. Radicals such as Joseph Priestly (1733-1804), Thomas Paine (1737-1809) and William Godwin (1756-1836) rejected the Classical theory of mixed government altogether and denounced the principle of hereditary power prevalent in the House of Lords. The House of Lords and the aristocracy were condemned for monopolizing power, wealth and privilege and for being in opposition to the ethics of sound morality and individual character. English radicalism in the 1790's challenged the justification for retaining an elite chamber such as the House of Lords.

The radicalism of Priestly, Paine and Godwin introduced a new idea of unabashed, unmixed, pure democracy to challenge the traditional values of elite hierarchical

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representation evident in mixed government. In 1791, Priestly, in his book *Political Dialogue on the Principles of Government* proposed a single chamber executive based on pure democracy instead of mixed government. Paine in *Common Sense* (1776) rejected mixed government and, in his famous book *The Rights of Man* (1792), condemned the hereditary principle embodied by the House of Lords. He suggested, instead, a single chamber assembly divided into smaller groups for discussion.

The Rights of Man was an enormous publishing success and had considerable influence over the path of radicalism and on the growth of various political societies. Paine's new idea of democracy added fresh impetus and direction to established political societies, such as the Society for Constitutional Information, who spread this idea of democracy through letters, pamphlets and proclamations, while the London Correspondence society established a network of 20-30 political societies under its auspices influenced by the writings of Paine.

The 1790's marked the high tide of radical ideas both in England and across Europe as radical ideas advocating an egalitarian and participatory model of democracy threatened to challenge the existing elite principles of monarchic and aristocratic government and undermine the existence of the House of Lords. Weston contends (1965, 180): 'The years 1791-1800 mark the beginning and end respectively of this democratic agitation the first since the Seventeenth Century'. Despite the pressure of English radicalism, with its new idea of popular sovereignty and democracy, the Classical theory of mixed

government and the governing institutions of Crown and House of Lords remained steadfast and undeterred and unbreakable.

Weston (1965, 199) contends: 'By 1792 Parliamentary reform was unpopular in England'. She continues (1965, 218): 'Unmistakably among the ruling classes democracy had won no disciples before 1832'. Public apathy among the masses and deep antipathy and suspicion among the ruling aristocracy to participatory democracy combined to ensure that the radicalism of Priestly, Paine and Godwin remained on the margins of British political society. Britain remained on high alert to prevent the spread of the French Revolution throughout the nation. The Administration of William Pitt the Younger brought in a raft of legislation designed to repress political societies and inoculate the nation against the spread of revolutionary sentiment. The anti-revolutionary mood of the nation culminated in the state trials of 1794, when thirteen members of two political societies, the London Correspondence Society and Constitutional Society, were arrested and tried on a charge of trying to incite a Republican revolution.

As Weston (1965, 215) argues: 'By 1800 the political societies were moribund'. In France the single chamber Republic, the French National Assembly was overthrown by Napoleon Bonaparte and instead of a Republican ideal a military dictatorship governed France. To English political theorists, the situation in France reaffirmed the orthodox belief in Britain that: 'Unmixed democracy was a form of government unsuitable for states as large as England and France' (cited in Weston, 1965:215).

Weston (1965, 201) contends: 'The theory of mixed government, upheld by such champions as Burke and Pitt had triumphed over the strain of democratic, Republican thought represented by Priestly and Paine'. The Classical theory of mixed government had survived and, indeed, was never seriously challenged by radicalism.

Priestly, Paine and Godwin's idea of popular participatory democracy had little affect over the development of democracy in Britain and, as a result, a negligible influence on the authority of governing institutions and distribution of power. Rather, the development of democracy in Britain was much more influenced by the ideas of elitism and the objectives of top-down power already inscribed into Britain's governing institutions by the theory of mixed government. The model of democracy which eventually emerged was rooted in a conservative idea of responsibility and the need to keep the elite authority of institutions intact. This notion of responsibility underpinned for the development of a democracy with a form of hierarchal representation aimed at preserving the existing elite and top-down authority of Parliament which was already evident in mixed government.

Section Three: Parliament - The Pressure for Reform

Throughout this thesis it is argued that certain ideas of representation and responsibility are at the core of the British Political Tradition. Representation is clearly the lifeblood of the Parliament, enabling the nation to be represented and allowing Parliament to connect to the nation. As illustrated earlier, in the last quarter of the Eighteenth Century a

combination of economic and social forces created dislocation between Parliament and the nation, ensuring that Parliament was no longer representative. As a consequence, the Classical Constitution of Mixed government became untenable and its replacement by a form of democracy essential, if Parliament was to reconnect to the nation. The Industrial Revolution, economic reform, administrative reform and the professionalism of the Civil Service combined to reduce the power of the Crown and the House of Lords. The development of a popular press and public opinion, the spread of education and the democratic ideas unleashed by the radicals all combined to ensure that there was intense pressure to reform the House of Commons. As such, the strength of the constitution could no longer be rooted in harmony between the Houses of Lords and Commons, but rather on harmony between public opinion and its representative institution, the House of Commons.

i) Institutional Reform: A new elitism pre-dating Democracy

Before the advent of democracy, important institutional changes were already occurring in the balance of the constitution. Economic and social change began to move the pendulum of power away from the Crown and House of Lords axis towards the House of Commons, with ramifications for the power of the First Minister and the Executive.

The gradual ascendancy of the House of Commons led to an important constitutional development; the consolidation of the cabinet and office of Prime Minister. As Williams (1960, 71) argues:

The modern cabinet is a direct descendent of the "inner" or "efficient" Cabinet of the Eighteenth Century, which crystallised out of the "cabinet Council of the Seventeenth Century, which in its turn had grown out of the Privy council.

Throughout the history of the British political system, there has always been an elite council charged with the task of governing the nation. This reflects the hierarchical, top-down, nature of power enshrined in Parliament. In the Eighteenth Century, the Monarch, who acted as Head of the Cabinet, chaired a 'Cabinet Council', consisting of 12-13 men. Charles Fox, speaking in 1784, said that it was: 'undoubtedly the prerogative of his majesty to appoint his ministers' (cited in Williams, 1960:70). The King selected his ministers but the ministers needed the confidence of the House of Commons.

During the reign of King William III (1689–1702), a Cabinet Council of 12-13 members was established, but there were practical difficulties in the administration of government. A Cabinet body of 12 members was too large and cumbersome for the efficiency and secrecy thought to be necessary for government and a smaller inner cabinet called the *Efficient Cabinet* developed to deal with the sensitive and secret affairs of the state. During the reign of Queen Anne (1702–1714), there were weekly meetings of both Cabinets and the Queen attended the meeting of the larger Cabinet Council. The large Cabinet Council acted as a second chamber to the smaller, inner, Efficient Cabinet.

George I (1714 - 1727) kept up the practice of attending Cabinet meetings until 1717, but, due to his poor grasp of the English language, rarely attended Cabinet meetings after 1717. The absence of the Monarch from the Cabinet meetings created a new precedent in Cabinet Government. The Cabinet Council began to present proposals to the Crown that had already been agreed upon in Cabinet. The Minister who chaired the Cabinet Council began to gain an air of authority and pre-eminence over other Cabinet Ministers. Cabinet conventions began to be established decreeing that Chief Ministers were entitled, as of right, to a place in the Cabinet. Williams (1960, 72) writes that by the mid-Nineteenth Century: 'a cabinet council (of about fourteen members) used to give formal sanction to the decisions of the "efficient cabinet" (of about five members)'.

ii) The rise of the Cabinet

The development of Cabinet Government hastened the decline of the Monarch as a direct participant in executive government. The apparatus for delivering elite and top-down government moved from the Crown to the Cabinet and, in particular, to the Chief Minister. The evolution of the cabinet was described as: 'this slow and irregular process, the elimination of the Crown, and the establishment of the cabinet as the central organ of government, was naturally accompanied by the growth of the office of Prime Minister' (cited in Williams, 1960, 73).

During the long ascendancy of Robert Walpole as the First Minister of the Crown between 1721 and 1742, it became apparent, according to Masterman (1913, 164): 'that there should be an avowed and real minister, possessing the chief weight of the council,

and the principle place in the confidence of the King'. The Cabinet needed a Chief Minister to represent its collective identity to the Monarch. The Chief Minister must possess the confidence of the King, the Cabinet and Parliament.

During the last quarter of the Eighteenth Century, the balance of power between the Crown, Lords and Commons began to shift markedly towards the House of Commons. The power of the Crown began to be eroded and ebbed away, first to the Cabinet, as representative of the Commons, and then to the Prime Minister, as head of the Cabinet. However, it seems clear that the principle of elite government continued to be inscribed in governing institutions, only it was now the Prime Minister and Cabinet who monopolised executive power, rather than the Crown.

The mantra of elite Government still applied to the altered constitution, with the House of Lords continuing to exercise enormous power and influence through patronage and control of elections. Indeed, during the years 1782 to 1805, out of 90 Cabinet Ministers, 72 (80%) were Peers. The Classical Theory of mixed government still applied and a Prime Minister needed the confidence of both the Crown and Parliament, but it was now principally the House of Commons he had to win over.

Between 1700 and 1775, membership of the House of Lords remained stable at approximately 200 members. Parsimonious practice ensured that there were only two noble creations a year and this, together with the extinction of existing noble lines, meant a slight net decrease in the membership of the House of Lords. The House of

Lords remained the preserve of the landed aristocracy elite with each member on average possessing not less than 10,000 acres of land. However, in the next 55 years between 1775 and 1831, the House of Lords underwent a dramatic expansion and a change in the background of its membership. The House of Lords numbered 199 in 1776, but 209 new Peerages were created and the House expanded to 358 members by 1831. Two individuals, King George III (1760 – 1820) and Prime Minister William Pitt the Younger (1784 – 1802) were chiefly responsible for the transformation.

iii) The House of Lords 1760-1832 : Towards a Conservative Chamber

King George III succeeded to the throne of England in 1760 and was the first Monarch from the Hanover line to be born and educated in England. During the reign of the first two Hanover sovereigns, George I and George II, the authority of the Crown in the executive affairs of government declined to a minimum. However, George III had been educated in England and had been imbued with ideas of Monarchic power. George III was familiar with Blackstone's book *Commentaries* (1765) and the idea of the Royal Prerogative. He took the idea of a King standing above all others and embodying the nobler instincts of the nation from Bolligbroke`s tract on the *Patriot King* (1738). George III was determined to re-establish the direct authority of the Crown by appointing Ministers to the Cabinet and directly wielding strong executive power.

George III needed support and votes in Parliament to achieve authority in the Cabinet. He built up a network of '*Kings Friends'* who could be called upon for support in both the Lords and Commons. The King also cut back on personal expenses and used the

surplus to directly, or indirectly, bribe a circle of friends to support him in the Houses of Lords and Commons. The King used the power of Royal patronage to good effect and lavished pensions and sinecures as an incentive and reward for loyal supporters. During his reign, George III created 116 new peers, the vast majority in the later part of his reign, when Pitt was Prime Minister.

iv) William Pitt the Younger: A Tory Chamber is Born

William Pitt the Younger became Prime Minister in 1783 after a resounding election victory. He, more than any other politician before or since, had a profound influence and effect on the size and shape of the House of Lords. In December 1783, when Pitt came to office, the Upper Chamber consisted of 3 Dukes of Royal blood, 22 other Dukes, 78 Earls, 17 Viscounts, 76 Barons, 16 Scottish Peers and 26 Bishops; a grand total 238 members. By 1837, the House of Lords consisted of 3 Dukes, 21 other Dukes, 19 Marquises, 112 Earls, 19 Viscounts, 187 Barons, 16 Scottish Peers, 28 Irish Peers, 26 English and 4 Irish Bishops. So, the House of Lords had almost doubled its size from 238 members in 1784 to 435 members in 1831 and was on its way to outstripping the size of the House of Commons, if it continued to grow at the same pace.

Pitt the Younger instigated a large expansion of the House of Lords by a generous and lavish disposition of Peerages. Pitt used membership of the Upper Chamber as a form of patronage to reward those who had used their political power and influence to establish him in power. Pitt expanded the social complexion of the House of Lords beyond the landed aristocracy by awarding Peerages to men in public and commercial life whose

wealth and social standing merited a social advancement in rank. Turberville (1958:51) argues: 'it has been contented that Pitt transformed the House of Lords from a pre-dominantly Whiggish chamber into a Tory stranglehold the very embodiment of reaction'. The large expansion of the House of Lords began after 1760, at the accession of George III, and gained momentum after 1783 with Pitt`s creations. The effect of this rapid expansion was to transform the Upper Chamber into a predominantly Tory chamber and institution which embodied Conservatism and reactionary ideals.

In the years between 1760 and 1784, George III fought a protracted struggle with the Whigs to re-assert Crown control over the Cabinet and Parliament. Tories supported the Crown's attempt to assert authority, believing effective government was best achieved through the leadership of the Crown, while Whigs believed government was best optimised by a partnership between the Crown and Parliament. It seems clear that ideas of representation and responsibility lay at the heart of the dispute between Tories and Whigs. However they shared a conception of responsibility, with both Tories and Whigs subscribing to the view that government should be elite-led and hierarchical, but divided over representation. Tories believed elite government should be the sole preserve of the Crown, while Whigs subscribed to the view that elite government should be shared between the Parliament and the Crown.

In the last quarter of the Eighteenth Century, both Parliament and the nation grew weary of the long period of Whig dominance of Parliament and began to accept the more hierarchical Tory idea of power. In the years between 1760 and 1837, under

Parliament's archaic system of representation, the Tories governed for 64 out of a possible 77 years and, as a consequence, a conservative notion of responsible government became more entrenched in both Houses of Parliament. There was a reassertion of Royal power over the Cabinet and by extension the House of Commons, while the House of Lords became a more partisan Tory chamber, with the creation of 195 Tory Peers, as against 64 Whig Peers, during the period.

Throughout British political history, the state has always acknowledged great achievement with the bestowal of a Peerage, but never to the extent that it occurred after 1783. Between 1750 and 1779, 16 men, the majority of whom were politicians and Judges, entered the House of Lords as a reward for public service. Between 1780 and 1801, the number jumped to 35 men, including 6 Judges, 3 businessmen and, in particular, an influx of 17 military men. The Pitt Governments also promoted a sizeable portion of country gentlemen to the Peerage, with 21 Country landowners raised to a Peerage between 1750 and 1779 and 56 Country landowners admitted to the House of Lords between 1780 and 1801.

McCahill (cited Jones, 1986: 423) argues: 'The peerage of the Nineteenth Century ceased to be the exclusive haven of the Magnate'. So, an aristocratic pedigree and ownership of large tracts of land were no longer essential pre-requisites for entry into the House of Lords. Forty percent of those raised to a Peerage between 1750 and 1830 received them for services to the Crown. Ten percent of these had large estates, but the remaining thirty percent were, in the words of McCahill (cited Jones, 1986: 417):

'neither blue blooded nor immensely rich'. Forty seven individuals, representing twenty percent of Peers created, possessed less than three thousand acres of land at the time of the creation of their Peerage.

The influx of a new caste of Peers, without vast tracts of land, changed the social complexion of the House of Lords. The House of Lords changed from being the exclusive preserve of the landed aristocracy to being an institution that included the merits of professionalism and skilled public service. The floodgates opened in particular from 1801 onwards, with 50% of all new Peers being created for distinguished public service. McCahill (cited Jones, 1986: 424) argues: 'Gradually Magnates who had dominated affairs for generations found themselves displaced by a new political elite at the core of which stood those men elevated to the Peerage after 1790 and their descendents' The new Nineteenth Century Peerage broadened the social complexion of the House of Lords and, gradually, displaced the traditional aristocracy in positions of power in Parliament and the Cabinet.

The Peerage in the House of Lords still maintained a strong influence and presence in the corridors of power through their positions in the Cabinet. In the years from 1782 to 1805, 72 (80%) of the Cabinet were Peers in the Lords. The strong aristocratic presence in the Cabinet was maintained from 1806 to 1830, when 75 (62%) of 121 Cabinet Ministers were Peers of the realm. The influence of William Pitt, and the rapid expansion of the Peerage which occurred under his Administration, can be gleaned from the fact that out of 72 Peers in Cabinet between 1782 and 1805, 36 were Peers created

by the Pitt Government. In the years 1806 to 1830, 48 out of 75 Cabinet Peers held the peerages created by Pitt. The new Peerage gradually began to displace the traditional aristocratic Peerage in the Cabinet.

v) The House of Lords: The union with Scotland and Ireland

In 1800 the Parliamentary Union of England and Scotland became the Parliament of the United Kingdom and Ireland. Both British and Irish Parliaments passed the Act of Union with Ireland, which came into effect on 1 January 1800. The Act of Union absorbed 100 Irish Members into the House of Commons and 28 Members of the Irish Peerage joined the House of Lords. Four members of the Episcopal Church, consisting of two Archbishops and two Bishops, joined the spiritual branch of the House of Lords.

The introduction of Irish members to the House of Lords and Commons was to alter the social fabric of Parliament and have political ramifications that would reverberate throughout the Eighteenth and Nineteenth Centuries in British political life. In 1782, out of 231 members of the Lords, 31 had a landholding in Ireland. At the Act of Union, out of 331 members of the House of Lords, 83 possessed Irish lands and by 1833 out of an expanded Lords membership of 423, a sizable 105 owned Irish lands.

Large (cited Jones, 1986: 373) argues: 'In a House that had doubled its numbers since 1783 virtually one Peer out of every four had a stake in Ireland through ownership of the land'. Large further writes (cited Jones, 1986, 373): 'the majority of these were men whose economic interests were exclusively centred on their Irish estates'. The Irish

Peerage was a larger, more heterogeneous, body, than their Scottish counterparts. At the Act of Union 1800, there were 220 Irish Peers sitting in the Irish House of Lords. The Act of Union stipulated that 28 Irish Peers should be elected by their fellow Irish Peers to sit in the House of Lords and, once elected, they were elected for life. The Act made provision for the future of Irish Peerages by stipulating that no new Irish Peerage could be created until three existing ones had become extinct. The total number of Irish Peers was to be reduced to 100 and, thereafter, Peerages could be replaced on a one to one basis. The Act also decreed that any Irish Peer not elected to the House of Lords could be a representative in the House of Commons, for English, but not an Irish, constituency.

The Scottish Act of Union 1707 stipulated that 45 Scottish representatives could sit in the House of Commons and 16 Scottish Peers in the House of Lords. A Scottish Peer was elected by his contemporary Peers and served for the duration of the Parliament, which was a maximum of 7 years, before standing for re-election. The Administration of Pitt the Younger appointed Henry Dundas, later Viscount Melville, to manage Scottish affairs. Melville, by a mixture of patronage, political skill and influence, built up a commanding position of influence over the election of Scottish Peers. In 1776, out of 16 Peers elected, 13 were nominated and endorsed by Melville. The Crown and the government of the day had a great of deal influence over the election of Scottish Peers and, as a consequence, the Scottish Peerage in the Lords was indebted to the Crown and owed particular allegiance to the Tory Administration of Pitt.

The Act of Union 1707 gave Scotland and Scottish Peers economic and political benefits and the retention of many vestiges of independence. The Presbyterian system and Scottish legal system were guaranteed and a sum of £ 400,000 was paid by the English to equalise the national debt of the two countries. All the benefits of trade with England and the extended Empire were thrown open to Scotland.

The inclusion of the Scottish and Irish Parliaments to form the Parliament of Great Britain and Ireland brought different cultures, heritages and traditions into Parliament. Scotland had occupied a position as an independent state prior to 1707 and had a similar religious faith to England. As such, the Scottish Peerage claimed to represent and lead the majority of the Scottish people.

The Act of Union between England and Scotland could be regarded as a true alliance and this was in stark contrast to the relationship between England and Ireland, as Masterman (1913:181) emphasises: 'the position in Ireland had for centuries been practically that of a conquered nation held down by the sword'.

The integration of the Irish and Scottish nobility made the House of Lords a more cosmopolitan chamber and reinforced its landed and aristocratic character. The union of the three aristocracies reinforced the House of Lords loyalty to the Crown, with the Scottish nobility having a reputation for being zealous supporters and the Irish aristocracy pledging unflinching loyalty to the Crown. As McCahill (cited Jones, 1986:

416) writes: 'Loyalty was the d'etre of the Irish aristocracy'. To the Irish aristocracy, loyalty to the Crown was a matter of honour.

The Irish interest in the House of Lords, although sizeable, did not represent a discrete or organised body, but was a body large enough to alter the character of the Lords. Large (cited Jones, 1986:375) contends: 'Increased Irish representation in the upper house really reinforced the conservatism of that body'. The Irish contingent, with its roots firmly based in aristocratic landowning, hastened the process already underway of making the House of Lords a bulwark of conservatism and a reactionary institution. This was to have ramifications throughout the Nineteenth Century, as Parliament attempted to embrace Parliamentary reform and the new democracy.

vi) Parliament: The Pressure for Reform

As already emphasised, the demand for Parliamentary reform and democracy came from a variety of sources and circumstances. In the years between the accession of George III in 1760 and the accession of Queen Victoria in 1837, Britain was transformed from a rural, agricultural, nation into an urban, industrial, nation. Economic power shifted from rural agriculture to urban-based trade and industry. A new middle class arose outside the landed aristocracy and expanded their economic power through trade and industry. The new commercial class began to demand Parliamentary reform and democratic representation to match its economic power. Among the new urban-based working class, there was also pressure for democratic representation and Parliamentary reform to help alleviate the chronic poverty and deprivation evident in the new cities.

Among the working class, the ideas of the French and American Revolutions had engendered ideas of liberty and equality and accompanying demands for universal manhood suffrage, annual Parliaments and secret ballots. The radical ideals were reflected in the expansion of political societies that maintained pressure for Parliamentary reform. Economic and social change transformed the fabric of the nation and, as a consequence, the pressure for Parliamentary reform and democracy was intense.

Democracy was essential for the new middle and working classes to be politically represented in Parliament, but it was also a necessity if Parliament was to govern the new industrial and urban nation efficiently and effectively. The model of democracy used would have a crucial bearing on the nature of representation, defining the relationship between the electorate and their representatives, shaping the flow of power and, ultimately, establishing government responsibility and the authority of Parliament. Democracy would redefine the constitutional relationship between the Crown and the Houses of Lords and Commons, establishing the scope of power and authority of each institution and defining the relationship between them.

Parliament was faced with different competing and contrasting ideas of democracy. The radical idea of popular sovereignty, advocating a more egalitarian idea of representation, challenged the elitist and top-down idea of representation, already inherent in mixed government. Despite contestation from the radical, participatory, idea of democracy, the

version that triumphed was shaped by the British Political Tradition and based upon existing elitist ideas of representation, already inherent and inscribed into the governing institutions inherited from mixed government.

The objective of Parliamentary reform was not to be radical and sweep away the institutions of the constitution, in particular the House of Lords, but to be moderate and measured. The aim of democracy was to expand the franchise enough to strengthen the democratic branch of government, the House of Commons, within the balanced constitution of mixed government. Parliamentary reformers had the somewhat duplicitous task of implementing a democracy that would strengthen representation, while simultaneously maintaining a form of responsible government that was elite and top-down. Conservative ideas of responsibility aimed at consolidating the authority of elite governing institutions shaped the new democracy, creating a form of representation that was limited and hierarchical and designed to maintain the elitist status quo inherent in mixed government. In this vein, Smith (cited in Davis,1995**:**88) argues the aim of reform was: 'to restore confidence in the existing constitution rather than create a new one, to prolong the aristocratic age into the era of rising democracy rather than give in to the tide'.

Section Four: Democracy - Towards the Great Reform Act of 1832

In 1830, a Whig Government, led by Charles, Second Earl Grey, succeeded the Duke of Wellington's Tory Administration with a strong commitment to bring in a Parliamentary

Reform Act. The Grey Cabinet had a strong aristocratic complexion; nine of the thirteen members were from the House of Lords, while one was an Irish Peer and one a Baronet. In the House of Commons, the Whigs' premier speakers were all nobles, such as Lord Althorp and Lord Russell.

The aim of democratic reform was to implement a form of representation which would compliment the elite and top-down ideas of responsible government inscribed into existing institutions. The reform was radical by the standards of British political history, because it attempted to reduce the power of the Peers over elections and members of the House of Commons through control of the rotten boroughs. In 1802, 98 Peers were responsible for returning 224 members of the Commons. In 1812, 97 Peers returned 228 Commons members and, in 1830, 98 Peers returned 214 members to the House of Commons. In 1832, the year of the Reform Act, 354 members of the House of Commons were under the power and patronage of the Peers; this meant that 54% of all Commons members owed allegiance to a member of the House of Lords. The kernel of aristocratic control over the House of Commons, and indeed the key to the maintenance of mixed government, was control of the *rotten boroughs*. Consequently, the Reform Bill was aimed primarily at the reform of the *rotten boroughs*.

i) The Passage of the Great Reform Act

The First Reform Bill, introduced on March 1, 1831, aimed to disenfranchise 55 boroughs, reduce 30 others to 1 member and reduce one 4-member seat to a 2-member seat. The Act allocated 2 member seats to 22 boroughs and 1 member to 20 other

boroughs. A grand total of 143 seats were re-allocated to the largest unrepresentative boroughs and the most populous counties. A uniform £10 householder franchise was introduced in boroughs. In the Counties, the franchise was extended beyond the old 40 shilling freeholder, to include the £10 copyholder, long leaseholder and tenants paying more than £50 rent. In total, the number enfranchised by the Act was under half a million. There was no commitment to manhood suffrage, secret ballots or annual ballots and, as such, the Reform Act was moderate and aimed to preserve the principle of elite, top-down government.

It could be argued that the passage of the Reform Act and the method by which it was passed was more radical than the Act itself. On March 21 1831, the Second Reading of the First Reform Bill was passed by 1 vote in the House of Commons, but was defeated in Committee by 8 votes on 19 April 1831. The Grey Government asked the King to dissolve Parliament in preparation for an election that would be fought over the sole issue of the Great Reform Act. The 1831 General Election was, in effect, the first national referendum on a single issue in British political history. In the election, the Whigs won a resounding victory, with the electorate voting strongly in favour of the Reform Act. On the 24 June, Lord Russell introduced the Second Reform Bill which passed the Commons, commanding a majority of over 100 on 8 July 1831. The Great Reform Act finally passed the House of Commons by 345 to 236 votes in September 1831 and was passed to the House of Lords.

In the House of Commons and the House of Lords, argument over the Reform Bill raged most fiercely around the issue of the borough qualification and the disenfranchisement of the rotten boroughs. Whigs maintained that reform was necessary to uphold mixed government, while Tories claimed that reform of the House of Commons was incompatible with mixed government. However, both Whig and Tory arguments over reform and democracy where shaped by the values of elite government, with both Whigs and Tories wishing to uphold elite and hierarchical government - the Whigs through democracy and mixed government, the Tories through the Crown and mixed government. Both rejected any notion of radical, participatory, democracy. The Tories were particularly opposed to the Reform Bill because it threatened their power base in the pocket boroughs and they perceived this would lead to a long period of Whig supremacy in the Commons. As Weston (1965:242) writes: 'From the first almost to last the House of Lords opposed a Bill that would destroy the influence of individual peers over membership of the House of Commons'.

ii) The Second Reform Bill

In October 1831, the House of Lords debated the Second Reform Bill and rejected it by 199 to 158 votes, a majority of 41. A significant statistic was the vote of the Spiritual bench of the Lords; the Bishops voted 21–2 against the Reform Bill. There was a belief that, if the Bishops had voted for the Bill, it would have passed and, therefore, non-representative, non-hereditary, Bishops in the Lords were chiefly responsible for the defeat of the Reform Bill. There was a furious response, with riots in all the major towns in Britain, particularly in Bristol, Derby and Nottingham. The mood of the nation

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suggested: 'The, bill the whole bill and nothing but the bill' (Masterman, 1913: 199). The House of Lords was deeply unpopular throughout the nation and the Bishops, whose votes had virtually decided the outcome, faced an anti-clerical hostility unseen since the days of the Long Parliament.

The Grey Government and the passage of the Reform Bill reached a critical juncture. Grey explained to the King William IV that the Government had received a mandate from the nation in the 1831 Election to implement the Reform Act. In effect, this was the first example in Parliamentary history where the will of the people, represented through the House of Commons, took precedence over the will of the House of Lords. It was clear that resistance by the Lords would antagonise the nation and lead to more radical demands for universal manhood suffrage and secret ballots, measures that the Reform Act, influenced by the ideas of the British Political Tradition, was designed to avert. The intransigence of the Lords had forced a situation of deadlock between the Lords and the Commons. The stalemate forced Grey to play the last and most extreme card, that of using the Royal Prerogative to create sufficient peers to swamp the House of Lords and coerce it into voting for the Reform Act. King William extended Parliament to allow the Third Reading of the Reform Act in December 1831. The recalcitrance of the Lords forced Lord Grey to make contingency plans with the King to create enough Peers to force the passage of the Reform Act.

iii) The Third Reform Bill: Parliament Passes the Great Reform Act 1832

The House of Commons passed the Second Reading of the Third Reform Act by 324 to 239 votes and the Third Reading by 355 to 239 votes, but an attempt was made in Committee to postpone the crucial disenfranchisement clauses. The Grey Government felt that the entire Bill had been undermined, resigned and the King was forced to call on the Duke of Wellington to form a new Government. Wellington failed dismally to find support for a new Administration and the King was forced to recall Grey. The Reform Bill, and indeed democracy, faced a major impasse until Grey secured from the King a promise to create: 'such a number of Peers as will be sufficient to ensure the passing of the reform bill' (Masterman, 1913:199) and the Reform Bill went to the House of Lords in March 1832. The Duke of Wellington, under the auspices of King William IV, used his authority over the Lords to ensure enough Peers abstained on the Third Reading of the Reform Bill to allow the Bill to be passed by 184 to 175 votes, a majority of 9. The Great Reform Act was passed and became law on 7 June 1832.

The 1832 Reform Act was a watershed in British political history because it swept away the Classical Theory of Mixed government and permanently altered the balance of power between the governing institutions of Crown, Lords and Commons. The disenfranchisement of the rotten boroughs broke the hegemony of the Peers over elections and Members of Parliament. The House of Commons gained a new independence away from the patronage of the House of Lords. Political power moved away from the Crown and the House of Lords, towards the Cabinet and the House of Commons.

The Reform Act led to a great constitutional change in the power and functions of the Crown, Lords and the Commons. The new independence of the House of Commons resulted in the end of Crown intervention in the Cabinet and the policy of executive government. The House of Lords changed because it no longer wielded direct control over the House of Commons and could no longer be regarded as a safe backstop to governments in trouble in the Commons. Smith (cited in Davis, 1995:94) writes of the Lords' new position: 'The majority in the House, who had previously been natural supporters of the ministers chosen by the monarch, were now their opponents'. In the case of deadlock between the Lords and Commons, the third branch of the Constitution, the Monarch, must use the Royal prerogative to endorse the will of the Commons. The equipoise of the Constitution no longer rested with the House of Lords, but with the House of Commons.

In the years between 1688 and 1832, Parliament completed the transformation from an oligarchic form of government, in which the Crown, and especially the House of Lords, was pre-eminent, into an embryonic form of democratic government, in which the Cabinet and House of Commons would become pre-eminent. However the elite values of the British Political Tradition, consolidating the authority of hierarchical governing institutions and an unequal distribution of power, remained the dominant idea bridging the divide between mixed government and democracy.

The British Political Tradition: Elite democracy

As already emphasised, a continued commitment to the British Political Tradition maintained the principles of elite and top-down government traditionally inscribed into Parliament under mixed government and transfers those same principles to a more democratic political settlement. Democracy changed the sphere and authority of governing institutions, creating a new hierarchy, strengthening the Ministry against the Monarchy and the House of Commons against the House of Lords, but it was still a political system underpinned by the views of democracy inscribed in the British Political Tradition.

Weston emphasises: 'The end result would be, under a middle-class Queen, a middle-class constitution providing not for a mixed government but for a cabinet system of government based upon the supremacy of the House of Commons` (1965: 253). The locus of sovereignty shifted irrevocably from the Crown and the Lords to the House of Commons. The maxims of mixed government would yield to the maxims of cabinet government.

McCahill (cited Jones,1986,:432) argues: 'The House of Lords ceased after 1832 to be the balance of the constitution, and the nation no longer required or desired farsighted aristocrats to keep it on an even keel'. The Classical theory of the constitution, in which the equipoise was the House of Lords, began to yield to a new form of constitutional government, based on democracy, in which the House of Commons held the ascendancy over the House of Lords. Democratic government, located within the House of Commons, would displace oligarchic government, based on the House of Lords. As

Weston (1965:253), argues: 'With the growing power of public opinion had come a gradually increased dependence of the House of Commons upon the electorate, the ministry upon the House of Commons, the King upon his ministers, and the House of Commons upon ministers because of the royal power of dissolution'.

The 1832 Reform Act shifted political power away from the upper echelons of the Crown and the Lords and relocated it with the democratic branch of the constitution represented by the House of Commons. However, despite the introduction of democracy, the principles of elite, hierarchical and top-down, government remained, only now the Cabinet, drawn largely from the House of Commons, was at the apex of power, instead of the Crown and the House of Lords.

The years between 1688 and 1832 represented the Classical Age of Constitutional Mixed government. The House of Lords was the equipoise of the constitution and enjoyed a golden age of aristocratic power in the corridors of government. Britain was governed by an oligarchy of aristocrats, in conjunction with the Crown, whose landed roots reflected the economic power of the nation. The House of Lords, as the institution that symbolised elite aristocratic power, were: 'great oaks that shade a country and perpetuate benefits from generation to generation' (cited in Jones, McCahill 1978: 432). The concentration of political power in the House of Lords and the hierarchical dispersion of power reflected the dominance of elitism over political institutions and also the elite power that the landed aristocracy exercised over civil society. The House of Lords political dominance over mixed government mirrored the landed aristocracy's

dominance over the economic and social fabric of the nation. This dichotomy supports Birch's argument that Parliament is primarily a representative institution which reflected the hierarchical nature of civic society and the dominance of economic and social elite over the governing of the nation.

McCahill illustrates the importance of elitism to representation when he argues: 'of not inconsiderable importance was the deferential character of the populace' (cited in Jones, McCahill, 1986, 431). British civil society was graded and ordered and defined by principles of elitism and hierarchy and Parliament was politically representative of the elitism ingrained in the nation. The aristocracy, through their institutional engine the House of Lords, governed the nation, using the principles of elite government with a hierarchical dispersion of power and the House of Commons was the means through which the nation was represented and gave consent.

The industrial revolution created a rupture with Britain's rural agricultural past, causing political and social dislocation and the need for democracy to re-establish representation and govern the nation effectively. The establishment of democracy as the principle against which to measure the effectiveness of governing institutions undermined the legitimacy of aristocratic government and weakened the House of Lords. However, the democracy that emerged after the 1832 Great Reform Act was shaped by the British Political Tradition and reflected dominant ideas of elite government and hierarchy already inscribed within governing institutions and adhered to by civil society.

To conclude, Disraeli encapsulated the spirit of the 1832 Reform Act when he said: 'the aristocratic principle has been destroyed in this country, not by the Reform Act, but by the means in which the Reform Act was passed' (cited in Birch, 1964: 51). The Duke of Wellington wrote in the same vein: 'that the Reform Bill was carried against the intentions of the King and excepting the Ministers, the unanimous wish of the House of Lords' (Weston 1965:243). Through the introduction of democracy, the will of the Cabinet and the House of Commons had overcome the historical authority of the Crown and the House of Lords. As Smith (cited in Davis,1995:79), writing about the introduction of democracy contends: 'the House of Lords rather than the House of Commons was in many ways the real seat of government until the Great Reform Act decisively changed the balance between the two Houses of Parliament` .

However, while a new order was created, a belief in the ideas of hierarchy and elite authority, inherited from the liberal constitution, continued into the age of democracy and underpinned Parliament. The British Political Tradition remained a dominant idea shaping the beliefs, preferences and actions of agents who subsequently introduced those ideas of democracy into Parliament. As a direct consequence, an idea of elite democracy continued to underpin and define the power and authority of governing institutions ensuring stability and guaranteeing that change would be gradual. Democracy determined the new constitutional relationship between the Crown and the Houses of Lords and Commons, but the values of strong government and hierarchical representation reflected in the British Political Tradition remained dominant

Chapter Five:

House of Lords 1832 -1911

This chapter examines the House of Lords from the passing of the Great Reform Act (1832) through to the Parliament Act (1911). The aim is to chronicle the development of democracy in the Nineteenth Century and examine how it impacted upon the authority of Crown and the Houses of Lords and Commons. The chapter shows how democracy moved the balance of constitutional power away from the Crown and the House of Lords towards the House of Commons and transformed the constitutional relationship between the three governing institutions. The main objective of this chapter is to demonstrate how the British Political Tradition and its idea of elite, top-down, Government became the dominant idea underpinning the expansion of democracy. The chapter illustrates how, through the period 1832 to 1911, and the development of democracy, the British Political Tradition underpinned a new form of elite, top-down, Government in Parliament, through the dominance of the executive over the House of Commons.

In the previous chapter it was demonstrated how the introduction of democracy, heralded by the Great Reform Act 1832, had the immediate effect of moving the locus of power away from the House of Lords and towards the House of Commons and removing the Crown as a key participant in government. It was further argued that the British Political Tradition, which underpinned top-down government, had resisted the challenge from the participatory democracy and shaped the model of democracy emerging through the 1832 Great Reform Act. A conservative notion of strong and responsible government, inherited

from the liberal constitution and owing much to an oligarchic tradition of government, was instrumental in defining the idea of representation which emerged through the 1832 First Reform Act. The chapter argued that this preference for elite government created a limited form of democracy designed to maintain the existing authority of strong, responsible, governing institutions and a hierarchical distribution of power.

The focus of this chapter is primarily upon the conception of representation inherent in the British Political Tradition. As argued throughout this thesis, Parliament is primarily a representative institution, which, needed to embrace democracy in order to reconnect to, and be truly representative of, the nation. As pointed out in Chapter Three, the House of Commons was the institution which traditionally represented the petitions of the people and, therefore, a constitution which embraced democracy needed to recognise that government would be conducted with the participation and agreement of the populace. Democracy was the means by which the interests of the people would be represented in government. As democracy developed in the Nineteenth Century, the idea of representation inherent in the British Political Tradition was crucial in shaping the degree to which the populace and their elected representatives would participate in Government and also in influencing the extent to which Parliament would be responsive to the populace.

Section one analysis the development of democracy from the First Reform Act (1832) to the Second Reform Act (1867). This section assesses the immediate effects of the Great Reform Act (1832) on the constitution and governing institutions, demonstrating that the

first instalment of democracy swept away the old liberal constitution of mixed government and replaced it with a fledgling democracy. The affect of the British Political Tradition's view of democracy on governing institutions is demonstrated by outlining how it altered the balance of the constitution, nullifying the influence of the Crown, weakening the House of Lords and vesting sovereign power in the House of Commons. However, this elitist, top-down, conception of democracy was reflected in the continuation of executive power and, particularly, the rise of Cabinet Government and the emergence of the post of Prime Minister.

The implications of the new democratic settlement were that the House of Commons, for the first time in constitutional history, would be in an ascendant position in relation to the House of Lords. Democracy moved the pendulum of sovereign power away from the Crown and the House of Lords, where that power was underpinned by ideas of oligarchic government, towards government by the House of Commons, where power was underpinned by democracy and public opinion. One of the most significant effects of democracy was to make Parliament take account of public opinion and it will be demonstrated throughout this chapter that public opinion was one of the key elements defining constitutional relations between the House of Commons and the House of Lords. This section illustrates how the House of Commons, supported by public opinion, could circumscribe the authority of the House of Lords, but, conversely, a House of Commons without the endorsement of public opinion could be constrained by the House of Lords. Throughout this chapter, it is argued that democracy created a second form of strong responsible government within the House of Commons to rival the traditional authority of

the House of Lords and, as a consequence, a constant undercurrent of tension continued to exist between the House of Lords and the House of Commons.

Section Two examines the ideas of representation that shaped the expansion of democracy after the Second Reform Act 1867. This section focuses in detail on the liberal theory of representation and analyses the implications of it for Parliament, given that the theory suggested that Parliament would hold authority over the executive. The section shows how the disciplining of political parties and the subordination of MPs to the Party whip enabled the executive to dominate the House of Commons, but not the House of Lords. It is argued that the development of cohesive political parties, able to wield discipline over members, was indicative of a new form of elite and hierarchical government and ensured that the effect of the liberal theory of representation in Parliament would be limited. This exemplifies once again, the influence of the British Political Tradition over the operation and development of institutions.

Throughout this chapter, it is emphasised that an underlying tension between the House of Lords and the House of Commons was created by the democratic turn. The chapter demonstrates that this was really a tension between two traditions of strong responsible government; between the new idea of democracy and the old tradition of oligarchic government by people of property. As such, Section Three chronicles the tension between the House of Lords and the House of Commons from 1880 onwards, culminating in the constitutional crisis of 1911. This section identifies how tensions between the Houses of Lords and Commons were exacerbated by economic and social change, which saw a

decline in agrarian power, and thus a decline in the influence of the House of Lords, and a rise in urban industrial power, which was mirrored by the rise of House of Commons power. The Third Reform Act in 1884 marked a major step towards mass participatory democracy and further strengthened the authority of the House of Commons over the House of Lords. The chapter examines how the rise of collectivist legislation brought tension between the Houses of Commons and Lords to breaking point, and argues that this was, in effect, a tension between democracy and property. In the years between 1880 and the constitutional crisis of 1911 there was a battle of attrition, in which the House of Lords mounted a vigorous rearguard advocating the Doctrine of the Mandate, but the Parliament Act 1911 represented a triumph for democracy.

Section One: Democracy: The Effects of Democracy between the First Reform Act 1832 and Second Reform Act 1867

The Great Reform Act disenfranchised a total of 141 Parliamentary borough seats, of which 103 were situated in the South of England, and redistributed them to populous boroughs in London, the North and the Midlands of England. London gained 65 newly enfranchised borough seats, while the North of England gained 45. Sixty five seats were created to include County representation and 26 Counties were divided into new constituencies. Seven English, and three Welsh, Counties gained one additional member each and a further 13 seats were transferred to Scotland and Ireland. The total electorate rose by a modest 217,000; an increase of 50%. However, as Masterman (1913:200)

argues: 'the real importance of the Reform Act was not in theses detailed changes, but in the fact that the old order of things had been swept away'.

The democracy introduced by the Reform Act and implemented by the Whig Government was rooted in a limited principle of democratic representation, entailing a limited extension of the franchise. Smith (cited in Davis, 1995:88) argues: 'reform therefore was to be a palliative rather than a surgical operation'. The Reform Act added only a moderate number of new voters, but the creation of a large number of numerically big constituencies was far more significant. These large electorates made it difficult for aristocratic patrons to control and manipulate voters and the electoral outcome. As such, although the numerical increase in the franchise was modest, it created a major transformation in the constitutional powers and functions of the Crown and the Houses of Lords and Commons. The end of the rotten boroughs removed the system of patronage and nomination that enabled the Lords to control the membership of the House of Commons. An indirect consequence of this was that the Crown, through its alliances with the Lords, could no longer determine the composition of Ministries, thus undermining the Eighteenth Century system of *King's Government*.

The introduction of democracy created free and independent elections in constituencies and, as a result, elected members of the House of Commons enjoyed a new liberty and independence away from the constraints of the House of Lords' influence. Instead of the Eighteenth Century system of government, in which the Crown and the Lords would create a Ministry, democracy meant that the party with the most members in the House of

Commons would determine the composition of a Ministry and oblige the Crown to accept that party's leaders as Cabinet Ministers.

The Great Reform Act was a watershed because it introduced a new democratic concept into Parliament, that of the sovereignty of the electorate. Indeed, Keir (1938:405) argues that the effect of democracy over the authority of governing institutions was that: 'it vindicated that of the House of Commons over the Lords and destroyed the convention of a constitutional balance between the Crown, Lords and Commons'. Democracy transformed the governing institutions of the Crown and the Houses of Lords and Commons, transferring authority and legitimacy away from the Lords towards the Commons and leading directly to a decline in the powers of the Crown.

The French journalist Fontblanque, reflecting on the effect of democracy on the constitutional relationship between the Houses of Lords and Commons, wrote: 'the improvement of the Commons is small, but small as it is, it gives it gives a *momentum* against which the Lords cannot bear up' (cited in Weston, 1965:244). The Reform Act created only a limited extension of the franchise, but it greatly diminished the powers and authority of the House of Lords. In the post-democratic era, the Upper Chamber would have to carve a new constitutional relationship with an increasingly strong and authoritative House of Commons. Charles Greville, writing in 1835 about the effect of the Reform Act on the House of Lords, declared that it had instigated: 'a great practical change in the constitutional functions of the House of Lords' (cited in Davis: Smith, 1995:94). The new independence and authority of the House of Commons reinforced the

authority of the Cabinet and transformed the Peers relationship with the Ministry. The House of Lords in pre-democracy days had been a natural supporter and ally of the Crown and the Ministers chosen by the Crown. Democracy had altered the situation by giving independence and authority to the House of Commons and the Cabinet and, as a direct consequence, the House of Lords now found itself, as a result of the Reform Act, ranged as a natural opponent of the Ministry. As Smith contends (cited in Davis, Smith, and 1995:94): 'no longer did the House provide a reliable backstop for governments who were in difficulties in the Commons.'

i) The Decline of the Crown and the House of Lords

The first indication that democracy had directly led to a decline of the Crown and Lords' power occurred in 1834, with the fall of Lord Melbourne's Whig Ministry. The Melbourne Ministry attempted to reconstruct itself after the elevation of Lord Althorp to the House of Lords from the Commons. Melbourne proposed Lord John Russell as the new Leader of the House of Commons, a suggestion which was unpalatable to King William IV. The Melbourne Ministry resigned after a vote of no confidence and the King, as his predecessors had done prior to 1832, attempted to form a Ministry conducive to his own views. The King invited Sir Robert Peel, the Tory Leader of the Commons, to form a new Ministry. However, in the General Election of 1834, Peel failed to achieve a Parliamentary majority. The Peel Ministry laboured on without the confidence of Parliament, as a weak minority government, until being forced to resign after 100 days, eventually being replaced by another Melbourne Ministry.

The events of 1834 were a stark illustration that the power of the Crown was no longer sufficient to sustain a government in power. To govern with strength and authority, a governing Ministry needed the confidence of the House of Commons and, where this confidence was lacking, a Ministry could not legitimately govern. Democracy had destroyed the Eighteenth Century system of government in which Ministries had been a comprised of loose alliances of cross-party groups and individuals shaped by the preferences and patronage of the Crown. The 1832 Reform Act meant that the Crown's authority and its deliberations were open to the scrutiny of the House of Commons representing the electorate. A scenario existed whereby the Crown's deliberations could be rejected by the electorate thus undermining the authority of the Crown. The only way to preserve the dignity of the Crown was its complete withdrawal from participation in executive government. In the 1830s the 'Place and Pension' system was dismantled and in 1834 the remaining Sinecure Offices were abolished, meaning the Crown no longer possessed the powerful instruments of patronage by which it had shaped governments and cultivated support in the House of Lords. The powers of patronage still continued, but were transferred to the Ministries and party leaders in the House of Commons. As such, Smith (1992:95) argues that the Reform Act made it impossible for: 'the *Kings* government to be carried on'.

The democracy created by the 1832 Reform Act ended elite government founded upon the Crown and the House of Lords. Democracy directly led to the demise of the Crown as a participator in executive government and its replacement by Cabinet government, founded on the ascendancy of the House of Commons and underpinned by public

opinion. Wakefield, in his analysis of the new democratic constitution, declared that it rested primarily on two features: firstly, Ministerial responsibility for the action of the Crown; and, secondly, the supremacy of the House of Commons. Wakefield writes: 'the House of Commons, though in theory but a third estate of the realm, has become the representative embodiment of the nation as a whole' (cited in Weston, 1965: 256). A governing Ministry with executive powers was now responsible to the House of Commons and no longer the Crown.

ii) The Rise of the Cabinet and the Prime Minister

In the immediate years following the 1832 Reform Act, the torch of executive government passed from a declining Crown and House of Lords to the Cabinet and the House of Commons. Executive power and authority became the domain of the Cabinet, with the office of Prime Minister gaining increasing strength and authority over the Cabinet. The Cabinet became a potent, disciplined, homogeneous body and the Prime Minister became the true executive leader of the government.

Sir Robert Peel, the first Tory Prime Minister of the new democratic era in 1835 and again between 1841 and 1846, was the standard bearer for the office of Prime Minister and the working of the Cabinet system under the new democratic constitution. Lord Roseby described Peel as the: 'model of all Prime Ministers' (Masterman, 1913:191). Peel possessed a mastery of all political departments and was able to dominate Cabinet Ministers and Cabinet policy, to the extent that the Cabinet would pass measures of which not all members necessarily approved. A Cabinet convention became established

that all Cabinet members were bound collectively to support Cabinet policy and owed allegiance to the Cabinet leader. Loyalty to the Cabinet leader displaced the old Eighteenth Century system of loyalty to the Crown. Peel established the convention of a strong, authoritative, Prime Minister, presiding over a strong authoritative Cabinet. A hierarchy existed between the Prime Minister and the Cabinet and between the Cabinet and Parliament. Peel highlighted the new prominence and supremacy of the House of Commons when he said: 'It was at variance with the spirit of the constitution for a ministry to continue in office without the confidence of the House' (Keir, 1969: 406:). Peel further reiterated the strength and authority of the Commons when he argued: 'No administration could enjoy power unless it possessed the confidence of the House of Commons' (Weston, 1965:254)

As Weston (1965:257) argues: 'following the passage of the Great Reform Bill the House of Lords remained the sole remnant of mixed government that had not been fitted into the new machinery of government'. The House of Commons already had powers of supply and could withhold the yearly militia bill and, now, due to the Great Reform Act, with control over members and ministries, it became the supreme and executive authority of the nation. In the words of Peel: 'the government of the country must be mainly conducted with the concurrence and immediate agency of the House of Commons' (Weston, 1965:255)

The challenge facing the House of Lords in the post-reform, democratic climate was to reinvent itself in a new constitutional role for the governing of the nation. The House of

Lords needed to recognise the new supremacy of the Commons and reconcile itself to role of a junior and subservient partner, while simultaneously maintaining a legitimate function in the governing of the nation and maintaining the aristocratic principle in government.

The Grey Government's Great Reform Bill had been designed to steer a middle path between satisfying the demands of democracy, proposed by radicals and middle class reformers, while, simultaneously, sustaining a positive constitutional role for the House of Lords. A central concept in the Whig Government's idea of reform was that the House of Lords should retain proper constitutional powers and be, nominally at least, an equal partner in legislation with the House of Commons. The Grey Government envisaged the Upper Chamber as a revising chamber that might, in an atmosphere of calm deliberation, debate issues that may have passed to hurriedly or too heatedly through the House of Commons. The *Times* newspaper, discussing the Reform Bills in October 1831, emphasised the new role of the Lords: 'among the uses of an upper chamber ought to be accounted that of checking occasionally the too impetuous flight of public impulse' (cited in Davis; Smith 1995:89)

Consequently, democracy created a situation in which the House of Lords needed to maximise its authority as a legislative chamber, rather than its former authority as the premier executive chamber, if it wished to carve out a niche in a new democratic constitution.

iii) The Effects of Democracy: The Duke of Wellington and Sir Robert Peel Reform the

Houses of Lords and Commons

The Duke of Wellington, the Tory Leader of the House of Lords, and Sir Robert Peel, the Tory Leader of the House of Commons, were both quick to realise that democracy had transformed the political landscape of the Houses of Parliament. In the event of deadlock between the Houses of Lords and Commons, the King could not use his powers of dissolution to force the Commons to back down, nor could he shape, through Crown and Lords influence, a House of Commons favourable to the Lords' position. The Great Reform Act had made the old system of *Kings Government* impossible. A government in the democratic House of Commons, backed by a majority of the Commons and with the support of public opinion, was in an unassailable position. It was useless for the Lords to defeat bills and bring down governments, as it no longer held the power or authority to replace a ministry with one more congenial to the House of Lords. The most the House of Lords could do was embarrass the government by vetoing legislation in an attempt to delay it. The Lords could not veto legislation for an indefinite length of time and it became a standard Parliamentary convention that a government with a determined will and the confidence of the Commons reflecting public opinion must prevail, regardless of what the House of Lords' opinion might be. In the most extreme case, the House of Lords could be coerced into line by invoking the Royal Prerogative for creating Peers.

As such, Wakefield, writing in 1844 about the effects of the Great Reform Bill on the House of Lords, emphasised: 'The House of Lords as special representative of the aristocracy, has become a council of revision, less amendable to popular control and with

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more a show of privilege, but with less real power in the state' (cited in Weston**,** 1965:256)

The new independence and authority of the House of Commons from the House of Lords was first illustrated in 1833. The Duke of Wellington, in his capacity as Leader of the House of Lords, attempted to defeat the Government over its foreign policy in relation to Spain, introducing a censure motion. The Government was defeated in the Upper Chamber by 79 to 69 votes, but did not resign, as would have been the convention prior to 1832. During the years from 1833 to 1837, it became a new standard of Parliamentary practice that a government would not resign over a defeat in the Lords, as long as it retained the confidence of the House of Commons and the Crown.

iv) Democracy: the Effect on the House of Commons

Beer (1965:38) contends: 'In general, the period between the First and Second Reform Acts was "the golden age of the private M.P'.   The First Reform Act, by ending the *rotten boroughs*, destroyed the hegemony of the House of Lords over the members of the House of Commons. The House of Commons members for the first time in constitutional history enjoyed independence away from the patronage of the Peers in the House of Commons. Beer contends (1965: 49):

> Breaking free from the heavy hand of old Whig patronage and not yet
>
> subject to the still heavier hand of modern party discipline, the Member
>
> of Parliament could, if he chose, plausibly imagine himself falling not
>
> far short of the Liberal ideal.

In the immediate aftermath of the First Reform Act, the House of Commons members broke free from the shackles of the House of Lords patronage. However, in the absence of patron discipline, and during an era of lax party discipline, members dissipated into factions and groups who shared different loyalties. As Beer (1965:49) writes: 'Some members were beholden to patrons, other to what they took as public opinion; and by various means the party influenced the votes of many'. Party politics in the House of Commons was a mosaic of shifting groups and factions which made it difficult for a party to be a cohesive and achieve a Parliamentary majority. The fragile majority or minority Governments weakened the authority of the executive in the face of the House of Lords. Indeed, Beer (1965:50) contends: 'From the opening years of the reformed Parliament, Peel, representing the oligarchic tradition of strong and stable government, was deeply disturbed by the absence of reliable majorities'.

The diffuse structure of political parties led to fragile majorities in the House of Commons which made strong government impossible. In effect, political parties became homogeneous organisations to discipline members and achieve the majority needed for strong, responsible government.

One of the major effects of democracy over the Houses of Commons and Lords was that it made public opinion a significant factor in Government for the first time. Democracy produced Governments based in the House of Commons and supported by citizens and

this influenced the success, or failure, of legislation oscillating between the Houses of Lords and Commons.

The years between 1833 and 1837 were thus turbulent years for the British constitution, as the first elections following the 1832 Reform Act produced weak majorities in the House of Commons. The Houses of Lords and Commons were forced to re-adjust their legislative authority to account for the democratic will of the people. In the new era of democracy, new constitutional conventions began to be established governing the relationship between the Commons and Lords, which reflected the theoretical seniority of the Commons in relation to the House of Lords. However, small party majorities in the House of Commons in the early years of democracy allow the House of Lords to constrain the executive, while, conversely, large party majorities allowed the House of Commons to bypass the House of Lords. Indeed, the Duke of Wellington, as the Tory Leader of the House of Lords, and Sir Robert Peel, the Tory Leader in the House of Commons, recognised the potential for ebb and flow between the Houses of Lords and Commons and was instrumental in defining new, more fluid, constitutional conventions.

The years following the 1832 Reform Act were marked by the ascendancy of the Whigs/Liberals as the dominant political force in the House of Commons and between 1830 - 1835 they created 198 Whig and only 70 Tory Peers. Despite the large increase in Whig Peers, they remained in a perpetual minority in the Upper House. Indeed, in 1835, Lord Hatherton calculated that, in a House of Lords totalling 430 Peers, only 87 could be classified as Whigs and this was to have repercussions for Whig Ministries in the

Commons. As Weston (1965:241) argues: 'For the Whig government, relying on its support on the reformed House of Commons, found its efforts continually thwarted by an angry House of Lords, primarily Tory in its complexion because of Pitt`s numerous creations'.

v) The Reform Act 1832 - the Effects of Democracy on the House of Lords

The passage of the 1832 Great Reform Act filled Wellington with a foreboding about the future of the House of Lords, as an active participant in constitutional government. LeMay (1979:5) quotes Wellington as predicting: 'No- blow up, no bloodshed but that all our ancient institutions will be destroyed by the due course of law.'

The constitutional relationship between Lords and Commons needed to undergo a realignment that would acknowledge the seniority of the House of Commons, while simultaneously allowing a positive constitutional function for the House of Lords. In the new post-Reform Act democratic climate, Wellington recognised that the Lords must assert its authority by carefully choosing issues that align them with, or at least did not directly conflict with, public opinion or the public interest.

Wellington asserted that, as a result of the Reform Act, the Lords were: 'an assembly still powerful in legislation; but without political influence' (cited in Davis, 1995:100). The House of Lords' political dominance had been ended by the destruction of the rotten boroughs and the Lords no longer possessed the means by which to coerce the Commons to accept the Lords' interests. Of course, the Lords still possessed one powerful

legislative function in its armoury, a veto over Commons legislation. Parliamentary legislation could not become law without the blessing and assent of the House of Lords. The House of Lords possessed the power of veto, but, as the events prior to the Reform Act in 1831 and 1832 had shown, if this power was abused or exploited, it could provoke the nation and lead to demands for the Ministry and the Crown to swamp the Lords with new Peers. Wellington's objective was to ensure that the Lords were not merely an echo of the Commons, but used their power of veto enough to assert its importance without provoking the wrath of the Ministry or the nation.

The Lords power of veto was a powerful constitutional weapon over the Commons, but it was also a double-edged sword that needed to be wielded with care. Wellington recognised that the House of Lords' power of veto was a powerful weapon in the armoury of the Upper Chamber, but, if it was used inappropriately, it had the potential to alienate and inflame the House of Commons. Wellington realised that the House of Lords needed to be sensitive in choosing the issues on which to use the veto and steer a delicate path between asserting their powers for the common good and making unwarranted interferences which would undermine that authority of the House of Commons. Lords' aggression could potentially lead to catastrophe and ruination, but Wellington never sacrificed the power of the Lords veto, nor shrunk from letting Ministries know it existed. As Davis (1995:100) puts it: 'His was a game which required political skill of a high order'. Wellington's strategy was to hold the Lords' power of veto in reserve and use it sparingly. He regarded the House of Lords as the: 'ultimate guardian of the constitution' (LeMay, 1979:130). The Lords were the custodians and vanguard of Britain's cherished

constitution and institutions and had an obligation to ensure that constitutional principles were not transgressed by the House of Commons. The power of the veto was to be used rarely, only on issues that affected the constitution, so that the Lords would: 'preserve its powers in tact against the day when it might need to spend them on some great occasion' (LeMay, 1979:30). To use the Lords' powers on trivial issues was to weaken and undermine that power. The power of the House of Lords was, in essence, a reserve power to be used only on pre-determined issues, such as property or religion, where the Lords felt that constitutional convention had been transgressed.

During the years between 1833 and 1840, as a result of the Reform Act and the beginning of a fledgling democracy, the House of Lords established a new constitutional role as a guardian of the constitution. The House of Commons, as the democratic Chamber, wielded executive power, but the Upper Chamber, as custodian of the constitution, still had a constitutional role in monitoring the democratic impulse of the Commons and ensuring it did not step outside the boundaries of the constitution, nor become too estranged from public opinion. The introduction of democracy transferred the balance of political power from the Lords to the Commons and, buoyed by the legitimacy of democracy, the House of Commons began to assert authority over the House of Lords. However, democracy was limited in the House of Commons and this, in tandem with weak Whig and Tory Ministries, with precarious majorities in the House of Commons, ensured that the Tory-dominated Upper Chamber could, on certain issues, curb the legislation of the House of Commons.

As Large (cited in Jones,1986: 388) argues: 'The Tory majority in the Lords was a valuable, though by no means easily controlled, weapon in the hands of Conservative leaders by which the Whigs were forced to content with what the Conservatives would grant them'. The passing of the English Municipal Corporation Act, unhindered by Lords amendments, proved that the Ministry in the Commons with a democratic mandate could overcome the opposition of the House of Lords. The House of Lords amendments to the Irish Municipal Corporation Act proved that, in its role as guardian of the constitution, especially as custodians of the Protestant ascendancy, it could still wield strong influence in the absence of public opposition. As such, between 1832 and 1867 the House of Lords continued to participate as an almost equal partner with the House of Commons in the governing of the nation and contributed at times as a stronger, more stable, Chamber.

vi) Democracy: The Beginnings of Party Politics

The years leading up to the Great Reform Act 1832 and the intensity of the debate about it in Parliament had seen members in both the Houses of Lords and Commons polarise into discrete camps of Whigs and Tories. The Reform Act had created two stark and distinct choices, between the conservation of the old order, as represented by the Tories, and the ideals of reform and change, as represented by the Whigs. Smith (cited in Davis, 1992:93), writing about the passage of the Reform Bill and the emergence of distinct and separate groups of Whigs and Tories, argues: 'Nevertheless, the battle was a party one, between Whig/Liberals and Tory/Conservatives: it merely chanced that the balance of the parties differed in the two Houses.' He further contends (1992:93): 'Party became the dominant political division in the House of Lords after 1830'.

During the years from 1830 to 1841, the Whig-dominated House of Commons found its legislation continually thwarted by a Tory-dominated House of Lords. The Whig Ministries of Lord Grey (1830–34), and later Lord Melbourne (1835–41), could not rely on a standing majority in the Lords or the support of the Crown, as previous Ministries had done, but were, instead, forced to rely on strength of numbers and the efficiency of their own party organisation to pass legislation. Conversely, the Tory-dominated House of Lords and the Tory opposition in the Commons had to mobilise and organise its party apparatus to block Whig legislation and promote its own amendments and interests.

The heated opposition of the House of Lords to the Whig Ministries in the House of Commons, particularly over English and Irish Municipal Corporation Bills, showed that the: 'opposition in the House of Lords was shown to be motivated by party not constitutional principle' (cited in Davis,Smith:1995:94). Indeed, Greville wrote in 1835: 'there is no party in the House of Lords supporting the Crown… but all are Tories or Whigs arrayed against each other and battling for power' (cited in Davis, Smith 1995:94)

As emphasised earlier, democracy began a process of change in the character of government by transforming Ministries of the Crown and the Lords into Ministries of the party and the Commons. The passage of events, which culminated in the Great Reform Act 1832 and the aftermath of the Reform Act, saw the emergence of more discrete political parties who were more aware of their political identity and more prepared to mobilise collectively to promote a common political agenda. The creation of two more

homogeneous parties, ready to act collectively to pursue a common goal, was a novel feature of the new democracy. Indeed, Smith argues (cited in Davis, 1995:95): 'Government by party had displaced government by the Crown and the House of Lords was even more affected by the change than the Commons'. The years immediately preceding and following the first Great Reform Act had created a climate of partisan party identity among the Whig and Tory Parties in Parliament. However, as already demonstrated, although party identity became more perceptible after the 1832 Reform Act, parties were still far removed from highly disciplined and efficient party apparatus which emerged after the 1867 Reform Act.

Section Two: Whig/Liberal Theories of the Constitution

The main purpose of this chapter to date has been to develop the argument that a limited liberal idea of representation shaped democracy and underpinned the institutions which emerged after the 1832 Reform Act. In this section, the liberal theory of representation is examined in order to demonstrate how it claimed to represent the nation's interests, while simultaneously complimenting the mantra of strong, responsible, government inherent in Britain's existing governing institutions.

The Great Reform Act 1832 created a new democratic constitution, using the existing governing institutions of the Crown and the Houses of Lords and Commons and adopting a new set of constitutional principles and conventions to govern. The rudiments of the constitution owed much to the Whig/Liberal theory of constitutional government and

proved enduring enough to provide the foundation for constitutional government throughout the Nineteenth Century. The central principle at the heart of Whig/Liberal constitutional theory was a belief in civil and religious liberty, extending through to the political and economic spheres. Sir James Mackintosh emphasised the importance of liberty to Whig theory when he argued: 'Liberty, the parent of commerce; the parent of wealth; the parent of knowledge; the parent of every virtue!' (cited in Hanham, 1969:2). Secondly, Whigs believed in a dramatic curbing of the power of the Monarch, arguing that the Monarch should possess only nominal constitutional powers and should be duty bound to accept the recommendations of the Ministers who commanded the majority in the House of Commons.

Whigs urged the need for balance between the powers of the Crown and the Houses of Parliament, but always subject to the superior authority and prerogative of Parliament. Whig constitutional theory suggested that the will of the nation should be expressed in free elections to Parliament at regular intervals. Members of Parliament, once elected, were to have the freedom and independence to act individually and on behalf of the national interest and not as delegates of a particular district or as a cipher of an economic interest. The Whig theory of the constitution was significant because it supported hierarchical ideas of representation and responsibility, which provided the underpinnings of the model of democracy that, would eventually become dominant.

Whig theorists of the early Nineteenth Century took their politics from John Locke and economics from Adam Smith. Locke's ideas of liberalism during the era of mixed

government provided the dominant intellectual influence over English politics in the Eighteenth Century and his sentiments were echoed by the Lord Chief Justice in 1765: 'The great end, for which men entered into society, was to secure their property' (cited in LeMay, 1979:8). In 1818, in the *Edinburgh Review*, Sir James Mackintosh expanded on the importance of property to Whig constitutionalists when he reflected upon: 'the importance of landed proprietors as upholders of the constitution' (cited in Hanham, 1969:3). The Whig theory made the first link between property and political power and suggested that all landed proprietors, such as rate payers, lodgers and office holders, should be entitled to representation and a stake in political power.

Bentham (Birch, 1964:44) deserves special attention in the annals of Whig political theorists as he bridged the divide between Locke and the supremacy of mixed government, in the Eighteenth Century constitution, and the development of democracy, in the Nineteenth Century constitution. In the years following the 1832 Reform Act, various factions purporting to follow the ideas of Bentham, such as Benthamites, Ulitarianists and Philosophical radicals, formed a coherent group of formidable intellectual power. Birch (1964:54) writes of their influence over ideas of representation and democracy that: 'their influence on the course of British politics was greater than any other group of reformers has ever enjoyed'.

i) Liberal Theory: Representation

The title of the Great Reform Act, ` *An Act to Amend the Representation of the People* ` (cited in Keir, 1938:400), was in itself an acknowledgement of a new principle of

representation in British politics. The reference to representation of the *people* differed markedly to the traditional meaning of representation in Parliament, where the focus had been upon the representation of communities and interests. The Great Reform Act's use of the term '*the people'* was an acknowledgment of the radical thought instigated by Bentham and recognition that the individual, rather than the community, should provide the basis of representation. Keir (1938:401) argues that the Reform Act: 'introduced organic changes which reflected the increasing ascendancy of the radical thought stimulated by Bentham and reinforced by the democratic impulse received from the doctrines of the French Revolution'.

Throughout the passage of the Reform Act and the development of a fledgling democracy, the main objective of reformers was to maintain strong and responsible government. Such strong and authoritative government had traditionally resided with the House of Lords and the objective of reform was to expand it to embrace the House of Commons. The aim of democracy was to make the Lords and Commons co-ordinate powers. As Keir (1938:404) argues: 'What the landed interest consented to in 1832 was, in short, not a surrender, but a partnership in power.' The idea of democracy that emerged was strongly shaped by traditional and inscribed ideas of strong government responsibility that had always been dominant in governing institutions.

 The aim of democracy was to consolidate the tradition of strong and responsible, and ultimately elite, government inherited from the House of Lords into the democratic chamber of the House of Commons. To achieve this objective, an idea of representation

was needed that would compliment the elite and top-down nature of power already ingrained in the pre-democratic Parliament. The idea of representation adopted in the new evolving democracy had the difficult, probably impossible, task of consolidating the strength and authority of existing governing institutions, while being representative of the will of the citizens. The Reform Act's specific reference to representation as being of 'the people' was indicative of the influence of Liberalism over ideas of representation and indicated that the individual, as opposed to the community, would be the cornerstone of the new unfolding democracy. As such, Birch (1965:52) argues of the Reform Act: 'Old principles of representation were abandoned and the gates were opened to further instalments of reform'.

ii) Liberalism: The British Political Tradition and Representation

Birch reflects on how Victorian discussions about representative government were dominated by Liberal ideas. He contends that (1964:52): 'Liberal ideas were by no means novel but developed, with a new emphasis of their own, from the Whig and Radical ideas that moulded progressive opinion at the time of the Reform Act'. The Liberal idea of the individual as the basis for representation would come to permeate, and eventually dominate, democracy. But, at the time, there was some contention over which model of democracy, either the mass participatory model favoured by radicals, or the top-down idea of democracy, would be the best vehicle for individual representation. As argued throughout this thesis, the British Political Tradition's elite, top-down, model of democracy emerged as the dominant, though contested, idea of democracy.

Liberalism was comprised of four, inter-linking components, the first and most significant of which was the notion of the individual as a discrete entity. First, the slogan 'one man, one vote; one vote, one value' (cited in Birch, 1964:65) reflected the liberal belief in establishing a franchise founded upon the individual and extending that franchise until it incorporated all individuals. Secondly, Liberalism theorised that the supreme power of the state resided with Parliament on the basis that Members of Parliament represented the opinions and interests of all citizens. This prognosis is important for democracy because it indicated Liberalism's belief that it was the House of Commons which represented the will of the nation and not the House of Lords. According to the Liberal theory of the constitution, the House of Lords could sustain no more than a junior and subservient role to the House of Commons in the functioning of government.

A third and very significant idea in Liberalism was the belief that responsible government was achieved by a Ministry's accountability to Parliament and not, as had been the case in the Eighteenth Century constitution, to the Crown. This was a highly significant aspect of Liberalism because it implied that Parliament should have a means of coercion or sanction over a Ministry to make it accountable. The fourth principle of Liberalism was a belief in the legitimacy of the rule of law and the idea that all citizens were equal under its jurisdiction. The rule of law applied equally to all citizens, with the offices of the Crown enjoying no special privileges.

Liberalism provided a coherent and practical theory of representation ideally suited to the British constitution and its governing institutions, because it emphasised the necessity of powerful economic and social interests being represented in Parliament. A further strength of Liberalism was that it complimented existing governing institutions and this reiterates an argument of this thesis that the maintenance of existing governing institutions remains a defining characteristic of the British Political Tradition. As Birch argues (1964:66), Liberalism had advantages over the democratic theories of Locke and Rousseau because it did not depend on an abstract notion of a Social Contract. Liberalism, and its underlying doctrine of Utilitarianism, provided a tangible idea of representation suited to the wide variety of economic and social interests of Victorian Britain. Manufacturers in Northern industrial towns and trade and craftsmen in London and the South, as well as political reform groups, all wanted a fairly substantive Parliamentary reform. So, Birch (1964:66) writes of Utilitarianism: 'As an ideology of reform it had all the virtues'.

As such, the principle of the individual as the unit of representation cut across a wide spectrum of social and economic groups and had a significant influence over the idea of democracy that came to dominate. The Whig theory of representation was deemed too moderate and aristocratic in tone to provide a truly effective and representative democracy, while the radicalism of Paine and his followers was deemed inherently dangerous, with the potential to sweep away the sacred governing institutions. Indeed, Birch (1964:47) argues: 'The Utilitarian theory had the advantage of being radical without seeming revolutionary'. Birch (1964:66) emphasis that Liberalism had many

virtues that were uniquely complemented to British governing institutions: 'not least among which was the fact that it was tied so closely to the existing institutions in Britain.'

Hanham (1969:3) contends that: 'The supremacy of the reformed Parliament was now recognised, and the defects of parliamentary government were now becoming apparent'. Liberals altered their interpretation of the role of Parliament, beginning to perceive it as no longer based on a conflict of interests, but rather on a conflict of opinions. John Stuart Mill emphasised the point when he declared that Parliament should be a: 'Congress of opinions' (cited in Birch, 1965:53). Parliament should be a theatre of discussion in which every facet and shade of opinion was represented.

Liberalism's new stress on opinion, rather than interests, undermined a core principle of Whig representative theory, that of *virtual representation*. A Member of Parliament was now deemed to represent individual opinions and not, as before, collective or vested interests. Virtual representation ensured that all citizens could claim to be adequately represented, as long as Parliament contained Members of all professions and all regions. As such, it was no longer viable because Liberals now claimed that the purpose of a Member of Parliament was to represent individual opinion and, furthermore, there was not necessarily a correlation between opinion and occupation.

The change in emphasis was from the collective ideal of representation, entailed in virtual representation, to a new ideal in which every individual and interest had a discrete

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identity and needed to be individually represented. Birch illustrates the implications of the Liberal emphasis on opinion and individualism for democracy when he declares that representation now meant that: 'everyone capable of holding an opinion should have the vote' (Birch, 1964:53).

The liberal idea of representation encompassing the individual as the unit of representation became a dominant idea shaping the democracy which emerged between 1832 and 1867. However, at the same time, a conservative notion of responsibility aimed at reinforcing the existing strong authority of institutions ensured that the Liberal idea of individual representation would be limited. As such, between the First and Second Reform Acts the two key features of the British Political Tradition, a limited liberal notion of representation and a conservative notion of responsibility, became inscribed into Parliament and Government. The conservative emphasis upon strong, responsible Government continued from the pre-democratic liberal constitution and ensured that the model of representation which emerged would be limited and designed to defer to the authority of institutions.

The Liberal idea of representation stressed the importance of free and independent Members of Parliament who had a primary duty to act in the nation's interests and were free from the dictums of the electorate. Keir (1938:407) emphasises the elitist nature of Government: 'Ministries, again still regarded themselves as primarily charged with administrative responsibility, and not with the execution of a political programme endorsed by an electorate'. In this way, democracy was designed to maintain elite, top-

down, government, with strong responsible institutions and an unequal distribution of power within Parliament and between Parliament and the electorate. So, the inherent elitism of the British Political Tradition meant that MPs, and indeed the Government, consulted the electorate, but were never dictated to by them.

The British Political Tradition's ideas of strong responsible government, complimented by limited representation, created a new style of elite and top-down government, founded upon democracy. Robert Peel illustrated the dominance that elite and top-down government had over the Nineteenth Century Parliament when he wrote: 'We are here to consult the interests, not to obey the will of the people, if we honestly believe that that will conflicts with those interests' (cited in Birch,1964:49).

iii) The 1832 Reform Act: A New Equilibrium is established

Le May argues that the House of Lords regrouped and recovered itself sufficiently following the 1832 Reform Act to play a positive and confident role in Parliament between 1832 and 1880. He contends: 'For the next fifty years, the two houses lived together in general harmony quarrelling rather about privilege than policy' (Le May, 1979:127). As already mentioned, the years immediately following the 1832 Reform Act had led to some turbulence between the Houses of Lords and Commons, but, from the 1840's onwards both Houses of Parliament settled into an established constitutional relationship. By the mid-Nineteenth Century, the House of Commons was firmly established as the premier, but not all-powerful, branch of the constitution representing the public will. The House of Lords' power of veto ensured that the House of Commons

did not have total dominance in the legislature. The House of Lords carved for itself a constitutional role as a secondary revising Chamber with an ethical duty to uphold the constitution and this, in tandem with its power of veto, meant it was still a formidable governing institution with the potential to reign in Government.

In addition, a further indication that the House of Lords was not a spent force was its retention of a semblance of electoral control over the House of Commons. Although the House of Lords hegemony over the urban boroughs was broken following the 1832 Reform Act, it still retained a degree of influence over the county electorate. Indeed, Smith (1992, 116) calculates that 44 Peers retained sufficient electoral influence to control 59 Commons seats in 26 Counties. Dod (cited in Smith, 1992:116) similarly estimated that, from 1832 to 1842, up to 250 Peers retained some influence over a representative in the House of Commons. At the same time, 172 sons, 27 grandsons and great grandsons of Peers and 8 Irish Peers occupied seats in the House of Commons between 1842 and 1847. As such, the House of Lords retained some influence over the membership of the House of Commons in the years following the Reform Act, although that influence became increasingly marginal and began to wax and wane in the decades following 1832.

iv) The Second Reform Act 1867

In 1867, Parliament introduced the second major instalment of democratic reform when it passed the Second Reform Act. The 1867 Reform Act greatly extended democracy and enfranchised a sector of the working class and most of the urban-based population. The

principle effect of the Second Reform Act on the House of Commons was a hardening of party discipline and the subordination of Members of Parliament to a party whip. Members of the House of Commons became accountable to the party and in an election to the electorate. The second instalment of the democratisation of Parliament had the effect of reinforcing the principles of strong government and hierarchy in Parliamentary politics by subjecting the Member of Parliament to the discipline and hierarchy of the party in Parliament. The rise of disciplined political parties in the House of Commons, supported by a mandate endorsed by the electorate, further diminished the authority of the House of Lords.

Two further Acts of Parliament eroded the influence of the Peerage over the countryside. The Ballot Act passed in 1872 and the Corrupt Practices Act 1883 curbed the potential power of the Peerage to distribute patronage, or to use methods of coercion to manipulate elections and win political control. In the sphere of local government, Parliamentary Acts in the 1880 and 1890s established democratically elected councils, which also removed political control of rural affairs from the country houses. As such, the tide of democracy and democratic legislation emanating from the House of Commons served to further diminish the influence and authority of the Peerage and House of Lords. The landed aristocracy were unnerved by the changes that democracy had brought about and retreated to its traditional bastion, the House of Lords, as a bulwark against the increasing tide of radical and interventionist legislation emanating from the House of Commons. Smith argues that the change in economic fortunes precipitated political change and created a widening gulf between the Houses of Lords and Commons and consequently:

'The 1880s were to begin a new, less co-operative era in relations between the two houses' (Smith, 1992, 129).

Section Three: The House of Lords after 1880: The Seeds of the Constitutional Crisis 1911

This section chronicles the tensions that existed between the Houses of Lords and Commons from 1880 onwards which culminated in the passing of the Parliament Act (1911). The aim throughout this chapter has been to demonstrate how the British Political Tradition's elite conception of power established strong and responsible governing institutions in both the Houses of Lords and Commons.

Democracy moved the mantle of strong responsible Government away from the exclusive preserve of the House of Lords and broadened it to include the House of Commons. Although democracy empowered the House of Commons and made it the ascendant chamber of Parliament, the House of Lords power of veto ensured the Commons never had total dominance of the legislature. Between the First and Second Reform Acts, the Houses of Lords and Commons established a new equilibrium to define powers and discourse between them and co-existed as almost equal partners in government. However, although the Houses of Lords and Commons sustained mostly cordial relations between 1832 and 1880, and governed almost as co-ordinated Chambers, there remained fundamental and unresolved tensions beneath the surface.

The House of Commons, representing democracy and the will of the people, and the House of Lords, representing private property and a tradition of hereditary power, could co-exist, but, as will be demonstrated, economic and social change in the latter half of the Nineteenth Century created a situation in which the interests of democracy came into conflict with the interests of property and exacerbated the tensions between the two Houses of Parliament to breaking point. The tension between the House of Lords and Commons was a conflict between two approaches to strong government and only one could be victorious.

During the last quarter of the Nineteenth Century, economic, social and political change further eroded the influence of the Peerage and the House of Lords over the Commons. In the 1870s a sharp fall in land values and rental income saw a decline in aristocratic wealth relative to the rising wealth of the middle class. A consequence of this was that new members of the House of Commons increasingly came from middle class backgrounds and reflected the radicalism and collectivist proclivities of men like Joseph Chamberlain. The House of Commons became an increasingly middle class chamber representing middle class interests. The rise in the economic and political power of the House of Commons coincided with a decline in the traditional economic power of the landed aristocracy in the House of Lords and the two Chambers came to represent different aspirations and interests.

Hanham (1969:174) emphasises: 'By 1885 the role of the Lords and that of the Commons were manifestly quite different, as they had not been before 1832'. The growth of

democracy, particularly following the 1867 Reform Act, created a widening schism between the Houses of Lords and Commons, as each House came to epitomize and represent different, distinct and possibly conflicting interests in the nation. Hanham further (1969:174) argues that the Houses of Lords and Commons polarised into representing divergent interests: 'The Lords represented property and the Commons the popular will.'

It was obvious that, as democracy strengthened the authority of the House of Commons as the institution that representing the popular will, it greatly exacerbated tensions between the Commons and the House of Lords, which represented property and had a traditional role as guardian of the constitution. In the late Nineteenth Century, the tide of collectivist and interventionist legislation emanating from Liberal Governments in the House of Commons impinged on the hallowed ideals of private property so revered by the Lords and this pushed the already tense relations between the House of Commons and Lords to breaking point

During the years between 1880 and 1900, the House of Lords began to take a more proactive stand over House of Commons legislation. One man above all others was responsible for the new assertiveness of the Upper Chamber; Lord Salisbury, who dominated the Upper Chamber from 1881 and 1902 and combined this with, spells as Prime Minister in 1885, from 1886 to 1892 and from 1895 to 1902. Blake described Salisbury as: 'the most formidable intellectual figure that the Conservative party ever produced' (cited in Smith, 1992:158). Salisbury, much as the Duke of Wellington had

been a half a century earlier, was the guiding light for the House of Lords in the late Nineteenth Century and, through the doctrine of the mandate, developed a theory of the constitution that would allow the Upper Chamber to express its latent conservatism and intervene forcefully in the legislation of the House of Commons.

i) Doctrine of the Mandate: The House of Lords Rearguard Action against Democracy

The Salisbury doctrine of the mandate was a blueprint outlining the justification for the House of Lords using its power of veto over Commons legislation. Salisbury asserted that the Lords should not be a cipher of the Commons: 'The object of the existence of a second House of Parliament is to supply the omissions and correct the defects which arise in the procedures of the first' (cited in Smith, 1992:135). Salisbury conceded that the democratically elected Commons represented the will of the nation, but suggested that, on nine occasions out of ten, the public will was indifferent to the intricacy of legislation. The House of Lords had a duty to identify contentious legislation that was unconstitutional or did not have the support of public opinion. In this view, it was the duty of the Lords to oblige the Commons to refer contentious legislation back to the public for a referendum, resulting order to determine the true will of the nation. In the event that the referendum ascertained the Commons and the nation were unified, 'the vocation of this house has passed away' (cited in LeMay, 1979:136) and the Commons would receive its mandate to enact the legislation.

Salisbury's doctrine of the mandate was, in reality, a rearguard action by the House of Lords to consolidate the remnants of its own power and also crucially to restrict the

House of Commons capacity to implement collectivist legislation. The mandate allowed the legislation of the democratically elected House of Commons to be challenged by the non-elected House of Lords and, in effect, allowed the will of the nation to be scrutinized by an unrepresentative Upper Chamber. Le May (1979:137) argues of the doctrine of the mandate: 'this was a doctrine not of balance but of resistance'. The British Political Tradition established the legitimacy of strong, authoritative government in the democratic branch of the constitution in the House of Commons, but, faced with spectre of a reinvigorated House of Lords, armed with the doctrine of the mandate and the power of veto, there was the potential for the democratic will of the Commons to be thwarted by the older, more traditional, form of authority of the House of Lords. The doctrine of the mandate created the potential for a scenario of conflict and impasse between two forms of strong government.

In 1880, Salisbury succeeded Disraeli as Leader of the Conservative Party in the House of Lords and immediately began to put the theory of the mandate into practice by beginning an era of Lords' intervention in the affairs of the House of Commons. Le May (1979:137) writes of Salisbury and the mandate: 'he was to put his theory into action and establish a pattern of behaviour that led eventually to the rejection of the budget in 1909'.

The House of Lords in 1880 contained over 500 members, of whom 280 were Conservative Peers, 203 Liberal Peers, 26 Prelates, with 13 Peers of no fixed party and 6 non-attendees. The House of Lords remained a predominantly Conservative Chamber and the gradual drift of Liberal Peers to the Conservative side between 1880 and 1906 over

the issue of Irish Home Rule reinforced the ranks of Conservatism in the Upper Chamber. As such, in 1906 the House of Lords consisted of 334 Conservatives, 107 Liberal Unionists, 98 Liberals and 43 Independent members.

ii) The House of Lords Puts the Theory of the Mandate into Practice

From 1880 onwards, the House of Lords began to put the theory of the mandate into practice, actively intervening in the legislation of the House of Commons. The House of Lords, armed with the power of veto, began a systematic campaign of frustrating the House of Commons legislative programmes when Liberal Governments were in power, but remaining passive when Conservatives had a majority in the Lower Chamber. In 1884 the House of Lords rejected the Liberal Party's Franchise Bill. The Franchise Bill was the third major instalment of democracy in Parliament and extended the franchise to virtual universal male suffrage, while also introducing constituencies based on population. The House of Lords rejected the Liberal Franchise Bill purely for partisan party reasons. Salisbury was worried that the Liberals would call an election before redistribution using the old constituencies, with the Conservatives fearing a loss of up to 47 seats. A constitutional crisis between the Lords and the Commons was only averted when a compromise was reached between Gladstone, Hartington and Dilke, representing the Liberals, and Salisbury and Northcote, representing the Conservatives, allowing the Lords to pass the Franchise Bill only after the Redistribution Bill.

In 1893 the Second Home Rule Bill, introduced by the Gladstone Liberal Government 1892– 94, was passed by the House of Commons, but defeated in the House of Lords by

419 to 41 votes. The House of Lords invoked the doctrine of the mandate to inflict the largest ever defeat on a Government Bill sent up from the House of Commons to the Lords. In the ensuing election of 1895, following the dictums of the mandate, the will of the nation was consulted over the Home Rule. The General Election returned a resounding 150 seat majority to the Conservatives vindicating the opposition of the Lords to Home Rule. In line with the theory of the mandate, the opinion of the nation had been consulted and proved strongly against Irish Home Rule.

Le May (1979:144) argues: 'Salisbury had transformed the House of Lords into a decisive factor in government, and at the same time had popularised a distinctly Conservative theory of the Constitution'. As such, the doctrine of the mandate had reinvented the Upper Chamber as a formidable institution of government by declaring that it represented the national will: 'the national will was supreme, and the Conservative Party represented it' (LeMay, 1979:144). The House of Lords, using the theory of the mandate, seriously disrupted and undermined the authority of the democratic branch of the constitution, the House of Commons, particularly when Liberal Governments were in power. The disruption of government legislation in the Commons by an unelected and partisan House of Lords seriously weakened democracy itself and unhinged the balance of the constitution. The British Political Tradition endorses the view that democracy gives legitimacy to strong authoritative government in the House of Commons and, consequently, a strong and strident House of Lords not only made strong government impossible, but also went against the grain of the British Political Tradition. The key point here is that strong, responsible government cannot emanate from two governing

institutions simultaneously, as this undermines the authority of both. The impasse which the Houses of Lords had created needed to be confronted and addressed, if the strong and responsible government of the British Political Tradition was to be restored.

Section Four: The Constitutional Crisis 1910

Relations between the Houses of Lords and Commons involved the unstoppable force of democracy meeting the immovable object of the House of Lords and could only be resolved by one Chamber triumphing over the other. In 1906 the Liberal Party won a resounding General Election victory and, from 1908, began to embark on a radical programme of social reform called New Liberalism. The huge scale of the Liberal victory meant that the Liberals could legitimately claim to represent the public opinion and the democratic will of the nation. Yet, despite this, the Lords continued to reject major Government Bills sent up from the Commons. In 1906 the Lords rejected the Education Bill and the Plural Voting Bill, in 1907 it rejected the Land Valuation Bill and in 1908 the Licensing Bill (by 272 to 96 votes).

The House of Commons armed with a democratic mandate and representing the will of the nation, was having its legislative programme continually frustrated by a politically partisan and unelected House of Lords. The tension between the Commons and the Lords, which made the work of democratic government almost impossible, stretched the validity of the constitutional arrangements between the Lords and the Commons. The constitutional conflict between the Commons and the Lords was a conflict between two

traditions of Government, between an old tradition of oligarchic power and a modern tradition of democratic power. As such, while both the Houses of Parliament embodied elitist ideals and strong, responsible Government, the constitutional struggle was a battle to decide whether the torch of strong government should be founded on democracy or autocracy. It was obvious that the House of Commons would have to overcome the formidable autocratic power of the House of Lords, if strong responsible government through democracy was going to succeed.

i) The House of Commons: Addressing the Problem of the Lords

In 1907 the House of Commons attempted to address the problem of dealing with an intransigent House of Lords, by passing the Suspensory Bill by 432 to 147 votes. The Suspensory Bill restricted the Lords' power of veto. The Bill declared that the Lords veto: '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' (Hanham, 1969:175). The House of Lords veto became a power to suspend, rather than an absolute veto, but, significantly, the Lords could still delay legislation until after a General Election, although in the early years of a Parliament the will of the Commons should be allowed to prevail. The Suspensory Bill represented the House of Commons first attempt at ending the deadlock in the constitution by reigning in some of the powers of the House of Lords. The passing of the Suspensory Bill marked the beginning of a war of attrition between the Liberal Government in the House of Commons and the Conservative-dominated House of Lords. Tensions between the Houses of Lords and Commons would eventually

climax in 1909, when the House of Lords rejected the Liberal Government's *People's Budget.*

The 1909 People's Budget was the Liberal Government's attempt to pay for the large swathe of social reform involved in New Liberalism. The Budget aimed to raise the £16 billion pounds needed to pay for social reforms, but, also, with the spectre of war with Germany on the distant horizon, for rearmament and eight new dreadnoughts. The budget was radical, because it raised existing taxes on spirits, tobacco, liqueur and licences, rather than imposing tariffs on imported goods, which was strongly favoured by the Conservatives and had been the case in the past. The Budget was particularly novel because it also raised money from income taxes and death duties and introduced a super tax on income over £5000. The most contentious taxation was the introduction of a set of land taxes; a tax on unearned income.

Lord Lansdowne, the Conservative Leader of the House of Lords, and Arthur Balfour, the Conservative Leader of the House of Commons, decided, for a variety of reasons, to reject the Budget. First, they argued that the Commons had abused its power by tacking measures on to the Budget, such as licensing and land valuation, which had already been rejected by the Lords and were not financial. This device was seen as particularly problematic because, in theory, the Commons could pass Home Rule using this tactic. However, the main reason for the Lords' rejection of the Budget was that it was seen as redistributive and it methods of revenue raising broke several financial principles that had traditionally been seen as sacrosanct. In particular, the tax on unearned income was perceived as an attack on the hallowed realm of private property.

The Liberal Government's abandonment of tariffs on foreign goods and its policy of raising new and existing forms of taxation to pay for reform were seen to run against the constitution by the House of Lords. In November 1909 the House of Lords rejected the Finance Bill by a resounding 350 to 75 votes. The House of Lords, using the doctrine of the mandate, took the ultimate step of refusing to grant supplies to His Majesty's Government and plunged the nation into a constitutional crisis unseen in Parliament since the passing of the Great Reform Act in 1832.

The House of Lords' rejection of the Budget was clearly a challenge to the democratic branch of the constitution in the House of Commons to find a mandate from the voters for the Finance Bill. As such, the House of Lords was throwing down the gauntlet to the House of Commons and challenging it to demonstrate that it represented the will of the people. The House of Lords rejection of the Budget approved by the democratic Chamber of the constitution was calculated to force a General Election which the Conservatives thought they would win. In fact, the 1910 General Election produced a House of Commons with 275 Liberals, 273 Conservatives, 82 Irish Nationalist and 40 Labour Members. As such, the General Election result was very inconclusive, leaving the Liberals and Conservatives evenly balanced in Parliament. Under the terms of the mandate, the will of the nation over the *People's Budget* could not be clearly defined, although it could be argued that an anti-Conservative majority of 120 had been achieved. In this trial of strength between Lords and Commons, the will of the people seemed inconclusive.

The constitutional crisis which unfolded between the House of Commons and the House of Lords involved a collision between two ideas of power. The elite values associated with the British Political Tradition suggested that strong responsible government could only emanate from one governing institution, as power derived from two parallel institutions dilutes the power of both and makes strong government impossible. In March 1910 the Liberal Prime Minister Asquith set up a Committee to examine the relationship between the Houses of Lords and Commons and resolve the problem. The Committee was the latest attempt by the House of Commons to look at ways of reducing the powers of the House of Lords, allowing government to govern unhindered. The Committee had the express objective of abolishing the Lords veto over money bills, imposing a time limit on its veto over non-financial legislation and looking at the possibility of reducing the maximum duration of Parliament from 7 to 5 years.

As LeMay (1979:197) argues: 'Politics had reached a state of halting uncertainty'. Government was thrown into a state of paralysis by the constitutional deadlock between the Houses of Lords and Commons. Churchill, in a letter to the King, described the position of the Liberal Government during the constitutional crisis as living: 'from day to day under the shadow of the axe' (cited in LeMay, 1979:197). Democracy, represented by the executive in the House of Commons, faced its sternest test from a hereditary and unelected House of Lords and needed to overcome the challenge of the Lords, if strong government was to be achieved. The 1910 Constitutional crisis was a clash between the democracy inscribed in the Commons and the authority of the Lords. The opposition of

the House of Lords was so fervent and formidable that it seemed the only measure available to the Government was to ask the King to create enough Liberal Peers to swamp the House of Lords. The magnitude of the problem facing the Crown and the Commons could be measured by the fact that the King would have had to create 500 new Peers to balance the Conservative presence in the Lords. In the end, the Crown and the Liberal Government agreed to a compromise and delayed implementing the ultimate sanction over the Lords until the outcome of another General Election in December 1910.

On the 14 April 1910, the Parliament Bill, incorporating the Committee's proposals for the future of the House of Lords, was passed in the Commons by a majority of 100. The Bill was passed up to the House of Lords with an implied threat from Prime Minister Asquith that, if the Lords rejected it, the Government would advise the Crown of the steps necessary to ensure its passage. On 18 April 1910, the Finance Bill was reintroduced into the Upper Chamber with the Lords passing it, thus, in accordance with the doctrine of the mandate, accepting the results of the 1910 General Elections. The Liberal Government still vigorously persisted with the Parliament Act in an attempt to permanently address the Lords power of veto and stop the potential for discord and disharmony that the Lords could potentially wreak, particularly when Liberal Governments were in power.

ii) The General Election of December 1910:

The December 1910 General Election was the last opportunity for democracy and the will of the people to resolve the impasse between the two Houses of Parliament. A

resounding Liberal victory would force the House of Lords to acquiesce, while conversely, a solid Conservative victory would endorse the House of Lords resistance to the Budget. In the event, the General Election of December 1910 left Parliamentary government as delicately poised as ever, with 272 Liberals and 272 Conservatives and Unionist seats in the House of Commons. In spring 1911, the Parliament Bill was reintroduced into the House of Lords, with the Government and the new King George VI agreeing contingency plans to create enough Peers, if necessary, to force the Parliament Bill through the House of Lords. In a repeat of the 1832 scenario, the House of Lords gave way, with 300 Unionists abstaining from the vote, but 114 Conservative *die hards*, as they became known, resisting the Parliament Act to the bitter end. The Liberal Government won the vote on the Parliament Act in the Upper Chamber by 131 to 114 votes, a slender majority of 17. The terms of the Parliament Act 1911 limited the House of Lords powers of delay over legislation from the House of Commons to 3 Parliamentary sessions or 2 years. The Lords' powers of intervention over money bills were severely curbed, so they could only delay a money bill for a month.

In Conclusion: The Triumph of Democracy?

Economic and structural change in society created the pressure for Parliament to modernise and introduce democracy. The ideas of democracy initiated by individuals and groups of agents was shaped by the British Political Tradition and owed much to the ideas of elitism and embryonic ideas of representation and responsibility inherent in liberal constitution of Mixed Government 1688 to 1832.

The idea of democracy which emerged following the Great Reform Act (1832) continued much of the tradition of elite top-down power inherited from the liberal constitution. Consequently the British Political Tradition bridged the divide between the liberal and the liberal-democratic constitution ensuring the stability of institutions and that change would be gradual and mediated. This idea of democracy continued to shape the development and operation of institutions throughout the Nineteenth Century to the Parliament Act (1911). Throughout the development of democracy in the Nineteenth Century neither the ideas which emerged from the tradition nor the institutions were cast in stone but continued to evolve

The development of democracy in the Nineteenth Century was marked by a shift to a liberal notion of representation which developed with the extensions of the franchise in 1832, 1867 and 1884. However, the British Political Tradition remained marked by a conservative notion of responsibility, emphasising that government knows best. Of course, the torch of strong, responsible government gradually passed from the House of Lords to an elected House of Commons and, particularly, an executive drawn almost exclusively from the latter. As such, strong, authoritative government in the House of Commons was still underpinned by a limited notion of representative democracy, but the legacy of pre-democratic age continued to exist and, throughout the Nineteenth Century, the Lords continued to exert power as an independent and (almost) equal branch of the legislature. During the years between 1832 and 1880, the House of Lords and Commons co-existed together in constitutional harmony with the power still effectively exercised in

an elite top-down hierarchical manner, but with the balance of power increasingly coming to reside more with the House of Commons.

The 1867 Second Reform Act and the 1884 Third Reform Act expanded democracy and further strengthened the authority of the House of Commons over the House of Lords. Democracy ensured that the Commons could more legitimately claim to represent the will of the people and this, in parallel with more collectivist legislation particularly from Liberal Governments, created a cleavage and tension with the House of Lords, which represented private property and the Constitution.

The Salisbury Doctrine of the Mandate represented an Indian summer for the House of Lords. The events which unravelled between the House of Lords and Commons after 1880, and which culminated in the Constitutional crisis of 1909 to 1911, represented a last stand for an old tradition of oligarchic power in the face of a rising challenge of democracy. The passage of the 1911 Parliament Act was a triumph of democracy over oligarchy and produced the unconditional surrender of the House of Lords. The Parliament Act (1911) ushered in a new constitutional era and defined a new statutory relationship between a dominant House of Commons and a junior House of Lords. The constitution would be underpinned by democracy, but the tradition of strong, responsible Government would continue, but this time exclusively through the executive in the House of Commons.

During the years between the 1832 First Reform Act and the Parliament Act (1911), the limited liberal idea of representation and the conservative idea of responsibility gained strength and credence to become the dominant view of democracy underpinning discourse and processes in both the Houses of Lords and Commons. The British Political Tradition was crucial in inscribing into democratic Government a number of features of elite, top-down, power, including: trust in the executive; an unequal and hierarchical distribution of power between the executive and legislature; and limited participation by the legislature, let alone popular will, in the decisions of government. The notion of strong, responsible Government, inherited from the pre-democratic liberal constitution, continued to dominate responsibility, but the idea of representation changed to incorporate free and fair elections.

The passage of the Parliament Act (1911) was a major turning point in the process of democratisation. However, it didn't fundamentally change the nature of British democracy. The process of democratisation began with First Reform Act (1832), gained momentum with the Reform Acts of 1867 and 1884 and reached a crescendo with the Parliament Act (1911). The ending of the House of Lords veto removed the last obstacle to the House of Commons and ensured the executive became dominant over the legislature in both the Houses of Lords and Commons. This reinforced, rather than challenged, the British Political Tradition and guaranteed that elite Government would continue, but with the executive in the House of Commons as the new dominant elite.

Chapter Six:

The House of Lords 1911 – 1951

The aim of this chapter is to demonstrate how the Parliament Act (1911) transformed the powers and authority of the Houses of Lords and Commons. The years between 1911 and 1951 are significant in the constitutional development of the Houses of Lords and Commons, because the foundations were laid for the modern, bi-cameral, system of Government, which is still recognisable and discernable in 2012.

In the previous chapter it was demonstrated how the discipline of political parties in the House of Commons enabled the majority Party in the Lower Chamber to dominate the legislature and, as a consequence, the Executive. It was suggested that the subordination of members to the party whip was indicative of a new form of elitism within Parliament, founded upon Party, and a new form of top-down government, based on executive dominance of the legislature. However, it was also argued that the executive dominance over the legislature was incomplete, as the House of Lords power of veto allowed it to weaken and dilute the legislation of the House of Commons. It was argued that this undermined and weakened the power of both the House of Commons and the House of Lords and, crucially, made strong, responsible Government very difficult, at best.

This chapter illustrates how the British Political Tradition and its endorsement of elite, top-down government helped to shape the Parliament Act (1911) and defined the new powers and authority of governing institutions which emerged in its aftermath. The passage of the Parliament Act (1911) was itself shaped by the British Political Tradition

and created new form of elite, top-down, government within Parliament by establishing a strong executive in the House of Commons which was dominant over a weak and reticent legislature in both the House of Lords and Commons. It is demonstrated how, throughout the development of democracy from 1911 to 1951, the British Political Tradition became further inscribed into the discourses and processes of Parliament, underpinning crucial aspects of the political system, such as: trust in the executive; a top-down and unequal distribution of power between the executive and legislature; minimal participation by the electorate; and a centralised unitary state, wielding enormous power.

The Parliament Act (1911) was an important step in an organic process of democratic development, designed, in large part, permanently to address the problem of divided government, by ensuring that the executive in the House of Commons could dominate the legislature in both the Houses of Lords and Commons. As such, the objective of the Parliament Act was to ensure that elite, top-down, power would emanate solely from the executive in the House of Commons and the House of Lords would, as a consequence, play a junior and subservient role

As argued in the previous chapter, the passage of the Parliament Act (1911) ensured that House of Commons was dominant over the hereditary, and unelected, House of Lords. However, an offshoot of the new democracy was that the right of an unelected House of Lords to participate in a bi-cameral system of Government was challenged. Here, it became clear that the House of Lords' undemocratic composition and lack of democratic credence was a fundamental weakness which potentially undermined its authority, as a

secondary Chamber, to revise and amend the legislation of the democratic first Chamber. This chapter demonstrates that this was an anomaly in the constitution which the House of Lords overcame by providing an indispensable service as a secondary Chamber for the revision of legislation, while unconditionally deferring to the House of Commons superior authority.

Section One examines the recommendations of the Bryce Conference (1917) which represented the first attempt to reform the House of Lords powers and composition following the Parliament Act (1911). This section scrutinises the Bryce Conference's ideas for the establishment of an elected chamber and further analyses the potential ramifications of an elected Upper Chamber for the House of Lords and the House of Commons. The argument here is that the House of Commons feared an elected upper Chamber would undermine its hard-won power, while, conversely, the House of Lords was satisfied with its existing, limited, powers, if it could retain its hereditary composition. Throughout the arguments for and against an elected chamber, a commitment to the British Political Tradition was crucial in ensuring that Parliament resisted the clamour for the House of Lords to be an elected chamber; both the House of Commons and House of Lords had a vested interest in ensuring the House of Lords did not become an elected Chamber. The Bryce Conference's recommendations about the powers of the House of Lords are examined in detail and it is shown how these recommendations provided the parameters for House of Lords power throughout the Twentieth Century.

Section Two concentrates on how the Bryce Report's (1917) recommendations as regards powers were interpreted by the House of Lords. This section shows how the House of Lords utilized its remaining legislative powers to act as an effective, secondary, revising Chamber to, mostly, Conservative Governments during the inter-war years (1918-1939) and how it adapted to the minority Labour Government (1924) and the weak majority Labour Government (1929-31). The purpose here is to illustrate the Upper Chamber's politically partisan nature and show how this coloured its contrasting attitudes to Conservative and Labour Governments. The House of Lords offered full, though at times qualified, support to Conservative Governments legislation, while providing intransigent opposition to the legislation of Labour Governments. The objective in this section is to illustrate that the Upper Chamber, despite being conscious of its limits as an unelected Chamber, still had scope to intervene in legislation, if the government in the House of Commons was either in a minority or had a slender majority.

Section Three concentrates on the House of Lords contribution to the Labour majority Government in the House of Commons (1945–51). The aim here is to compare the Upper Chambers' intransigence towards the weak Labour Governments of 1924 and 1929-31 with the co-operative approach towards the first Labour Government to achieve a sizeable majority in the House of Commons. This section analyses how the House of Lords, despite its ingrained Conservatism, and its ideological antipathy towards the Labour Government's nationalization programme, passed legislation which it strongly opposed.

Section One: The Parliament Act 1911

The Parliament Act divided Bills into two categories: Money Bills; and a very broad category of ordinary or other Bills. A Money Bill was designated as such by receiving a certificate from the Speaker of the House of Commons under the criteria specified in the Parliament Act. A Money Bill could be presented for Royal Assent one month after being sent up to the Lords, with or without the Lords agreement, and with amendments. The Lords can debate a Money Bill, but can delay it for no longer than a month. The Parliament Act decreed that, in relation to ordinary, non-money Bills, the Lords could only delay a Bill from passing for three Parliamentary sessions, or a maximum of two years, before it could be presented for Royal Assent.

The main effect of the Parliament Act 1911 was to transform the Lords power of veto over Commons legislation into a power of delay. In the event of the Lords enforcing its power and delaying Commons legislation up to the maximum two years, the Bill finally presented for Royal Assent must be identical to the original sent to the Lords by the House of Commons. The final draft must include amendments agreed by both House of Parliament and any minor changes must be certified by the Speaker, due to the lapse of time. The Parliament Act did not cover Provisional Order Bills, Private Bills or Delegated Legislation.

Bromhead (1958:141) reflected on the effect of democracy on the constitutional relationship between the Houses of Lords and Commons when he argued:

The strife of the early years of the Twentieth Century was caused not only by difficulties between Liberals and Conservatives, but also by the failure of the House of Lords to accept the implications for itself of the changes of the character of political power.

As democracy expanded, and the mass of the population became enfranchised, the House of Commons came more directly to represent and translate the will of the people. Democracy strengthened the House of Commons as the democratic branch of the Constitution representing the will of the nation, at the expense of the non-elected, hereditary, Chamber, representing the traditional power of property.

The terms of the Parliament Act 1911 severely curtailed the Lords powers and influence over Commons' legislation. The removal of the Lords from the sphere of finance greatly diminished the Upper Chamber's influence over the Commons, but the destruction of the Lords' power of veto had the effect of nullifying the most potent constitutional weapon in the Lords' armoury. The House of Lords no longer possessed the means by which to undermine and challenge the authority of the House of Commons and create Constitutional deadlock. The Parliament Act had the effect of ensuring that the majority party in the House of Commons had a monopoly of power over the legislature in the Houses of Lords and Commons. As such, the Parliament Act (1911) was clearly underpinned by a commitment to strong, responsible government. This was achieved by

ensuring that the House of Commons would be allowed to govern the nation, relatively unhindered by the House of Lords.

The Parliament Act (1911) also included a provision reducing the maximum duration of a Parliament from seven to five years, ensuring a shorter interval between democratic elections. The reduction in the lifespan of a Parliament was a reflection of the growing importance of democracy in relation to Parliamentary government and was designed to ensure that there would be more regular elections to the House of Commons, which would therefore more accurately reflect the will of the nation. However, the Parliament Act (1911) still allowed the House of Lords a modicum of power, by decreeing that the Upper Chamber still retained the right to veto any Commons legislation extending a Parliament beyond five years.

i) Parliament Act (1911): An Infamous Preamble

The Preamble to the Parliament Act stated: 'Whereas it is intended to substitute for the House of Lords as at present a second chamber constituted on a popular instead of an hereditary basis, but such a substitution cannot immediately be brought into operation' (cited in Crick, 1964:122).

The Liberal Government passed the Parliament Act as a temporary expedient to deal with a constitutional crisis by strengthening democracy and the position of the House of Commons in relation to the House of Lords. As such, the Parliament Act reflected the dominance of democracy in the constitution and reinforced the supremacy of the House

of Commons as the democratic arm of the constitution representing the will of the people. However, the new eminence of democracy in the constitution also raised the question of whether an unelected Chamber, such as the House of Lords, could legitimately participate in democratic government. The Parliament Act (1911) brought the question of whether the Upper Chamber should be a democratically elected Chamber to the surface. The Liberal Government envisaged the Parliament Act as the first step towards transforming the Lords from a non-elected hereditary Chamber into a democratic and representative chamber. The possibility of an elected House of Lords opened a Pandora's Box of potential problems for the constitution and the issue of election continued to cast an indelible print over all ideas for reform of the House of Lords throughout the twentieth century to the present day (2012).

A comprehensive reform of the composition and powers of the Upper Chamber was needed and a new definition of the constitutional role of a secondary chamber in the new democratic constitution needed to be established.

ii) The Bryce Conference 1917

In 1917, a Conference, under the Chairmanship of Lord Bryce, was commissioned by the Government to consider the future of the House of Lords. The Bryce Commission was cross-party and included members of both Houses. It consisted of 32 of the most distinguished men in the nation, both within and outside Parliament. The Bryce Commission's objective was to establish workable criteria for the Second Chamber's powers and composition as a democratic Chamber. The Bryce Report deserves special

attention in the annuls of Twentieth Century House of Lords' history, because, although the bulk of its recommendations never came to fruition, its definition of the powers of the House of Lords in the face of an overwhelmingly dominant executive in the House of Commons provided a blueprint for the constitutional role of the House of Lords throughout the Twentieth Century.

Lord Bryce's *Conference of Reform of the Second Chamber* published its concluding report in 1918, outlining four main functions of the House of Lords under democracy: (1) the examination and revision of bills brought up from the Commons; (2) the initiation of bills of a non-controversial character; (3) the interposition of delay (and no more) in the passing of a bill into law as may enable the opinion of the nation to be adequately expressed upon it; and (4) full and free discussion of large and important questions when the House of Commons is otherwise disposed.

The Bryce Commission's Report was the first, comprehensive, study of the work of the House of Lords as a secondary revising Chamber in the UK and its definition of Lords' powers, with some minor modification, endured throughout the Twentieth Century. The examination and revision of bills brought up from the House of Commons is the most important function of the Lords in its capacity as a secondary Chamber. The introduction of the *Guillotine procedure* into the House of Commons in 1918 meant that rules governing the time the Commons could debate a Bill were stringently enforced and, consequently, a Bill could pass through the Commons with large swathes and clauses not discussed. As such, the House of Lords plays a valuable role in examining, revising and

amending clauses and statutory instruments that would otherwise never be examined, due to the constraints on time in the Commons. The increased volume and intricacy of legislation necessary to govern in the modern world, coupled with the limits on Commons time, means the House of Lords plays a useful role both in reducing the pressure of legislation in the Commons and in improving its quality. Indeed, Crick (1964:112) concludes: 'By far the most important work of the Lords is the examination and revision of bills coming up from the Commons'.

The second function Bryce identified for the Lords, 'The initiation of bills of a comparatively non-controversial character', was merely a statement of traditional common practice and tacitly accepted by both the Lords and the Commons. Historically, there had been two restrictions on a government introducing legislation into the Lords before the Commons. Firstly, there was the accepted practice that all Supply bills originated from the Commons and, secondly, the unwritten rule that all major and contentious legislation must begin in the Lower House. The House of Lords were left with a very limited scope to initiate legislation and were restricted to piloting purely routine and mundane legislation of a non-controversial character.

Bryce's third function for the House of Lords was as a secondary revising Chamber which could delay legislation to: 'enable the opinion of the nation to be expressed upon it'. Bryce's third function was by far the most contentious, and potentially far-reaching, recommendation about the Lords' powers in democracy. Bryce implied that the Lords had the right to impose their power of delay over legislation where it suspected that the

opinion of the nation was indeterminate, deeply divided or not consulted. The Lords power of delay, "to enable the opinion of the nation to be expressed' '(Crick, 1964:111) was an echo of the doctrine of the Mandate and implied that, in relation to any contentious legislation or issue affecting the Constitution, the Lords should have the right to the delay the legislation until a referendum decided the opinion of the people. The suggestion that an unelected Lords had the right to challenge the democratic authority of the Commons in the name of the public interest was potentially highly divisive and a challenge to democracy. As Crick (1964:112) argues: 'the presumption is now, at least amongst Labour and Liberal constitutional writers, that the Lords or indeed any second chamber are not the proper body to set themselves up as interpreters of the nations will over the Commons'.

As emphasised earlier, Bryce's third function regarding the House of Lords' power to delay was by far the most contentious, because it had echoes of the Salisbury Mandate of the Eighteenth Century, which had undermined the authority of the executive and made strong, responsible Government difficult. The House of Commons embodied the democratic turn and its legislation represented the democratic will of the nation, while the Lords remained a non-elected, secondary, revising Chamber. The House of Commons' authority was legitimised by democracy, while the Lords, as a non-elected and hereditary chamber, had no mandate or legitimate authority to delay or interfere with the Commons' legislation. The Lords' powers of delay and amendment were restricted by democracy and limited primarily to making recommendations regarding the details, rather than the fundamentals of legislation. As such, Crick (1964:112) contends that the purpose of the

Lords was: 'to influence, but not to determine the course of legislation; and to be a chamber concerned with administrative implication and method rather than the making of political decisions'.

The fourth function that Bryce saw the Lords as performing was as an arena for the full and free discussion on major issues of government policy. Certainly, the House of Lords performs an important constitutional role as a Secondary Chamber monitoring the government's stewardship of the nation. In this vein, Bromhead' (1958:221) contends that the Lords should act: 'As check on the executive, as a body which discusses what the government is doing or not doing, has done or has not done, ought to do or ought not to do'. In terms of the debate and amendment of legislation, the Lords have functions that parallel those of the Commons. The major advantage that the House of Lords has over the Commons is that the Government is not responsible to the Lords and therefore debate takes place in a less adversarial, more congenial atmosphere, than in the House of Commons.

The House of Lords has more time to debate legislation in depth and this can enhance the quantity and the quality of legislation debated, amended and passed. Bromhead (1958:221), writing in 1957 of the Lords as a secondary debating Chamber, contends: 'In terms of the time spent in debate, and of quantity and quality and variety of subjects debated, has so greatly increased in the past half century as to be almost entirely transformed in character'.

By far the most contentious issue the Bryce Commission addressed was the complex problem of House of Lords' composition. The Bryce Report produced the first detailed proposals to make the House of Lords an elected chamber by proposing that the Lords should consist of two democratic elements, with the first element consisting of 246 members representing geographical areas and elected by the single transferable vote. The second elected element should consist of 80 Peers elected by a joint committee of both Houses of Parliament, with all parties represented. During the first election, only Peers and 5 Bishops could stand and, in subsequent elections, hereditary Peers would fill only half the vacancies. A minimum of 30 hereditary Peers and Bishops would be represented in the Lords at any one time. Election to the new assembly would be for 12 years, with one third retiring every four years.

The House of Commons endorsed three of the four functions recommended by Bryce, with the only the highly contentious issue of the Lords right to delay legislation until after a referendum being rejected out of hand. Here, Shell (1992:12) writes: 'It has always seemed artificial to entrust to an unelected chamber the task of deciding when delay should be imposed in order to enable public opinion to be expressed on a matter'.

The issue of composition caused major problems for the Bryce Commission, with the 32 members of the Commission being divided over the issue of democracy and elections to the House of Lords. The Bryce Report's recommendation for an elected Upper Chamber seemed, at face value, to fit with the move towards greater democracy in relation to the institutions of Parliament, but, in reality, democracy in the House of Lords had the

potential to undermine the authority of the House of Commons and unhinge the constitution. In this vein, Smith (1992:179), lamenting the effect of elections to the Upper Chamber, argues: 'A second chamber which merely mirrored the balance of the parties in the Commons would be superfluous, and one in which conflicted with it would be even more obstructive, because it claimed a popular mandate of a real kind'.

The Bryce Report's recommendation that the House of Lords should have a significant number of democratically elected members was, of course, a highly sensitive issue for the House of Commons. Ideas for introducing democracy to the House of Lords faced severe practical problems, such as the choice of electoral system and the size of constituencies, but the greatest problem for the House of Commons was the potential mandate that an elected House of Lords would receive from the nation.

The significance of democracy to institutions and processes can be gleaned from the fact that an elected House of Lords would be empowered with a mandate and, therefore, had the potential to challenge and undermine the authority of the House of Commons. Ideas about the composition of the House of Lords have always been fiercely debated, because the nature of the composition, whether elected or non-elected, would almost inevitably determine the powers of the House of Lords.

The arguments pertaining to whether the House of Lords should be an elected or non-elected Chamber have always been influenced by the omnipotent presence of the British Political Tradition. Democracy empowered the executive within the House of Commons

and diminished the power of the House of Lords, as a consequence giving the executive the platform needed for strong, responsible, government. In contrast, the extension of democracy to the House of Lords would have armed it with a democratic mandate of its own and given the Lords the legitimacy and authority to challenge the supremacy of the Commons. To guarantee the supremacy of the House of Commons, it was necessary to ensure that democracy remained solely concentrated in the Commons and that the House of Lords remained an undemocratic and unelected chamber. The British Political Tradition's emphasis upon strong, responsible government through the executive in the House of Commons ensured that the House of Lords, shorn of democratic authority, could be no more than junior, and largely subservient, partner to the House of Commons.

With this issue in mind the Bryce Commission remained deeply divided over the question of democracy in the House of Lords and was unnerved by its potential to disrupt the constitutional status quo. Senior figures in the Bryce Commission, such as the Marquis of Lansdowne, showed strong dissent from the idea of elections to the Lords. As Bromhead (1958:262) argues: ` the volume of dissent in the Bryce Conference was such that no action was taken on its report`. The strong divisions within the commission over composition and democracy and unease at its potential to undermine the House Commons authority conspired to relegate the Bryce Report to the backburner of politics.

The issue of democratic composition was fudged again in 1918 and further schemes, broadly in line with Bryce's ideas, were advocated in 1920, 1921, 1922 and 1927; all floundered on the rocks of debates about its composition and democracy.

In the absence of any direct power or authority over the Commons, the House of Lords had to concentrate upon using its remaining legislative powers and reinventing itself as a secondary, revising Chamber, scrutinising the legislation of the Commons. So, as Shell (1992:128) argues: 'The legislative work of the House of Lords is generally regarded as its most important task'.

iii) The House of Lords Powers: Bi-Cameralism at Work

This section analyses the powers of the House of Lords and assess how it utilized its limited powers to be an effective secondary revising Chamber in a bi-cameral system of government.

Parliament's legislative process requires a Bill to pass three Readings in the House of Commons and then pass three Readings in the House of Lords, before receiving a Royal Assent and being enacted into law. The Lords' legislative process diverges from the Commons, because, as a secondary revising Chamber, it includes more devices for the scrutiny of legislation through Committees and more capacity for the amendment and revision of legislation.

The House of Lords is forbidden to revise or amend any bill dealing with Aids and Supplies and, in accordance with ancient privilege, all legislation dealing with Aids and Supplies must originate from the House of Commons. In modern times, Finance Bills deal with taxation and Consolidating Funds Bills authorise expenditure, collectively they are known as Supply Bills. The Lords' power over Supply Bills is very limited, but a

Supply Bill must pass the House of Lords to receive Royal Assent. The annual Finance Bill of the government, incorporating budget and taxation proposals, does receive some debate at the Second Reading Stage, during which time the Lords takes the opportunity to assess the government's running of the economy. The Bill is then passed through a Third Reading unamended to receive Royal Assent. The House of Lords does not even debate Consolidated Fund Bills.

In theory, a bill can originate in either the Lords or the Commons, but, in practice, bills containing major measures of government legislation must originate from the House of Commons as the Lower Chamber are the nation's elected representatives. The First Reading of Bill in the Lords is a formality, allowing the Chamber to become acquainted with the existence of the Bill. During the Second Reading, the House of Lords consider the principles of the Bill and a Government Minister extols the merits of the Bill and the reasons why the Government wants it passed. The Second Reading also affords all interested parties the opportunity to make speeches for or against the Bill. The Second Reading can also be a prelude to a peer introducing an amendment to a Bill.

The Second Reading provides a platform for discussion, with all interested parties, including government and opposition spokesmen, minor parties, cross benchers, trade unionist and industrialists, having the opportunity to voice an opinion, whether they have a vested interest or not. At the end of the Second Reading, a vote is taken and here the Lords have to walk a fine line. In the House of Commons, an opposition vote against the government is a normal part of the adversarial politics of that Chamber. In the Lords,

however, an opposition vote against the Government would represent a direct challenge to the Government, thus creating constitutional difficulties. There are transparent constitutional dangers in the Lords, as an unelected secondary Chamber, challenging the will of the democratically elected Commons. The Lords has to navigate a fine line between voicing opposition and destroying the Bill.

In the House of Lords, Conservative Peers outnumbered the Labour Peers 2–1 from 1911 to 1955 and this had a major influence on Second Readings in the Lords. The ingrained Conservative majority made it relatively easy for Conservative Governments in the Commons to pass legislation through the Lords. In contrast, Labour Peers were in a difficult position because they knew that opposition to a Conservative Government at Second Reading would make no difference to the bill because of their numerical deficit. A further concern was that Labour opposition to a Second Reading would create a precedent for the future; whereby Conservative Peers would vote against a Labour Government on a Second Reading, and because of their numerical superiority seriously thwart a Labour Government's legislation.

Bromhead (1958:142) argues: 'the Conservative majority in the Lords has developed a policy of not voting against a second reading of bills brought by a Labour government'. The Second Reading allows the House of Lords the opportunity to table amendments to the bill, with a high profile contentious bill likely to attract a fair number of amendments, while a non-controversial bill may attract none. After the Second Reading, the Bill goes for detailed scrutiny at the Committee and Report Stages.

In theory, after the Second Reading, every bill will enter the Committee Stage, but, in practice, the Lords do not go into committee on Supply and Money Bills and this stage is bypassed before the bill passes a routine Third Reading and receives the Royal Assent. For ordinary bills, the Committee Stage can be cancelled and the order of commitment discharged, if the bill is so benign as to have attracted no amendments.

So, as Crick (1964:112) writes: 'The Committee stage in the Lords is far from a mere formality'. The Committee Stage produces numerous proposals from both the Government and Opposition parties, with the bill receiving detailed examination clause by clause and amendments cited from the earlier Second Reading grouped for discussion. Throughout the Committee Stage, further new amendments may be added and discussed by the Committee.

The Committee Stage takes place on the floor of the House of Lords and involves all members present. The absence of a Speaker in the House of Lords means that there is no procedure for discussion or the selection of amendments. The House of Lords as a whole organises the discussion of bills and selects appropriate amendments with the result that amendments that fail to be addressed in the Commons, because of their relevance or the constraints of time, can be debated in the Lords. In extreme cases, the Leader of the House of Lords may ask for an amendment to be withdrawn because it is irrelevant to the bill and, behind the scenes, clerks and party whips exert pressure to ensure the bill is not weighed down with irrelevant amendments.

The smooth passage of a bill through the Committee Stage depends on the number and the complexity of the amendments that are tabled. High profile government legislation will attract a large number of amendments, while complicated bills, involving intricate measures, can also require considerable amendment, not least when the government adapts earlier proposals and fine tunes earlier drafts of the bill. The Committee Stage gives the House of Lords a clear opportunity to scrutinise the intricacies of Commons legislation and, possibly, suggest detailed amendments aimed at enhancing the quality of the bill.

A bill that has passed the Committee Stage with the amendments agreed upon then proceeds to Report Stage. The Report Stage gives exactly the same people the opportunity to scrutinise the bill again, but this time the main benefit lies in the examination of amendments added during the Committee Stage. The Report Stage also allows a third opportunity for amendments to be added to the bill, even at this late stage. At the end of the Third Reading, when the amendments are agreed upon, the Lords have the final say on the bill with the words 'that the bill do now pass' (cited in Shell, 1992:138) and the bill goes forward, with government agreement, for Royal Assent.

In the constitutional rules that govern the relationship between the House of Lords and Commons, there is one unwritten rule that underpins the whole process: 'The government in power whatever its complexion, will have its way in the long run' (Bromhead, 1958:143). The House of Commons and the government, democratically elected, are in

an unassailable position and can override any Lords' amendment, ensuring that the government has the final say on the complexion of a bill. This system reflects an elite, top-down view of government, associated with the British Political Tradition, and ensures that the executive has the ultimate responsibility for policy. Indeed, Bromhead (1958:143) contends: 'This is indeed one of the fundamental principles of the operation of the whole of contemporary British politics; it shapes relations between the government and the opposition in both Houses of Parliament.'

Once a bill has been passed by the House of Lords and the Commons, the House that has been second to consider it and to insert amendments returns it to the first House for consideration of those amendments. In the example of a bill starting in the Commons, and then amended by the House of Lords, the bill is returned to the Commons for the Lords amendments to be examined. The Commons has the choice either to accept the Lords amendments, in which case the bill becomes law, or reject the amendments citing reasons for the disagreement. In that case, the bill is returned to the House of Lords with the reasons for disagreement attached and, usually, the House of Lords acquiesce and the bill proceeds from the Lords in the form the government wants to receive the Royal Assent.

The House of Lords can, in extreme cases, where its amendments have been rejected by the Commons, set up a committee to outline the reasons why it wants the amendments inserted, before returning the bill to the Commons. If this happens, the Commons then debate the Lords reasons for the amendments and the bill bounces back between the two Houses until an agreed version is achieved. The House of Commons may choose to relent

or agree a compromise on the final draft of the bill. As such, the executive has the final say over the bill and will either enforce its will with impunity, or can, voluntarily, agree to the Lords' amendments, but its judgement is final.

The function of the House of Lords is completed by their work on Private Bills and Provisional Order Bills. The House of Lords procedure on Private Bills provides an echo of how Parliament worked in the Eighteenth Century. Private bills are bills sponsored by a variety of public or quasi-governmental bodies, such as Universities or Local Authorities, who are asking for legal powers for a specific purpose. A University may want to alter its charter or a Local Authority may want to build a bridge, close a river or extend its revenue raising powers. A Private Bill will be heard by a sub-committee of 6-12 members and all parties with a vested interest are allowed to express an opinion on the proposed Bill. The House of Lords work on Private Bills is routine and mundane and the Lords share about half the total number of private bills with the House of Commons.

Section Two: The House of Lords - The Inter-War Years

The years following the end of the First World War saw the emergence of a new political party, the Labour Party, and, with it, to an extent, a new ideology, Social Democracy, into Parliament. The rise of the Labour Party in Parliament, first as the main party of opposition and later as a credible party of government, meant that the House of Lords had, for the first time, to face the possibility of a Labour majority Government in the House of Commons implementing a radical manifesto. The emergence of the Labour

Party and a new ideology of 'Socialism' or Social democracy into Parliament, with some commitment to public ownership and equality, represented a potential challenge to the traditional principles inherent in the House of Lords. The House of Lords represented the principles of hereditary privilege, hierarchy and private property and played a traditional role as custodians of the Constitution, but, potentially, all those principles and powers were susceptible to challenge and scrutiny from a social democratic party with a majority in the House of Commons. The Labour Party's programme and its attitude to the House of Lords were formulated at the 1918 London Conference in a document *Labour and the New Social Order* (cited Bromhead, 1958:264). The Labour programme made a clear and unequivocal statement that no attempt by a hereditary and unelected House of Lords to interfere with the legislation of a Labour Government would be tolerated. The programme suggested that, in a scenario in which an intransigent Conservative majority in the House of Lords frustrated the legislation of a majority Labour Government in the Commons, comprehensive reform of the membership of the House of Lords should be enacted.

In 1933, at the Labour Party Conference in Hastings, Sir Stafford Cripps advocated a radical plan to abolish the House of Lords completely (cited in Bromhead, 1958:264). In 1934, the Labour Party modified its plans for the Lords by advocating abolition as an ultimate sanction only if an intransigent House of Lords continually thwarted and negated a Labour Government's legislative programme. The Labour Party would only tolerate the existence of the House of Lords in Parliament in its existing capacity as a secondary chamber for the revision and amendment of legislation. In the event that the House of

Lords interpreted its constitutional powers too aggressively and began to undermine a Labour Government's legislative programme, then the Labour Government reserved the ultimate right to abolish the Upper Chamber.

Britain had developed into a mass participatory democracy by 1928, as the franchise was extended to finally include women on the same basis as men. In an industrial nation in which the working class represented a majority of the electorate, the Labour Party emerged as a discrete and distinct political party in Parliament with the objective of giving political representation to a formidable sector of the electorate. As the majority of the electorate were the working class, it seemed feasible the Labour Party, as the party that represented working class interests, would, in the future, form a majority government in the House of Commons and have the mandate to implement a radical programme.

The spectre of a Labour Government implementing a radical programme was clearly an anathema to the House of Lords and prompted Conservatives in both Houses of Parliament to adopt a more entrenched attitude to the position of the House of Lords.

Schemes for the reform of the House of Lords aimed at strengthening it as a bulwark against the rising tide of 'Socialism/Social democracy' were mentioned in speeches from the throne in 1920, 1921 and 1922. In 1925, a Cabinet Committee proposed a scheme suggesting an Upper Chamber of 350 nominated members, partly nominated by government and partly elected by Peers. Bromhead (1958:263) argues;

The proposals of 1927 were aimed almost entirely at strengthening the House of Lords as an instrument for resisting the danger of irresponsible, wild and unconstitutional measures, such were at that time expected to be produced by Labour government if one should come to power with a sound majority in the Commons.

The proposals for the reform of the House of Lords in the 1920s were politically motivated and designed purely to emasculate the radical programme of a Labour Government. Baldwin (1983:10) writes of the proposals: 'These received much criticism on the floor of the House of Commons and although a censure motion was not carried they were dropped in the summer of 1927.' He argues that attempts to reform the House of Lords were undemocratic and lacked legitimacy, because they were clearly politically motivated and designed primarily to strengthen the Conservative Party against a potential Labour Government. This ran against the principle that democracy represented the will of the people, with many MPs arguing that a Labour government in the Commons with sizeable electoral majority had the legitimate authority to implement a radical programme. The Lords had a limited power merely to revise and amend legislation, not block it, and Labour supporters saw its role as very limited; if it played a more active role that would be undemocratic.

Schemes for House of Lords reform ran against the grain of democracy and for this reason floundered. However, while there was no resonance in arguments for an increase

in the power of the House of Lords, executive government remained the order of the day and that was perfectly compatible with the British Political Tradition.

The inter-war years did not see the emergence of a majority Labour Government; rather the period was dominated by Conservative Governments. The Conservative Party either governed alone or as a dominant partner in National Governments. The Labour Party governed only briefly as a Minority Government in 1924, and again between 1929 and 1931 and never achieved an electoral mandate to implement a wide-scale radical programme.

Although it remains conjecture, the evidence suggests that, if the Labour Party had achieved a sizable majority in the House of Commons during the inter-war years 1918 to 1939, it would have been in a position to implement its legislative programme. The convention became that, once a political Party has achieved an electoral majority in the House of Commons, it is able to control the Executive and thus monopolise power. The Executive's dominance over both Houses of Parliament would have given a Labour Government the means to implement a radical programme, despite opposition from the House of Lords. A Labour Government, armed with a democratic mandate to implement a programme, and given the executive dominance of the legislature, would have been in a position to compel the House of Lords to acquiesce to its legislative programme.

i) *The House of Lords: Conservative Governments 1918 -1939*

Bromhead (1958:147) argues: ' Between the wars the House of Lords was by no means always subservient to the wishes of the Conservatives or Conservative dominated ministries which were in power throughout most of the period'. Although Conservative Ministries dominated the House of Commons throughout the inter-war years, the passage of legislation through the House of Lords was not a formality. Indeed, as Bromhead (1958:148) argues: 'The official opposition in the Lords was smaller than ever, but the government was often opposed by large numbers of right wing Conservatives.'   The House of Lords used the full gamut of powers available to it as a revising Chamber to amend major Acts of legislation. So, while the British Political Tradition underpinned a commitment to executive dominance, ensuring that no major Act of Government of legislation could be defeated by the House of Lords, the Upper Chamber still succeeded in forcing major amendments to many Bills, sometimes against Government wishes.

The 1929 Local Government (Scotland) Bill, the Agricultural Marketing Bill (1923), the Housing Bill (1935) and the Unemployment Insurance Bill (1930) were all amended; amendments that the government accepted, rather than prolonging the process. In addition, the Children's and Young Persons Bill (1931) was significantly amended when the Lords forced the Government to concede over its provision for the abolition of County power to order Corporal Punishment for young offenders.

The House of Lords also opposed the National Government Coal Industry Bill (1937-38), which proposed the nationalisation of mining royalties and the creation of a national organisation to regulate the coal industry. The Lords devoted 8 sittings to the Committee

and Report Stages, introducing a total of 117 amendments. Sixteen divisions were called and a Labour proposal to convert the Commission into a National Coal Board was soundly defeated by 108-5 votes. The House of Lords altered the major principles of the Coal Bill and, in the final draft; the Commons accepted 109 amendments and met a further 8 with compromises. As Bromhead (1958:150) argues: 'Right down to 1939 the House of Lords was a place where even Conservative governments found themselves in difficulties with progressive legislation'.

The inter-war years in Britain were an era of economic and social turbulence in civic society, which, was mirrored by political turbulence in Parliament. The rise of the Labour Party in Parliament destroyed the old political order, ending the old Conservative-Liberal dominance and introducing new radical ideas of to challenge the previously dominant ideas of private property and limited government. At face value, the prospect of a Labour Government introducing a wide-scale radical programme into Parliament seemed to challenge the sanctity of private property, which was a principle zealously, adhered to by the House of Lords. This scenario challenged the House of Lords to use its secondary legislative powers to pass or amend legislation to which it was ideologically opposed. Certainly, the rise of the Labour Party, with its principles of egalitarianism and redistribution, potentially represented a challenge to the elite, top-down, values of the British Political Tradition.

However, as events transpired, the British Political Tradition remained largely unchallenged. The Labour Minority Government in 1924 suffered defeats at the

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Committee and Report Stages of major Bills, such as the Prevention of Eviction Bill (twice), the Legitimacy Bill and the London Traffic Bill (twice). Democratic elections resulted in a situation in which a minority Labour Government in the Commons did not possess a mandate from the electorate to implement major radical legislation. The major Bills that the Labour Government did manage to pass, such as the Unemployment Insurance Bill, the War Charges Validity Bill and the Agricultural Wages Bill, were significantly amended by the House of Lords. Of course, an essential pre-requisite for a government to be strong and authoritative, as emphasised by the British Political Tradition, is a working majority in the House of Commons, reflecting a strong mandate from the electorate. Without such a mandate from the electorate, the House of Lords was able to circumscribe Government legislation.

The size of a Government's majority in the House of Commons directly determines the control that Government has over legislation in the House of Commons and strongly affects the degree to which the House of Lords can use its secondary powers to intervene in Government legislation. This was exemplified during the second Labour Government 1929-31 which, once again, was a minority government in the Commons, lacking a firm democratic mandate. As Bromhead (1958:151) argues: 'Mr Ramsey Macdonald's second ministry 1929-31 produced rather more substantial differences between the Lords and the Commons'.

The Unemployment Insurance Bill in 1930 produced the most controversial clash between the Labour Government and the House of Lords. The Unemployment Insurance

Bill proposed to widen access to benefit by making it easier for claimants to receive the benefit. The Government included proposals such as introducing a transition benefit and relaxing the rule that claimants must prove that they were looking for work. The House of Lords amended the Bill by adding a clause restricting it to one year only. The amendment was rejected by the Commons and returned to the Lords, who promptly reinforced their demand for a one year limit, passing the amendment by 156-42 votes. A dangerous state of constitutional deadlock between the Lords and the Commons was only averted when the Government suggested a compromise that the Bill would be operable for 3 years only. The House of Lords accepted the compromise and the crisis passed, but it exemplified how, when a government lacked a firm democratic mandate, the House of Lords could use the full range of its powers as a revising chamber to make major inroads into Government legislation. The House of Lords was also successful in introducing amendments to a wide variety of other Bills, such as the Housing Bill, the Widows Orphans and Old Age Pension Bill, the Road Traffic Bill and numerous agricultural bills, including the Agricultural Marketing Bill.

As such, despite the dominance of the executive over the legislature, established by the British Political Tradition, there were still instances, particularly when the Labour Party was in government, when the House of Lords proved a formidable opponent of government.

Section Three: The Labour Government 1945–51

The aim of this section is to analyse how the House of Lords responded to governing as a secondary Chamber during the first majority Labour Government between 1945 and 1951. Thus far in this chapter the House of Lords has been examined as it reinvented itself as secondary revising Chamber during periods of Conservative Government. The emergence of a powerful executive, with a weak legislature, including a House of Lords with limited powers, reflected the British Political Tradition. So, despite the democratic turn, an elite, top-down system of executive Government remained intact. However, as also argued earlier, despite the executive's dominance over the legislature, a government's power could be constrained by the House of Lords, if it didn't have a clear majority in the House of Commons. The House of Lords was able to intervene in the legislation of both the minority Labour Government (1924) and majority Government of (1929-31) when the Labour Party held a slender majority.

The 1945 General Election saw the Labour Party sweep into power with a huge majority in the House of Commons, which meant that, for the first time, a Labour Government had an electoral mandate to introduce a large programme of radical legislation which included 8 proposals for nationalisation. The resounding scale of the victory by the Labour Party in the 1945 General Election gave it a strong public mandate to implement its radical programme. For the first time, the House of Lords was confronted with a Labour Government in the House of Commons whose radical programme was endorsed by a democratic election. The issue of nationalization was particularly opposed by the House of Lords, as it impinged on the hallowed principles of private property. The stage seemed set for constitutional confrontation between the Houses of Commons and Lords and

between two, antithetically opposed, ideas. A Labour Government in the Commons advocating public ownership was confronted by a House of Lords defending traditional ideas of private property.

The challenge facing the House of Lords was how to reconcile the inbuilt Conservative majority in the Upper Chamber to radical legislation, towards which it had ideological antipathy. This represented a crisis of conscience for the House of Lords and this problem was further compounded by the Upper Chamber's awareness of its own limits as an unelected and undemocratic Chamber, challenging the will of the democratic Chamber. In this section, it is argued that the ideas associated with the British Political Tradition dominated the process and ensured that the Labour Government in the House of Commons got its legislative programme passed, while simultaneously allowing the House of Lords to participate as a secondary revising Chamber, thus keeping its powers and principles intact.

Of course, the House of Lords in 1945 was no longer the Leviathan that it had been in 1911, when its confrontation with the Commons plunged the nation into a constitutional crisis. As such, the British Political Tradition had asserted a firm grip over the governing institutions of Parliament during the 34 years that followed the 1911 Parliament Act. As argued throughout this chapter, democracy transformed the nature of Parliament, by asserting the supreme authority of the House of Commons over the Lords and ensuring that, by 1945, the House of Lords was a more melancholic institution, using its amending powers in a limited capacity as a secondary revising chamber. A new elitism, based on

trust in the executive, came to prevail and a mantra of 'government knows best' became increasingly inscribed into Parliament at this time.

i) The House of Lords 1945 -51

The Leader of the House of Lords in 1945 was the Fifth Marquis of Salisbury who was entrusted with the task of adapting the work of the Lords to a Labour Government's radical programme. The House of Lords, under Salisbury's leadership, was pragmatic and reasonable and aimed at a policy of co-operation with the Labour Government. As already mentioned, the House of Lords were ideologically opposed to the programme of nationalization, but were realistic about the limits of their power and aimed to use their revising and suspending powers to ensure a smooth transition of legislation into law. As Earl Attlee remarked on the Lords contribution: 'There was not so much real opposition to our nationalization policy' (cited in Bromhead, 1958:159)

The elite, top-down values of the British Political Tradition continued to dominate the new scenario, with a majority Labour Government in the House of Commons governing in conjunction with a subservient House of Lords. The House of Lords accepted that the democratic process had given the Government a huge electoral mandate and the authority to enforce its legislation and this severely curtailed the Lords ability to intervene and amend legislation. The House of Lords also knew that, if they opposed or delayed major legislation, the Commons would simply override their opposition and enact the Parliament Act to pass legislation. The supremacy of the House of Commons authority,

coupled with the limits of the Lords' powers, pressured the Upper Chamber into being co-operative in passing nationalization bills.

ii) The House of Lords 1945 -51: A Revising Chamber

The Labour Government 1945-51 was committed to implementing the largest volume of legislation that any government had ever attempted, over four Parliamentary sessions. The sheer volume of legislation, coupled with the constraints of the guillotine procedure, meant that major Bills passed through the Commons with many clauses and amendments undebated. During these Parliamentary sessions, the role of the House of Lords as a secondary revising Chamber took on greater significance as it revised and amended legislation to improve its drafting. The Labour Government traded off its ideological opposition to the Lords against its need for a secondary revising Chamber capable of alleviating the legislative pressure on the Commons. So, Crick (1964:123) argues: 'Let sleeping dogs lie was the sensible and practical policy for Labour during the great legislative drive of 1945 – 48'. He continues (Crick, 1964:123): 'The dogs behaved and did good work; but they were plainly very much on sufferance; and the Tory Lords passing, and assisting measure after measure that they deplored, did so only to keep their power of three sessions delay in tact'.

As already emphasised, Conservatives in the Lords and Commons were opposed to nationalization on ideological grounds, believing it undermined the principle of private property and led to excessive centralisation. However, the House of Lords were relatively mild in their opposition to nationalization, passing the programmes for Coal, Civil

Aviation and the National Health Service unscathed. In contrast, the House of Lords were strongly opposed to the Transport Bill's nationalization of road haulage and the nationalization of Iron and Steel.

The House of Lords was determined to circumscribe the power of Ministers to intervene in boards, combat excessive centralisation and limit the power of boards over charges. The challenge facing the House of Lords was that they could not assert their opposition to nationalization on ideological grounds, as they were without a democratic mandate and would be challenging the democratic supremacy of the government. Instead, their opposition had to be restricted to intervening in the administration and accountability of the National Boards.

The House of Lords received eight nationalization bills between 1945 and 1949, which produced 43 divisions at the Committee and Report Stages, of which 26 were associated with the Transport Bill (13) and the Iron and Steel Bill (13). The nationalization of road haulage and iron and steel were politically contentious and provided the greatest ideological gulf between the Labour and Conservative Parties. Division lists show that a hardcore of 80 Peers debated the nationalization bills, with the highest attendance for a vote being 119. The House of Lords accepted the centrality of nationalization to the Government's programme and the fact that it had a strong democratic mandate and, as a consequence the Lords never attempted to pack a debate or vote with backwoodsmen in an attempt to derail a nationalization bill.

The vast majority of the Commons' legislation during the 1945-46 Parliamentary Sessions was of a formal and mundane nature, concerning financial and administrative affairs. Legislation such as the Isle of Man (Customs) Bill, the Annual Public Works Bill and the Dock Workers Bill passed through the Lords without amendment. The House of Lords did amend 20 bills and return them to the Commons, but only the Coal Bill elicited opposition from the House of Commons to the Lords' amendments. The Coal Bill, which nationalized the coal industry, suffered 2 defeats in Committee and was returned to the Commons with the amendments attached. The House of Commons, sensing the Lords' opposition was based on ideological grounds, disagreed with the Lords' amendments and simply restored the Bill to its original state.

The Coal Bill was an example of how, in the event of disagreement between the Lords and the Commons, the authority of the Commons, underwritten by democracy, prevailed over the Lords and ensured the Coal Bill was passed in the form the Government envisaged. Bromhead (1958:171), writing of the legislative process contends: 'The proceedings were little more than a formality, because the Lords rarely introduced amendments that the government was not prepared to accept.' The dominant view of democracy inscribed in the British Political Tradition ensured that the will of the House of Commons was supreme.

The Parliament of 1946–47 included 2 major nationalization bills, the Transport Bill and the Town and Country Planning Bill. The House of Lords was ideologically opposed to

both nationalizations, but had to balance political opposition with its integrity as a secondary revising Chamber, capable of objectively examining and amending legislation.

The Transport Bill was a large and complicated bill, badly drafted in the Commons, due to the constraints of Parliamentary time. Indeed, Crick (1964:113) contends: 'The Transport Act is a good example of the work of the House of Lords and a case where one might expect an abuse of their powers'. The Transport Bill left the Commons in a raw, unadulterated state, with 31 clauses and 5 schedules receiving no consideration and 200 Government amendments not discussed, even in Committee. The House of Lords devoted 9 whole days in Committee and 2 days in the Report Stage to discuss 200 amendments, schedules and clauses. The Lords added 42 amendments of their own, mostly concerning de-centralization and limiting the extent of Road Haulage nationalization. The Transport Bill returned to the Commons with 242 amendments, of which 200 were the Government's own amendments redrafted by the Lords, while the other 42 were new amendments added by the House of Lords to enhance the quality of the Bill. The Lords 42 amendments involved 10 divisions in Committee and on Report and, consequently, the Lords won against the Government on 10 major issues of the Bill.

The Labour Government rejected all the 42 Lords amendments believing them to be politically motivated, merely reflecting Conservative Party policy. Crick, writing of the Transport Bill, argues (1964:114): 'Thus the ultimate power of the Commons and the Lords compliance to it is clearly shown even in such matters the passage of the Transport bill` was an example of how the British Political Tradition defined institutions and

processes. The rejection of all the Lords amendments to the Transport Bill indicated how a government with a majority in the democratic chamber could cut the ground from underneath the Lords with relative impunity and force through legislation in the specific form it wanted.

It can be seen that the events preceding the Transport Bill reflected the values of the British Political Tradition and showed the weakness of the House of Lords' opposition to the executive. The House of Lords' weakness was displayed by the fact that, when confronted by a Government with a majority in the Commons, they had, in the last resort, unconditionally to defer to the will of the Commons. The elite, top-down idea of democracy evident in the British Political Tradition established the unquestioned supremacy of the executive over the legislature, including particularly the House of Lords, where the Government was in a minority.

The House of Lords' strength was most clearly exhibited in their work as a revising and amending Chamber, examining the intricacies of clauses and sections to make the Transport Act workable. Indeed, *The Times* newspaper remarked: 'seldom if ever have a revising functions of the upper house been more important' (cited in Crick, 1964:113). It continued: 'if a revising chamber did not exist it would have to be invented.' (cited in Crick, 1964:113). Crick (1964:114) outlines the positive contribution the Lords made as a revising Chamber during the Transport Bill when he writes: 'the passage of the bill in an efficient form would have been impossible but for the existence of a revising body'.

The Town and Country Planning Bill was a prime example of the attributes of the House of Lords as a secondary revising Chamber. It was an enormous Bill warranting 35 hours attention in Committee and at the Report Stage in the House of Lords. It attracted a mammoth 310 amendments, of which 255 were routine drafting amendments. There were 55 amendments of substance, of which 48 were moved by the Opposition and accepted by the Government, or raised by the Government in response to the Opposition. There were 4 key amendments, of which the most significant was the proposal to exempt land owned by Universities, Schools and the Salvation Army from development charges.

The House of Lords made three other key amendments to the Town and Country Planning Bill which contributed significantly to the final outcome of the Bill. These covered development charges and, in particular, the definition of "dead ripe" land, which was land exempt from development charges in 1939, but whose development was prevented by the Second World War. The House of Lords made a further amendment regarding mineral rights which aroused some controversy in Parliament, because many Peers had landowning interests and the question of mining royalties directly affected their financial interests.

In a further example of the operation of top-down, executive, power, the Government rejected all four amendments, arguing that the House of Lords, as a land owning fraternity, had a direct and vested interest in proposing the amendments. The House of Lords, in deference to the democratic Commons, accepted the rejection without complaint, once again exemplifying the dominance of the executive over the legislature.

The House of Lords did win concessions on routine issues, such as reducing the time a Public Authority had to designate land for development from 10 to 7 years and reducing the powers that Public Authorities had over land.

The Iron and Steel Bill (1948–49) was the most controversial of the Labour Government's nationalizations and the one which provoked most disagreement between the Labour and Conservative Parties. The House of Lords expressed its usual reservations regarding excessive centralization and the composition of the Board. The Lords tabled amendments about qualifications for membership of the Board and circumscribing the powers and general duties of the Corporation, They also introduced further amendments aimed at the creation of an Iron and Steel Board.

The House of Lords' amendments were dealt with over two sittings in the House of Commons, stretching over 22 hours. The Labour Government regarded the amendments as Conservative Party amendments, given they had all been moved, debated and passed as a party issue, and under a Conservative whip in the House of Lords. Indeed, Bromhead writes (1958:169) of the Lords conduct during the Iron and Steel Bill: 'the Conservatives were carrying on the struggle with all the means at their disposal'. The Government argued that the Lords were acting in a political role and not as a neutral revising chamber, thus undermining the integrity of the amendments. The Government rejected all of the Lords' amendments and eight out of ten main discussions were abruptly terminated by a Government motion of closure. The 28 amendments that were accepted by the House of Commons were entirely routine points of drafting, with the rest rejected out of hand as

being politically-motivated amendments, reflecting an ideological gulf between the Parties, although the House of Lords did win one key concession regarding the vesting date for Iron and Steel Nationalization.

The House of Lords had no choice but to concur with the superior authority of the Government in the Commons and the Iron and Steel Bill was passed in the form the Government intended. Indeed, Lord Salisbury epitomised the weakness of the Lords powers in the face of a strident government when he remarked: 'I sometimes wonder whether the Labour Party, in spite of all their protestations, really believe in a second chamber at all.' (cited in Bromhead, 1958: 169). However, the Lords did win one key amendment that was to have ramifications in the future. The Labour Government inserted a provision that no member of the Corporation was to be appointed before 1 October 1950, after the expected General Election in 1950. Bromhead (1958:170) argues that, because the Labour Government was: 'disturbed at the practical difficulties that might be caused by excessive haste; they abandoned the political objective at the behest of the House of Lords'.

The events leading up to the passing of the Iron and Steel Bill demonstrated a tacit recognition by the Government, that this most contentious of nationalizations, and the one which created greatest polarisation between the Labour and Conservative Parties, needed a democratic mandate to be enacted. Democracy would play a pivotal role in deciding the outcome of a highly contentious piece of legislation disputed between the Houses of Lords and Commons.

iii) The Parliament Act 1949

The constitutional relationship between the House of Lords and the Labour Government was fairly harmonious and co-operative, but there was one spectre on the horizon which threatened to disrupt the concord. Under the terms of the Parliament Act (1911), the House of Lords had the power to delay legislation over 3 Parliamentary sessions or 2 years. The Lords' power of delay would, in theory, enable it to paralyse the Government's legislative programme in the second half of a Parliament, from 1947 until beyond the General Election, expected in 1950. The Labour Government had the very large and complex nationalization bills for Transport, Town and Country Planning and Iron and Steel planned after 1947 and feared that the Lords would enforce their power of delay to disrupt the programme. The Government's apprehension that the House of Lords would use their power of delay to cripple the nationalization programme motivated it to introduce a new Parliament Act in (1947) with the objective of reducing the delaying power of the Lords.

The Parliament Act was introduced in 1947 and was rejected by the House of Lords in three successive sessions, before being passed under the auspices of the 1911 Parliament Act in 1949. Under the terms of the new Parliament Act, if the Lords refused to pass in 2 successive sessions of Parliament, then, as long as a year had elapsed between the Second Reading of the first session and the Third Reading of the second session, then the bill would become law. The Parliament Act 1949 restricted the House of Lords' powers of delay from 2 years to 1 year, diminishing the Lord power to wreck a Government's legislative programme in the second half of a Parliament. Indeed, Crick (1964:107)

argues: 'the year`s delay the Lords can inflict on ordinary legislation is only on average five or six months longer than the normal passage of legislation'.

The passage of the Parliament Act (1949) ended the last means by which the House of Lords could forcefully intervene in a Government's legislative programme. The reduction in the House of Lords power of delay from two years to one year meant it could not delay legislation throughout the second half of a Parliament. The Labour Government in the House of Commons was able to pass the remaining nationalization bills for Transport, Town and Country Planning and Iron and Steel, unchanged by the House of Lords.

In Conclusion

The Parliament Act (1947) was the final act in a chain of events shaped by the British Political Tradition through which the executive in the House of Commons came to have almost total dominance over the legislature, and the role of the House of Lords was much reduced. A new idea of elite top-down power took root and provided the institutional framework within which other ideas would be interpreted. Following the passing of Parliament Act (1911) the British Political Tradition became increasingly instantiated within institutions and its ideas underpinned the discourses and processes of a new modern bi-cameral system of government. A conservative notion of responsibility informed executive dominance of the legislature and this is accompanied by a mantra of *government knows best* became *ingrained* in the psyche of governing institutions. This idea of responsibility continued to underpin the authority of institutions, providing stability and establishing parameters within which future generation of actors would work

in a new interpretation of bi-cameral government. In addition, that elite idea of responsibility shaped a limited, liberal notion of representation, where democratic government's legitimacy was rooted in free and fair elections, but minimal participation by the electorate, and indeed the majority of elected representatives, in executive government. The British Political Tradition`s ideas continued to evolve into a new age of bi-cameral government and as it did so as it shaped the development and operation of institutions. Throughout the process of constitutional change ideas were constrained but not determined by existing institutional structures. The Parliament Act (1949) ended the last vestiges of the House of Lords power over the Commons and completed the almost total subordination of the House of Lords to the executive. As Crick (1964:107) argues: 'the power of the Lords now to obstruct the actual process of government is negligible'.

Although the executive in the House of Commons gained total dominance over the legislature in the House of Lords, this camouflaged a paradoxical situation of an unelected and politically partisan House of Lords still continuing to participate in government in a modern day democracy. The first anomaly was the scenario of an unelected Chamber continuing to participate in the deliberations of democratically elected government but more significant was the potential for the House of Lords to still stifle the legislation of a democratically elected government. For the most part, the dominance of the executive over the House of Lords and the Upper Chamber's willingness to defer to the Commons concealed the anomaly, but, as emphasised in this Chapter, tensions could become exacerbated when Labour Governments were in power with small majorities. Both the Houses of Lords and Commons had a vested interest in

avoiding an elected second Chamber, but, as illustrated in the next chapter, as the anomaly of a politically partisan and unelected House of Lords became a greater problem in the late-twentieth Century, this created pressures to reform the composition of the House of Lords.

Chapter Seven:

The Labour Party and the House of Lords 1951 – 1997

This Chapter focuses upon the Labour Party and its approach to the House of Lords and the Constitution between 1951 and 1997. Although the chapter centres on the post-war years following the election of the Conservative Government in 1951 through to the election of New Labour in 1997, reference is made to the formation of the Labour Party's 'Socialist' ideology rooted in the ideas of the Fabians and Syndiclists during the inter-war years.

There are two principle reasons for analysing the Labour Party's ideological heritage and considering how it translated into constitutional practice. Firstly, Fabian ideas underpinned the foundations of, and provided the parameters for, the post-war collectivist state which emerged following the Labour Party's victory in the 1945 election. Indeed, in *Britain against Itself* (1982), Beer refers to the years from 1945 to 1979 as being the years when the ideas of collectivism reached its zenith in British politics. Secondly, Fabian ideas came to underpin and define an essentially conservative approach to the constitution by the Labour Governments during the 1929 to 1931 minority Government and later during the first majority Labour Government of 1945 to 1951

Evans in *Constitution-Making and the Labour Party* (2003) argues that Labour Party ideology has always focussed exclusively on utilizing the power of the executive to deliver 'Socialism' and that a vacuum existed over ideas to reform the constitution. Evans

illustrates the conservatism involved in the Labour Party's ideas about the constitution when he writes (2003:39): 'constitutional revisionists rarely focussed upon liberal democratic concerns, but rather upon ensuring efficient and effective policy delivery and removing obstacles to the exercise of executive power`. Clearly, this concurs with the British Political Tradition's idea of elite, top-down government. As such, the key aim of this Chapter is to show how the idea of the British Political Tradition can be utilized to understand the Labour Party's ideology and, more crucially, to identify its traditionally conservative approach to the House of Lords, and indeed constitutional reform as a whole. As such, the objective is to demonstrate how the Labour Party amended and refined its ideology to accommodate the dominant idea of the British Political Tradition already enshrined in Parliamentary institutions and constitutional practice.

Section One analyses the Labour Party and assesses its historical approach to constitutional reform rooted in its ideology. This section examines both the Fabian and Syndicalist ideas of Socialism and assesses how they offered radically different interpretations of the role of governing institutions and their place in the Constitution. The focus of this section is primarily upon the Fabian tradition and the aim is to demonstrate how its ideas of collectivism, using existing institutions, complimented the British Political Tradition's idea of elite top-down government. This section illustrates how the convergence between Fabian ideas and the British Political Tradition allowed Fabian ideas to gain the ideological dominance in the Labour Party and provided the foundation for the Labour Party's constitutional conservatism, which endured throughout the Twentieth Century and remained dominant until the 1990`s and the rise of New

Labour. Section One also addresses the alternative Syndicalist tradition within the Labour Party, arguing that its ideas of extra-Parliamentary pressure to achieve economic reform and a 'bottom up` distribution of power alienated it from the British Political Tradition and ensured its ideas remained on the periphery of the Labour Party.

Section Two concentrates on the cumulative effects of the Parliament Act (1911) and the Labour Government's Parliament Act (1949) on the constitution and how it reinforced the authority of the executive in the House of Commons over the House of Lords. Section Two illustrates how the Parliament Acts (1911 and 1949), together with the arrival of mass participatory democracy through the 1918 and 1928 Franchise Acts, cemented the dominance of the British Political Tradition over Parliament. Democracy shaped by the British Political Tradition created an overtly strong executive in the House of Commons presiding over a weak legislature in the House of Lords. This section summarises the House of Lords limited powers in the face of an overtly dominant executive and illustrates how the Upper Chamber reinvented itself by adopting the tacit, uncodified conventions of the *Salisbury Convention.*

Section One: The Labour Party and Socialism

Bogdanor offers an explanation of the Labour Party's adoption of the Fabian strand of Socialism and its conservatism with regard to the Constitution in *The New British Constitution* (2009). The Labour Party first emerged as a minor Parliamentary party in Parliament after the 1906 General Election when it gained 29 seats and formed an

electoral pact with the governing Liberal Party. This began a tacit and unofficial alliance between the Parties that endured up to the first minority Labour Administration in 1924. Bogdanor argues (2009: 41): 'At the beginning of the twentieth century, Labour had actually been helped by one of the ` capitalist parties`, the Liberals, through an electoral pact'.

The Parliamentary pact that the Labour Party entered into with the Liberals in its formative years had an influence over both the Labour Party's attitude to the constitution and the idea of Socialism which it adopted as its ideology. The fact that the Liberal Party, as one of the parties which supported capitalism, had nursed the Labour Party into Parliament and later into government meant that the Labour Party had a more positive attitude to capitalism and also that it adopted a more conservative approach to the constitution. As a consequence of the electoral pact with one of the traditional parties of capitalism, the Liberals, the Labour Party, in the words of Bogdanor (2009: 41): 'had not been faced with irredeemable hostility of the capitalist state' As such, the Labour Party did not perceive itself in British politics as being locked into a: `Socialist ghetto against capitalist opponents ` (Bogdanor, 2009: 41) As a direct consequence, the Labour Party, unlike its Social Democratic counterparts on the Continent, was inclined to accept the existing constitution of the nation, which, in turn, shaped the idea of Socialism that became adopted as the Party's dominant ideology.

As emphasised in the previous chapter, the British Political Tradition, complimented by the Westminster Model of Government, ensured that the executive in the House of

Commons dominated over a weak legislature, including a House of Lords with limited powers. Party discipline guaranteed the dominance of the executive over both Houses of Lords and Commons and this was complimented by a first-past-the-post electoral system which exaggerated the electoral dominance of the winning party and favoured a two-party system of Parliamentary politics. This dominant idea of the democracy which is referred to in this thesis as the British Political Tradition, ensured that elite top-down Government emanated solely from the executive in the House of Commons presided over a weak legislature in the House of Lords. The executive, underpinned by party discipline, was dominant over relatively passive Members of Parliament and this, together with first-past-the-post electoral system, ensured minimal participation by both MPs and the electorate in the affairs of government. The British Political tradition provided the dominant idea of underpinning democracy and, thus, the foundations for constitutional government and the accepted status quo

a) The Labour Party: The Fabian and the Syndicalist Traditions

Evans. in *Constitution Making and the Labour Party* (2003) contends that the Labour Party's constitutional revisionism, and indeed its ideology, can be divided into two central strands: one essentially a leadership project, motivated by pragmatism and aimed at achieving political power for the Labour Party; and the other, motivated by idealism. Evans argues that these two strands are shaped by the dominant traditions of Fabianism and Syndicalism, both of which incorporate pragmatic and fundamental interpretations.

i) The Fabian Tradition

The Fabian tradition of Socialism owes its origins to the ideas of Sidney and Beatrice Webb. Their book, *A Constitution for the Socialist Commonwealth of Great Britain* (1920), represented their first critique of the constitution and Socialism and reflected the Fabians' belief in the potential power of Britain's existing governing institutions to both to govern and transform society through the introduction of a Socialist programme.

Evans writes (2003: 19): 'The Fabian tradition, the dominant tradition within the Labour Party, is a strong advocate of the favoured mode of governance of the British Political Tradition Political Tradition; strong, decisive and responsible government.` Fabianism endorses the traditional authority of existing governing institutions, such as the Houses of Commons and Lords, to govern over the nation. It believes in the ' Parliamentary Road to Socialism'; the capacity of existing institutions of the state, such as the Houses of Parliament, to introduce a Socialist programme which would transform society and meet a Socialist vision of society. As such, the Fabians believed that the existing attributes of the British constitution, such as a strong executive with dominant authority over Parliament, were essential if a potential Labour Government was to introduce a radical programme of Socialism and transform society. The Fabians believed that for the Labour Party to be viewed as potential party of government it had to perceived as ` strong and decisive ` (Evans, 2003: 20)

The Fabian view of government fits easily with the British Political Tradition's existing idea of elite, top-down power, with a strident executive asserting democratic dominance over a renitent and weak legislature. Evans writes (2003:20):

> Traditionally the Labour leadership has supported functional elite democracy: state collectivism forwarded through and electoral majority; a constitution which legitimizes executive dominance; and constitutional arrangements which are amendable to manipulation by the executive.

Fabian ideas of Socialism supported a very conservative view of the constitution, implying that society could be reformed by harnessing the power of existing institutions. A future Labour Government would receive a mandate from the electorate to introduce a Socialist legislative programme through free a fair elections. Party discipline would create majority government and, hence, create the strong executive power necessary to introduce its legislative programme.

Strong, executive government was seen as an essential pre-requisite of a government and, for this reason, the Labour Party, alone of Social Democratic Parties in Europe, rejected a proportional representation system of election as this was deemed to undermine the power of the executive in Parliament and break the link between the Member of Parliament and the electorate. Instead, the Party favoured a first-past-the-post electoral system which tends to produce majority government, that, in turn, produces strong and responsible government. Bogdanor, speculating on the Labour Party's preference for the first-past-the-post electoral system, writes (2009: 41): `The more far-sighted Labour leaders such as Ramsey Macdonald looked forward to the day when Labour would become one of the major parties of in the state and would then come itself to benefit from

the distortions of the first-past-the-post system, with its well known tendency to exaggerate the support of large parties`.

Overall then, the Labour Party, from its inception in the early Twentieth Century, has adopted a conservative view of the constitution. It has been happy to maintain the constitutional status quo and endorse ingrained facets of the constitution, such as: strong executive power over the legislature; a first-past the-post electoral system; a minimal role for Members of Parliament in executive government; and limited participation by the electorate in governing affairs. Further, the Labour Party also rejected the idea of a written constitution, as this was perceived to undermine the sovereignty of Parliament and could be a constraint on the executive's power. Overall, the Fabian interpretation of the constitution sat happily with the view of democracy, the British Political Tradition, already enshrine in governing institutions. Bogdanor summarising the association of the Labour Party to the Constitution writes (2009: 40): ` The main purpose of the Labour Party has always been to transform society, not alter the constitution` and further ` they sought to capture the state not transform it`.

ii) The Syndicalists

The Syndicalist tradition of constitutional revisionism within the Labour Party lies in stark contrast to the Fabian tradition of constitutional conservatism and maintaining the institutions of the state. Syndicalist ideas first emerged within the Labour Party after the 1917 Russian Revolution and gained momentum during a climate of militant trade unionism and constitutional revisionism in Britain during the inter-war years.

Syndicalism's approach to constitutional revision stems from a dissatisfaction with the Labour Party's conservative approach to Parliamentary politics and the constitution and negative conception of the centralised sovereign state. Syndicalists believe that Britain's Parliamentary governing institutions are synonymous with, and reflect the interests of, a capitalist state, and this, together with their ingrained conservatism, make them insurmountable barriers to the introduction of Socialism. As such, Syndicalism rejects Parliamentarianism and the authority of the existing governing institutions, in favour extra-parliamentary and direct action to achieve a Socialist society.

Section Two: The Labour Party and the House of Lords 1945 – 1979

This section demonstrates how the Labour Government 1945 – 51 implemented a fairly radical legislative programme and how this had consequences for the authority of the House of Lords and the constitution. The Labour Party's legislative programme reflected the dominance of Fabian ideas of Socialism within the movement and, as such, the objective was to implement a social democratic programme, using the existing institutions of Parliament. As already indicated in this Chapter, the success of Fabianism within the Party was partly attributable to the fact that it dovetailed neatly with the elite, top-down, and ideas of the British Political Tradition. Translated into practice this meant that the power of a dominant executive, underpinned by a disciplined party structure, could be utilized over a weak legislature in both Houses. The Labour Government's Parliament Act (1949) further curtailed the House of Lords' capacity to intervene in

government by restricting its power to delay legislation to one term. This section illustrates how the House of Lords harnessed the residue of its remaining powers to reinvent itself in the face of an overly powerful executive through the *Salisbury Convention* and continue to participate in constitutional government.

By 1951 the full effects of democracy had been brought to bear over the Constitution and the Houses of Parliament. Britain's great age of democratic reform, which began with the 1832 Reform Act and was further extended by the 1867 and 1884 Reform Acts, was finally completed in the Twentieth Century by the Representation of the People (1918), granting the vote to women over 30, and later by Representation of the People (Equal Franchise) Act 1928, granting the vote to women over 21. The cumulative effect of democratic reform was that by 1928 universal adult suffrage had been achieved and Parliament was now underpinned by a liberal democratic constitution.

Democracy and the effects of the 1911 and 1949 Parliament Acts had conspired to greatly diminish the constitutional powers and authority of the House of Lords and it had minor powers in comparison to the democratic Commons. The United Kingdom Parliament comprised a supremely strong and authoritative executive, drawn almost exclusively from the House of Commons, and a weak House of Lords. The key feature of British governing institutions, strong responsible government, resided exclusively with the executive, while the House of Lords powers were diminished to the extent where it held a relatively benign constitutional role as a secondary revising Chamber for the scrutiny of House of Commons legislation. This allowed the Labour Government between 1945 and

1951 the power to implement a radical programme which had the effect of ingraining collectivism into civic society and what Beer refers to as a *collective polity* into politics.

With a Labour Government in the House of Commons, implementing a radical programme, but governing in conjunction with a hereditary and unelected House of Lords, which represented the interests of private property and privilege, there could, in theory, have been significant constitutional difficulties. Of course, the complexity of the situation was further compounded by the Upper Chamber's politically partisan composition. Throughout its history, the House of Lords had an inbuilt Conservative majority. In 1938 the Conservative Party overwhelmingly dominated membership of the House of Lords, as there were 400 Conservative Peers, 80 Liberals and a mere 15 Labour Peers. The Attlee Government oversaw a moderate increase in Labour representation in the Upper Chamber, creating 44 peers between 1945 and 1951. Nevertheless, throughout the post-war era from 1945 to 1999, the Conservative Party enjoyed an overwhelming 3-1 numerical majority over the Labour Party in the House of Lords. The domination of the Conservative Party over the House of Lords' composition ensured it was a politically partisan Chamber, which served to further undermine its moral authority to participate in the legislation of democratic government and increased the potential for constitutional crisis between the two Chambers.

That no such constitutional crisis occurred in the post-war years was due to the Labour Party and the House of Lords moderating their positions to ensure compromise was reached for constitutional government. Two factors were at work. Firstly, the Labour

Party's conservatism towards the constitution, inspired by Fabian influence, allowed it to tolerate the House of Lords continued participation in the constitution, in return for the Upper Chamber remaining a clearly subservient secondary Chamber. Secondly, the House of Lords' adoption of the *Salisbury Convention* when it scrutinised the legislation of the Labour Government ensured that it clearly deferred to the executive in the House of Commons. So, the positions of both the Labour Party and the House of Lords were strongly shaped by the British Political Tradition.

i) The Salisbury Convention

The Fifth Marquis of Salisbury was Leader of the Conservatives in the House of Lords from 1942 to 1957 and Leader of the House of Lords itself from 1942 to 1945 and from 1951 to 1957. During the debate in the House of Lords following King George VI speech at the opening of Parliament in 1945, Salisbury set the tone for the new, diminished, constitutional role for the House of Lords in the post-war democratic world when he said: 'It would be constitutionally wrong when a country has expressed its view, for this House to oppose proposals, which had been put before the electorate (cited in Cm 4183: ch 3:5).

Salisbury's statement became the basis for what was known as the *Salisbury Convention*, which translated into practice meant that House of Lords would not oppose at Second Reading any measure included in a Party's manifesto. The Salisbury Convention was a method used by the Upper Chamber, conscious of its undemocratic and inbuilt Conservative majority, to achieve a degree of impartiality, and therefore integrity, when amending legislation. The Convention was designed to impose self-discipline on the

Conservative majority, so that they would not oppose the legislation they found repugnant. The Salisbury Convention became the centrepiece of a raft of codes and conventions that would establish the House of Lords secondary and subservient constitutional relationship to the pre-eminent House of Commons. Among other codes and conventions that became assimilated into legislative practice were: the convention that the government should have its business attended to as quickly as possible; the Lords' veto over secondary legislation; and the establishment of a system of codes and conventions conducting the exchange of amendments between the Houses of Lords and Commons, known colloquially as *ping pong*.

The House of Lords was conscious that, in an age of democracy, its unelected and hereditary composition severely undermined its legitimacy to participate in a bi-cameral system of government. Although the British Political Tradition ensured strong responsible government emanating solely from the executive in the House of Commons, it remained a paradox to have an unelected Chamber revising the legislation of an elected Chamber. The Salisbury Convention was an attempt to counter-balance the Upper Chamber's lack of democratic credentials and justify its right to revise the legislation of the House of Commons. The Salisbury Convention was a method by which the House of Lords imposed self-discipline and limited its powers to defer to the superior authority of the House of Commons. By doing so, it could justify retaining its remaining powers of revision and amendment and, more importantly, retain its hereditary composition.

The Salisbury Convention, and the range of codes and conventions it spawned, reflected the dominance of democracy in relation to the constitutional relationship between the House of Lords and Commons. The Salisbury Convention was a tacit and wholesale acceptance by the House of Lords that democracy gave the House of Commons undisputed primacy and eminence in the constitution and that the House of Lords must retreat into the role of a secondary Chamber for the revision and amendment of legislation. From 1945 onwards, the Salisbury Convention provided the parameters for constitutional government by acknowledging that democracy bestowed a strong legitimacy on the authority of the House of Commons and, as such, the House of Lords could be no more than a supplementary Chamber to the House of Commons.

The Salisbury Convention acknowledged the weaker position of the House of Lords in a constitution based on democracy. Shell (1992:11) reflects on the discipline the Salisbury Convention imposed on the Upper Chamber and the significance of democracy in the constitution when contends:

> For their part Conservative peers refrained from voting down government
> Bills because they accepted guidance formulated by their leader the fifth
> Marquess of Salisbury, to the effect that it was wrong for the House to reject
> measures which had received clear endorsement by the electorate.

The Salisbury Convention's objective was to adapt the House of Lords to the reality of elite, top-down democracy and define a new constitutional niche for the Chamber in the

face of an overwhelmingly strong House of Commons. From 1945 to 1999 it established a constitutional status quo for a subservient House of Lords to defer to an ascendant House of Commons and proved so strong and resilient that only minor modification to the composition and power of the Lords were deemed necessary to maintain the process of evolutionary adaptability. In the decades following 1951, only the 1958 Life Peerage Act and the Peerage Act 1963 were to alter the composition and powers of the Upper Chamber.

The 1958 Life Peerages Act allowed the entry of non-hereditary Peers into the House of Lords for the first time. The Act introduced a radical new principle of appointment to the composition of the Upper Chamber and this would prove a highly influential and significant idea from 1958 onwards and throughout the post-1999 reform process. Peerages were created for the duration of a lifetime and allowed governments and major political parties in the House of Commons the right to have at least some influence over the membership of the Upper Chamber. Although appointments did not alter the numerical majority of the Conservative Party in the House, they provided an important avenue by which the government could introduce members of calibre and experience from diverse sectors of society. It made the Upper Chamber a more specialised and professional chamber. The Life Peerages Act bolstered Labour and opposition parties' membership of the Chamber, but, perhaps more significantly, also introduced a substantive number of independent cross-benchers. In addition, the Life Peerage Act entailed two minor modifications influencing the work of the Upper Chamber: the

introduction of out of pocket expenses for Peers; and the introduction of leave of absence for Peers who did not wish to attend the Chamber on a daily basis.

The 1963 Peerage Act ended the traditional convention whereby Peers where prohibited from standing for election to the House of Commons. Peers by succession where given the right to renounce their Peerages immediately and stand for election to the Commons, while Peers already in possession of inherited titles were given twelve months to decide. An existing Member of Parliament who succeeded to a Peerage was given one month to decide whether to renounce that Peerage and stay in the House of Commons. The Peerage Act (1963) also made a significant adjustment to the membership of the House of Lords, by allowing the entry of women into the Chamber for the first time, and a minor adjustment, by incorporating the inclusion of 31 Scottish Peers into the House of Lords. Finally, the Act ended the anomaly of Irish Peers sitting in the House of Lords.

Section Three: The Labour Party and the Post-War Collectivist State, 1945 – 1979

This section analyses the Labour Government between 1945 and 51 and assesses how, through the implementation of its legislative programme, it laid the foundations for the post-war collectivist state which endured until the 1970's. Beer, in *Britain Against Itself* (1982:10) describes collectivism as: `not only a pattern of policy, but also a pattern of politics`. He illustrates how the collectivist state which emerged following the Attlee Government election victory in 1945, not only dominated legislation, but also shaped

governing institutions. The Attlee Labour Government laid the foundations for the post-war collectivist state by employing Keynesian demand management economics to create a managed economy and implementing the Beveridge Report to establish the Welfare State. So, the 1945–51 Labour Government provided the foundations for the post-war collectivist state which shaped Parliamentary politics and economics for thirty years.

Collectivism provided the parameters for a thirty year period of economic prosperity between 1945 to 1975, which was   unparalleled in economic history. This provided the basis for the post-war political consensus as the Conservative Party also accepted the collectivist ideals of a managed economy and the financial burden of the welfare state. As already demonstrated in this section, the Labour Party implemented collectivism as the dominant idea of post-war politics by using the existing institutions of government. This reflected the dominance of Fabianism within the Party, which incorporated a conservative view of the constitution.

The cumulative effect of collectivism and the Labour Party's conservative view of the constitution were to move the House of Lords to the margins of British politics from 1945 to 1975. Parliament was overwhelmingly dominated by the executive in the House of Commons, with both Labour and Conservative Governments introducing collectivist legislation. Although the House of Lords was an unelected and hereditary Chamber on the periphery of politics, it continued to participate in constitutional government in a much diminished capacity as a secondary revising Chamber for the dominant executive in the House of Commons.

i) Harold Laski: Champion of Post-War Socialism

In *Constitution-Making and the Labour Party*, Evans writes (2003:24): `Harold Laski`s approach to the constitution is traditionally viewed as the voice of the Fabian tradition in the post-war period'. Although Laski`s views on the constitution were formulated in pre-war books such as *Parliamentary Government in England* (1939), his ideas on the constitution and how it could be utilized to introduce Socialism reached fruition during the post-war years. Laski believed, during the inter-war years, that Britain's crumbling economic and social base had created a breakdown in the constitution. The capitalist system, which involved inherent contradictions between the interests of capital and labour, had created social dislocation in the constitution, which, in turn, had created an ideological gulf between the Conservative and Labour Parties within Parliament. The traditional politics of agreement in Parliament could not be maintained under a two-party adversarial system.

The language of Syndicalism influenced Laski`s ideas to a degree, but this was not reflected in a radical appraisal of the constitution. In fact, Laski adopted a pragmatic and conservative view of the constitution, arguing that the nature of Britain's constitutional arrangements and the powerful forces of capitalism and political opposition within Parliament meant that it was unlikely Socialism could be achieved by constitutional means. However, Laski`s solution to overcoming the insurmountable barriers of constitution was orthodox. Laski concurred with the British Political Tradition's idea of strong, responsible and decisive government; seeing it as necessary to achieve Socialism.

He argued (2003:24) the: `virtuous parts of the British constitution to be: its strong executive, organised party system and a minimal role for private members` As such, Laski`s ideas strongly concurred with the British Political Tradition's stress on elite top-down, power. Evans illustrates the dominance of the British Political Tradition over collectivism when he writes (2003: 25) of Laski:

> He supported functional elite democracy: state collectivism forwarded through an electoral majority, a constitution which allowed for executive dominance; and constitutional arrangements amendable to executive manipulation.

This view was clearly synonymous with, and shaped by, the British Political Tradition. Laski supported a constitution that could deliver Socialism and, in his view, a strong executive was an essential pre-requisite to achieve strong responsible government. Consequently, he rejected all forms of constitutional reform, such as proportional representation, devolution and referenda, which would undermine the executive.

The Fabian tradition of government therefore favoured strong executive government underpinned by disciplined party structure and a first-past-the-post electoral system, governing over a unitary state with an elite and top-down dispersion of power between the executive and the legislature. The Fabian vision of Socialism provided the foundations for the post-war collectivist state and established an essentially conservative

vision of the constitution, in which the House of Lords was maintained as a constitutional partner to the House of Commons, but in a greatly diminished role.

ii) The Labour Party and the House of Lords 1945 – 79

Although the Labour Government between 1945 and 1951 introduced a radical legislative programme, as we saw it also retained a conservative approach to the constitution and used existing institutions for reform. So, Bogdanor (2009: 47)   writes:

> The Labour Party, similarly, did not expend its energies on constitutional Reform in 1945 when it was confident of its Socialist aims. The Attlee government was constitutionally conservative, using inherited institutions to achieve radical social and economic reform.

The 1945–51 Labour Government established the post-war political and economic consensus and a constitutional orthodoxy in terms of the relationship between the House of Commons and the House of Lords. In his book *Government and Parliament* (1954), Herbert Morrison, one of the stalwarts of the Attlee Government, extolled the virtues of the British constitution and its propensity to produce strong, executive government. Morrison, writing about the Attlee Government's policy on the House of Lords, declared that the Government had not been (2009:45)

> anxious for the rational reform or democratisation of the second chamber for this would have added to its authority and would have strengthened its

position as against that of the House of Commons. Changes which gave the House of Lords a democratic and representative character would have been undemocratic in outcome, for they would have tended to make the Lords the equal of the Commons….The very irrationality of the composition of the House of Lords and its quaintness are safeguards for our modern British democracy.

To summarise, the Labour Party adopted a conservative approach to the constitution because it was confident its Socialist/collectivist objectives could be achieved through strong executive government. The constraints of the *Salisbury Convention* imposed self-discipline upon the House of Lords which consigned it to a limited constitutional role as a junior secondary revising Chamber to the House of Commons. The Labour Government, although ideologically opposed to the House of Lords, did not propose its abolition, given that the creation of unicameral Parliament would be electorally unpopular, nor did the Government want to establish an elected Upper Chamber, as this would undermine the dominance of the executive in the House of Commons.

The Labour Government therefore adopted a conservative attitude to the House of Lords, linked to its conservative approach to the constitution as a whole. The Labour Party accepted the constitutional status quo and the participation of the House of Lords in the constitutional settlement in return for strong responsible government through the executive in the House of Commons, which could deliver a radical programme. In this vein, Wright identifies the Labour Party's conservative approach to the constitution when

he observes that the leadership were satisfied: `with the constitution, subject to minor amendment and adjustment, on the grounds that it was consistent with a collectivist politics` (cited Evans, 2003: 25).

iii) Beer: The Rise and Fall of the Post-War Collectivist State 1945-79

This section analyses the rise and eventual decline of the post-war, collectivist state between 1951 and 1979. As emphasised in the previous section, the Labour Party's resounding victory at the 1945 General Election allowed it to establish the foundations for the post-war collectivist state and, subsequently, provided the basis of a political consensus between the Labour and Conservative Parties. Indeed, the Labour Party revisionist Anthony Crosland summarised the dominance of collectivist ideas over Parliament when he wrote: 'Labour had won the real `revolution`; the 1945 Labour election triumph and the subsequent Tory Government's acceptance of `Keynesian social democracy ` was proof enough of that victory` (cited in Evans, 2003:25). The collectivist state reached its zenith in the 1950`s and 1960`s, achieving economic growth and full employment and underpinning the stability of governing institutions.

During the period between 1951 and 1979, Parliamentary politics reflected the dominance of collectivism over the constitution as the executive dominated the House of Lords. Indeed, during these years, the Upper Chamber seemed to be pushed to the peripheries of Parliamentary politics, with the House of Lords making little contribution to primary legislation. At the same time, there was little change in its powers or composition. However, the apparent economic success of collectivism camouflaged

underlying structural weaknesses in the economy and, by the late 1960s and early 1970s, those weaknesses resulted in economic decline which, in turn, put pressure on Britain's hallowed governing institutions and its constitution.

In *Britain Against Itself* (1982), Beer provides a critique of the decline of collectivism in post-war politics and considers the implications for institutions and the constitution. Beer's arguments in *Britain Against Itself* (1982) aims to update his earlier critique of collectivism contained in *Modern British Politics* (1965). Although he provides a coherent argument for the decline of collectivism, it remains a contested view. In Beer's view, Britain's post-war political and economic consensus appeared to have had irretrievably broken and collectivism was discredited as a remedy for the nation's mounting economic and social malaise.

Beer argues (1982: 10) that the success of collectivism during the halcyon days of the 1950`s and 1960`s also contained the seeds of its decline:

> (the) collectivist polity consists of the programme of the managed economy
> and the welfare state and also the political parties and pressure groups which
> have shaped those programs and in turn have been shaped by them. Policies
> and politics continually interact in the choice mechanism.

Beer asserts that the collectivist state created by post-war politics involving the managed economy and welfare state, created a corporatist, centralised economy, driven by the

state. The new corporatist state involved the direct creation of consumer and producer groups which owed their origins to, and were dependent upon, the corporate state. Beer defines the rise of the new producer and consumer groups as *New Group Politics* and refers to how such groups were closely linked to political parties: `Party government operating in the context of new group politics created the collective polity and gave rise to the consensus of the late 1950`s ` . (Beer, 1982: 15).

The collectivist state established a state economy managed by government and supplanted by a network of new consumer/producer groups. A new type of pluralism was born and, throughout the 1940s and 1950s, harmony was maintained between government and *New Groups* by a system of robust party government which bridged the divide between government and groups and paved the way for the consensus necessary between them for governing.

Collectivism and the pattern of *New Group Politics* were further enhanced by a buoyant economy which served to underpin the dominance of collectivism over Parliament. Economic growth during the 1950s and 1960s smoothed relations between government and groups. However, even during these decades of economic prosperity, the pattern of *New Group Politics* contained the seeds of collectivism's decline. As Beer writes (1982: 210): `The fatal conjunction occurred when the new group politics, intensified by the period of consensual party competition, confronted from the mid 1960s a party regime with diminishing powers of aggregation`.

Economic decline exacerbated tensions between government and groups. The collectivist polity established a corporate economy which was far more dependent upon the state than its liberal predecessor had been and, therefore, allowed new groups far more potential to disrupt an essentially corporate economy. Beer further writes (1982:210): `In this way this change in the ideal foundation of the collectivist polity of the 1950s led to its self-defeating behaviour in the 1970s`. In the 1970s the state no longer had the power to gain the consent from groups necessary to govern. Indeed, Beer writes (1982: 15): `Because the state lacks authority (by which I mean the ability to gain consent), it is not able to control the most powerful corporations in the state sector – the trade unions`. Economic decline led to the disintegration of the post-war consensus between government and groups and its replacement by a new era of confrontational relations when government was faced with an array of hostile and militant groups.

Conclusion

In this chapter it has been demonstrated through historical narrative how the Labour Party provided the foundations of the post-war collectivist state and how the British Political Tradition shaped its socialist ideology and its conservative approach to the constitution. The chapter illustrates how by the 1920 s the British Political Tradition was strongly inscribed into the discourse and processes of Parliament creating a dominant executive and a weak legislature in the House of Lords. The British Political Tradition was a dominant idea shaping all discourses and prompted the Labour Party to tolerate the House of Lords and refrain from constitutional reform as it was confident in the power of the executive to introduce collectivism. The Labour Party`s adaption of its ideology of

Socialism/Social democracy to compliment the British Political Tradition was indicative both of its dominance within institutions and its capacity to be accepted by new generations of actors.

Beer in *Britain against Itself* demonstrated how the collectivism, which blossomed in the 1950s and 1960s, had also, paradoxically, contained seeds of its own decline. During the 1970s those seeds of decline would germinate into pluralist stagnation and an economic malaise which undermined and challenged the capacity of Britain's governing institutions to govern efficiently. The next chapter chronicles how from 1979 to 1997, during the Labour Party's 18 years of House of Commons opposition, economic and civic change in society forced the Labour Party to reappraise its position in relation to the House of Lords and abandon its constitutional conservatism.

Chapter Eight: The House of Lords 1997 – 2012

> The old constitution is dissolving beneath our eyes. The
>
> only question is what will replace it. To that question the
>
> authors of the revolution have no answer.
>
> (Marquand, cited Evans, 2000:312)

This Chapter brings the narrative about the House of Lords and the British Political Tradition up to date by analysing New Labour's constitutional reform of the House of Lords, following its resounding victory at the 1997 General Election. The objective of the chapter is to illustrate how the tenets of the British Political Tradition, reflected in a limited liberal idea of representation and a Conservative idea of responsibility, have continued to shape the House of Lords Reform process. This chapter demonstrates how the first tenet of the British Political Tradition, a conservative idea of responsibility, initially dominated the reform process, but led to a reform quagmire and that it was only when the second tenement of the British Political Tradition, a liberal idea of representation came into the equation that the House of Lords reform gathered momentum. The aim of this chapter is to demonstrate how the modern day constitutional reforms of the House of Lords continue to sit happily with the British Political Tradition and that both tenements are necessary for successful constitutional reform.

Although this chapter focuses primarily upon events following the House of Lords Act (1999), it also briefly considers the Labour Party's wider constitutional reform

programme, including devolution for Scotland, Wales and Northern Ireland, the Human Rights Act and the Constitutional Reform Act (2005). The objective is to show how the British Political Tradition, and its idea of elite top-down power, continue to be a dominant idea driving not only the reform of the House of Lords, but also the wider constitutional reform process. The reform of the House of Lords remains an ongoing, and as yet incomplete, process and, consequently, throughout this Chapter primary sources are used particularly Government White Papers and Committee Reports, as evidence to substantiate the argument.

Section One concentrates on the Labour Party and examines how it abandoned its traditional constitutional conservatism to develop a radical constitutional reform programme for the Upper Chamber. The focus is upon the Labour Party between 1979 and 1997, during which time it endured nearly two decades of opposition. The purpose of this section is to illustrate how the demise of collectivism and its replacement with conservative ideas of liberalization, privatization and public sector management forced the Labour Party to re-appraise its ideology. This section illustrates how, in the new post-collectivist climate of politics, the Labour Party lost confidence in its ideology and, instead, sought to fill the ideological vacuum with new ideas of constitutional reform to promote its traditional ideals of egalitarianism. This section demonstrates how the electoral dominance of the Conservative Party over the House of Commons, accompanied by new dominant neo-liberal economic ideas, led the Labour Party to dilute its social democratic ideas and adopt new economic ideas to make it electable.

Section Two focuses on the Labour Party in Government following its victory at the 1997 General Election. This section analyses New Labour's reform of the House of Lords, commencing with the House of Lords Act (1999). It argues that, despite the Labour Party's radical transformation of the Upper Chamber's composition, when it came to ideas for an elected Chamber, the influence of British Political Tradition reasserted itself and influenced the Labour Government, so that to retreat to its traditional constitutional conservatism. This section considers the four major White Papers on House of Lords reform following the House of Lords Act (1999). It begins by analyzing the reasons for the proposals in the Government White Paper *Modernising Parliament – Reforming the House of Lords* (1998) (Cm4183) and the findings of the subsequent Royal Commission Report (2000), commonly referred to as the Wakeham Report (Cm4534). Subsequently, an analysis is made of the three further White Papers, focusing particularly on the proposals for an elected and/or nominated Chamber. This section also considers attitudes within Parliament itself to the reform of the House of Lords by examining the ideas of the Conservative and Liberal Democratic Parties for reform and contrasting the House of Lords preference for a nominated Chamber to the House of Commons preference for an elected Chamber. An analysis is made of the White Papers and Committee reports that emanated from Parliament after 2000, before examining in detail the 2008 White Paper, which provides the basis for an elected House of Lords. This section concludes by considering the likely future of the House of Lords.

i) Economic decline puts pressure on the Constitution

Bogdanor, in *The New British Constitution* (2009: 38) writes:

One of the major themes of British Politics in the early post-war years was an increase in the role of the state, which was to play a far greater part in the management of the economy and in social welfare than it had done hitherto.

The previous Chapter analysed how the Labour Government between 1945 and 1951 established the Keynesian managed economy and a universal welfare state as key policies of government. The Labour Government established collectivism as the dominant principle underpinning economic and social policy and, with the Conservative Party's adoption of these principles, collectivism provided the platform for the post-war political consensus in Parliament. As mentioned in chapter Seven, in *Britain against itself* (1982), Beer argued that collectivism provided the foundation for thirty years of unbroken economic growth ensuring economic prosperity and the stability and legitimacy of governing institutions. During the years from 1945 to 1975, the House of Lords, and indeed the constitution as a whole, remained on the periphery of politics evoking little discussion or ideas of reform. Indeed, Moran summarises (2003:1) the success of Britain's economic policy and its effects in creating stable governing institutions throughout the twentieth century when he writes:

> For the first two-thirds of the twentieth century, governing arrangements in Britain were among the most stable and least innovative in the advanced capitalist world. In the decades since

then, her governing systems have been in turmoil and she has

been a leader in institutional and policy change.

As mentioned in Chapter Seven, the thirty years of economic growth from 1945 to 1975, which was unparalleled in Britain's economic history, camouflaged structural economic weaknesses in the British economy. As Moran writes (2003:1): 'The biggest domestic change over the next half-century was, simply, continuing, gradual, miserable economic decline'. Economic decline, which eventually manifested itself in the economic crisis of the 1970's, led to principles of collectivism and the state-managed economy becoming discredited ideals, with new economic ideas about the economy, normally termed neo-liberalism, coming to the fore. However, economic decline also undermined the capacity of governing institutions to govern efficiently and effectively.

Economic decline placed pressure on the legitimacy of Britain's governing institutions to govern efficiently, but socio-economic changes in society further exacerbated the pressure on governing institutions. This Chapter demonstrates how factors, such as the collapse of deference, increasing participation in higher education and the declining link between class and party membership, created a gulf between Parliament and the populace and, as in the Nineteenth Century, ensured that Parliament became dislocated from the populace and was no longer effectively representative of the nation.

Bogdanor argues (2009: 49): 'The post-war era has been a period of massive socio-economic change, and it seemed that the existing institutions of government had been

slow to respond to these changes'. This Chapter analyses how economic decline and social change forced the constitutional change of governing institutions. During the Conservative Party's long period of government from 1979 to 1997 the ideas of economic neo-liberalism, privatisation and public sector management became dominant and displaced collectivism as the orthodox approach to the economy. This Chapter analyses how the electoral success of the Conservative Party and the economic success of neo-liberalism in reinvigorating the economy forced the Labour Party, after losing the battle of economic ideas, to turn to constitutional reform to fill an ideological vacuum.

As Evans remarks (2003: 321): 'The history of the British state since the 13th century has revealed a bias in favour of a strong executive and this continues'. Kelso further illustrates the principle of elite and responsible government through the executive dominance of Parliament when she writes (2009:7): ` The way in which the executive and legislature are fused together is the consequence of the key principles on which the British political system is based: parliamentary sovereignty, ministerial responsibility and party government'.

In the various studies of the British Political Tradition the idea of elite, top-down, power remains a reoccurring theme. There is a consensus among various interpretations of the British Political Tradition that elite power and strong responsible government have played a substantive role in governing institutions and shaped the evolution of the constitution. As mentioned in Chapter Two, academics such as Kelso (2009), Vincent (1998), Marquand (2009) and Moran (2002) all refer to the historical influence of elitism

within the British political system, but they do so without evoking the argument of the British Political Tradition. At the heart of this elitism and dominating historical studies of the British Parliamentary system is the dominance of the executive over the legislature in Parliament. As Norton remarks: 'Britain retained a Parliament formed by government, but what was meant was not government by Parliament but government through Parliament' (cited in Kelso, 2001:18). Judge further illustrates the elite, top-down, nature of constitutional government when he writes of the British Parliamentary system: 'State tradition places emphasis ` on government ` rather than Parliament' (cited in Kelso, 2009:15).

The cumulative effect of elitism over the British Political system is to place the executive and its constitutional relationship with the legislature at the centre of constitutional reform. As Kelso remarks in *Parliamentary Reform at Westminster* (2009:2) about ideas of Parliamentary reform, including the New Labour Constitutional Reform proposals: 'Ultimately, these debates have been concerned with the fundamental nature of executive-legislative relations at Westminster, how that relationship might be transformed, and the ideal role of Parliament within the political system'.

The British Political Tradition favours strong responsible government and, therefore, vests considerable power in the executive of the House of Commons, at the expense of the legislature, including the House of Lords. An elite and hierarchical relationship defines the constitutional relationship between the executive and legislature and consequently any reform of the House of Lords strikes at the very heart of that executive-

legislature constitutional relationship and, in theory, threatens to unhinge the balance of the constitution.

Chapter Seven referred to how during the post-war years the Labour Party was satisfied to accept the constitutional status quo and implement a social reform programme using existing institutions. This involved the Labour Party's acceptance of a hereditary and unelected Upper Chamber continuing to participate in government. However, from 1979, for a variety of reasons, some domestic, some extraneous and some pragmatic, it shifted from its position of constitutional conservatism to adopt a radical position involving ideas for the abolition of the hereditary Peerage and proposals for their replacement with a nominated and/or/elected Upper Chamber. The next section examines the reasons for the Labour Party's radical movement of its position over the House of Lords and, more generally, for its constitutional reform programme.

Section One: The Labour Party and the Constitution: 1979 – 1997

This section examines the reasons for the rise of New Constitutionalism within the Labour Party and illustrates how its germination developed during the Party's years of electoral opposition in the House of Commons between 1979 and 1997.

The Conservative Party's victory at the 1979 General Election ushered in an era of Conservative domination of the House of Commons which endured for 18 years. Bogdanor (2009:39) emphasises the domination and longevity of the Conservative Party

over democracy when he writes: 'The Conservatives, under, first, Margaret Thatcher and then John Major, remained in office for 18 years, a longer period of single-party government than Britain had seen since the time of the Napoleonic wars'.   The longevity of the Conservative domination of the House of Commons, unparalleled in Parliament's democratic history, allowed the Party to make significant inroads into the collectivist state that had dominated post-war politics. The economic ideas of the New Right, involving economic liberalism, privatization and public sector management, became the new mantra underpinning the economic policy and processes of institutions. During the years 1979-1997, neo-liberal ideas, reflecting the interests of the private sector and free market ideals, replaced collectivism, with its stress on the managed economy and the public sector, as the orthodox approach to economic management.

The triumph of neo-liberal economic ideas over collectivism meant that the Conservative Party had won the battle of economic ideas. The Conservative Party's electoral victories in the 1983 and 1987 General Elections further fortified the dominance of liberalization. The demise of collectivism, which had underpinned the Labour Party post-war economic policy, meant the Party was bereft of economic ideas and this, accompanied by continued electoral failure, ensured that it would need a new ideas platform from which to reinvent itself.

The Conservative Party`s long domination of the executive in the House of Commons transformed economic and civic society, but also, indirectly, had profound implications for the constitution. The Thatcher Governments from 1979 to 1990 demonstrated that it

was prepared to use the full force of the state in its robust quest to implement a radical neo-liberal programme. As already emphasised in this Chapter, a strong executive in Parliament wielding a monopoly of power has always been a classical feature of Parliamentary government. However, during the Thatcher years, the Conservative Government utilized the monopoly power of executive to the maximum, both to implement its economic policy and to by-pass the opposition of other governing institutions. The House of Lords was kept relatively weak and starved of new recruits, while the Thatcher Government also abolished the Greater London Council and the Metropolitan Councils, which were seen as strongholds of the left.

Inside the Labour Party there was a sense that the Conservative Party had stretched the unwritten constitution to the limits by exploiting the central concentration of executive power. A centralised; over-dominant state apparatus had been established. During the post-war years between 1945 and 1979 the `swing of the pendulum' and alternation between government at elections was perceived to be the best check and balance upon government, but the untrammelled longevity of the Conservative Party between 1979 and 1997 had removed that counter-balance.

The Labour Party`s interest in constitutional reform resulted from a combination of domestic and exogenous forces. The Labour Party's domestic political failure began with the defeat of its economic ideas and the decline of collectivism, which was translated into electoral failure and a long exclusion from office. Economic and political failure led to a loss of confidence in social democracy and an ideological vacuum which was partly filled

by the constitutional reform programme. As Bogdanor (2009:47) argues: 'It is hard to avoid the conclusion that Labour's espousal of constitutional reform was in some measure a response created by a decline in the belief of socialism and social democracy'.

He further argues (2009: 47)

> During the 1980 s and 1990 s, the left came to be more sympathetic to the pluralist and decentralist elements of the Socialist tradition, elements which had been submerged during the immediate post-war years when the Attlee Government had been constructing the welfare state, but which had always been part of the Party's heritage.

The Labour Party's new constitutional project was developed as a rhetorical retort to the excesses of Thatcher statecraft. The constitutional reform of the House of Lords was seen as necessary to counter-balance the dominant power of the Executive in the House of Commons. Bogdanor illustrates the effect that eighteen years of Conservative government had upon the Labour Party's constitutional thinking when he writes (2009: 45): 'Once again, eighteen years of opposition, from 1979 to 1997, served to alter Labour attitudes and many in the Party came to be convinced that stronger upper house was needed to act as a check upon government'.

In a similar vein, Evans (2010: 315) describes the Labour leadership conversion to constitutional reform in the 1990's as: 'an elite response to external party dynamics'.

After the long period of Conservative Government, during which the new ideas of liberalization, privatization and public sector management became the dominant mantras of government, the Labour Party was forced to adapt to a new policy agenda that continued the process of transforming the British Welfare State into a competitive state. New Constitutionalism involving the reform of governing institutions was part of a broader political project through which the constitution became restructured to complement the new domestic and global economic systems and new social relationships which had emerged within politics. As, Evans argues (2003:315), the new constitutionalism was an attempt to: 'reform the constitutional order in line with the economic order, and, most significantly, to alter pre-existing patterns of social relationships and politics in order to allow the state to deal better with the imperatives of globalization'.

Evans summarises the Labour Party's Constitutional reform project when he argues (2003: 315) "In sum, the emergence of New Labour's Competition State project was a direct corollary of the interaction between domestic political forces, exogenous forces and internal party dynamics'. As such, the Labour Party Constitutional reform project had dual objectives, adapting to a new economic and global order and making the Labour Party electable after a long period of House of Commons opposition.

Reform of the House of Lords was one aspect of a comprehensive programme of constitutional reform. The Labour Government passed legislation which fundamentally altered the constitution including: the 1998 Scotland Act, the Government of Wales Act

and the 2000 Northern Ireland Act, which introduced asymmetric devolution to the nations of the United Kingdom; the Human Rights Act (1998), which incorporated the European Convention of Human Rights into United Kingdom domestic law for the first time; and the Constitutional Reform Act (2005), which significantly affected the House of Lords as it established the Supreme Court (2009) and made the judiciary for the first time in constitutional history independent from the executive and Parliament.

Section Two: Labour in Power

This section examines how the Labour Party implemented its Manifesto commitment to reform the House of Lords by abolishing the hereditary Peerage and establishing an interim Chamber, dominated by Life Peers, with a residual 92 hereditary Peers. An analyses is made of the proposals contained in a range of White Papers and Committee Reports to replace the hereditary peers and it is demonstrated how the British Political Tradition shaped arguments for both an elected and nominated Chamber

The Labour Party's resounding 179 seat victory at the 1997 General Election gave it the mandate it needed to enact its radical reform of the House of Lords and usher in an era of constitutional reform. The Labour Party's manifesto pledge to abolish the hereditary Peerage's representation in the Upper Chamber was endorsed by the electorate and set to be implemented by a Labour Government. However, the commitment to do so without any clear blueprint about what should replace the hereditary peerage represented a step into the constitutional unknown. In the 1998 White Paper *Modernising Parliament*

Replacing the House of Lords, the Government outlined its reasons for reform and provided a vision of the possible composition of a new Upper Chamber.

> `For Parliament to carry out its purpose, it must act with authority and integrity each component part must possess the legitimacy to support its role in the process. The present House of Lords suffers from lack of legitimacy because of its anachronistic and unrepresentative composition. `
> (cm4183:ch1:1)

The Government argued that the unelected, and largely hereditary, composition of the House of Lords was an anomaly in a democracy and undermined its legitimacy to participate in government. The Government acknowledged the importance of the House of Lords to a bi-cameral system of government by stating: `The government believes that Britain, like other large mature democracies needs a two-chamber legislature' (cm4183:Ch2:2) and it was committed to retaining the House of Lords as a secondary Chamber and harnesses its existing strengths as a legislative branch of the constitution:

> But the House of Lords and the work it carries out suffers from its lack of legitimacy, because the presence of the hereditary Peers creates a permanent majority for a single party. For its functions to be performed properly the House of Lords needs a degree of legitimacy which it does not now enjoy.
> (cm4183, Ch2; 20)

The Labour Government's main reason for reforming the House of Lords was to end the Conservative Party's inbuilt numerical majority and establish a Chamber which, at least in theory, would be more congenial to the Executive in the House of Commons. The initial influence of the British Political Tradition can be gauged by the fact that the Government used democracy as the main reason for the removal of the hereditary Peerage upon which the Conservative majority was founded. In *Modernising Parliament Reforming the House of Lords*, it outlined the stages by which the House of Lords would be reformed. In line with the Manifesto commitment, the process would begin with the immediate abolition of the hereditary Peerage in the Lords and the creation of an interim Chamber comprised of Life Peers. The Government then proposed to establish a Royal Commission to examine both the powers and the composition of the Upper Chamber. The Royal Commission was given a directive to examine ideas for a future Chamber based on election and/or nomination.

On 4 January 1999 the total membership of the House of Lords temporal and spiritual was 1,295, of whom 510 were Life Peers (40%), 9 were hereditary Peers of the first creation and 750 were hereditary Peers by succession. Twenty six Archbishops and Bishops of the Church of England represented the Lords spiritual. In percentage terms the hereditary Peers accounted for 58% of the total membership, Life Peers for 40% and the Lords spiritual for 2%. As such, the hereditary Peers represented a sizeable majority in the Upper Chamber.

The political allegiance of the hereditary Peers underpinned the Conservative dominance of the Upper Chamber. Out of 627 Peers by succession, 360 identified themselves as having allegiance to the Conservative Party. In addition, of a total of 503 Life Peers, 172 were Conservative, 157 Labour, 45 Liberal, 119 Cross benchers and 10 from other parties. A total of 1,165 members of the House of Lords accepted a party whip, of which 476 were Conservative Peers. In percentage terms, and excluding the cross-benchers, the Upper Chamber was 66% Conservative, 24% Labour and 10% Liberal. Consequently, the Conservative Party overwhelmingly dominated the House of Lords.

The Labour Government was committed to the removal of the hereditary Peers from the Upper Chamber for a number of reasons. Firstly, it regarded membership of the House of Lords, and by extension participation in the governmental process by simple virtue of the hereditary principle, as a flawed principle and unacceptable in the modern age of democracy. However, the principle reason the Government wished to dispense with the hereditary Peers was because this was the element that gave the Conservative Party its permanent and inbuilt majority and the Government was against any one party having a majority in the new Chamber: 'The Government believes no-one political party should seek a majority in the House of Lords' (cm4183, Ch5:2).

As already demonstrated in previous chapters, democracy in the Twentieth Century had created a bi-cameral system of government, with a strong authoritative House of Commons, underpinned by democracy, governing in conjunction with a much weaker House of Lords. The objective of the Government's reform, aside from removing the

inbuilt Conservative majority, was to improve the efficiency of the legislative branch of the constitution.

The Government wished to harness and adapt the House of Lords existing legislative powers by making it a more efficient and effective Chamber for the scrutiny of Commons legislation. The Government's objective was to create a stronger, more formidable, secondary Chamber, more capable and efficient in its ability to scrutinise and amend Commons legislation, but not strong enough to challenge and undermine government legislation. Although democracy had created a dominant and strong Executive, drawn overwhelmingly from the House of Commons, and a weak legislature in the House of Lords, the nature of the bi-cameral system meant the House of Lords still played a significant role in the constitution. The House of Lords legislative powers, although limited, ensured that it was still crucial to the efficiency of Parliament and the constitution system and, consequently, the Government was particularly sensitive about the reform of the Upper Chamber because this has an impact on the sacrosanct nature of executive-legislative relations and struck at the heart of the bi-cameral constitution:

> The government does not underestimate the breadth or complexity of the issues involved in a fundamental reform of one of the Houses Parliament, but we believe that the present composition of the House of Lords is not defensible and the first element of reform will be significant and valuable in itself. (cm4183:ch5:1)

The reform of the House of Lords involved a review of both the powers and composition of the Chamber. The House of Lords powers had been limited since the 1911 Parliament Act and, as mentioned earlier, it had been particularly frugal in the use of its remaining powers from 1945 and the advent of the Salisbury Convention. As such, the House of Lords powers were not a contentious issue, as these had been defined by common practice and convention and agreed by the Houses of Lords and Commons. In stark contrast, the issue of the House of Lords composition and replacing the hereditary Peers was a complex issue opening up a Pandora's Box of constitutional questions. The choice for the Government was between a nominated Chamber, an elected Chamber or a hybrid nominated/elected Chamber. *Modernising Parliament Reforming* argued that composition was crucial to the debate about reform, because the balance between an elected and nominated chamber would directly affect the powers and authority of Chamber: 'The most important consideration in judging the balance of the membership would be which combination best fulfilled the functions the second chamber was being asked to perform'. (Cm4183, Ch8:7)

i) The Government's White Paper (1998): Modernising Parliament-Reforming the House of Lords

In *Modernising Parliament- Reforming the House of Lords,* the Government outlined the terms of reference for the Royal Commission, decreeing that the Commission must find a composition and function for the Upper Chamber:

(H)aving regard to the need to maintain the position of the House of Commons as the pre-eminent chamber of Parliament and taking particular account of the nature of the constitutional settlement including newly devolved institutions, the impact of the Human Rights Act and developing relations with the European Union (Cm4183:Ch7:1).

As the wording suggests, the supremacy of the Executive in the House of Commons was central to any notion of reform of the House of Lords and the Royal Commission had the task of establishing a new composition for the Upper Chamber that would enhance its existing attributes as a legislative chamber, but not undermine the House of Commons constitutional superiority. The White Paper reinforces the point: 'but the second chamber must have a distinctive role and must neither usurp, nor threaten, the supremacy of the first chamber' (cm4183:Ch2:2).

ii) The Royal Commission (2000): The Wakeham Report

The Royal Commission, known colloquially as the Wakeham Commission, had to establish the composition and powers of the Upper Chamber on a more legitimate foundation. The legitimacy upon which the Upper Chamber's powers were founded was dependent upon composition and there was contention over whether legitimacy should be derived from representation, as a nominated chamber would be, or democracy, as an elected chamber would be. The Wakeham Commission was faced with a plethora of options, ranging from a fully nominated Chamber, through to a fully-elected Chamber, with a range hybrid options consisting of a mixed elected and nominated Upper Chamber.

The British Political Tradition, with its emphasis on a strong executive power in the House of Commons, supplemented by a weak House of Lords, remained a sacrosanct principle and the maintenance of such a status quo, underpinned by top-down democracy, was essential to the reform process and influenced how the Commission interpreted all the options of nomination and election.

> The reform of the second chamber should be authoritative that authority could be derived from a number of sources but should not be as such as to challenge the democratic authority of the House of Commons. (Cm4534:71)

The Royal Commission had to assess the various merits and drawbacks of election and nomination to find a solution that would establish the Upper Chamber's legislative functions on a more legitimate footing. A fully-nominated Chamber ran the risk of being further dominated by the House of Commons and, therefore, might be more subservient than the existing Lords. A fully-elected House of Lords created potential constitutional dangers, because a House of Lords vested with a democratic mandate could, in theory, have legitimacy to challenge the supremacy of the House of Commons. This had the potential to unhinge the whole basis of a constitution based on democracy and Commons supremacy. For this reason, the Government was particularly wary of an elected Chamber, fearing it could end the Commons hard-won monopoly of executive power, which it had established under democracy since the 1832 Reform Act. The Government wished to maintain the House of Commons as the solitary Chamber of democracy and,

therefore, the sole arbitrator of power. The objective was to create a stronger House of Lords, while simultaneously avoiding the pitfalls of political subservience or gridlock. Consequently, the White Paper declared the priority of reform was: 'First, the need to ensure that the supremacy of the House of Commons is not undermined by the House of Lords' (cm4534:Ch8:4)

The White Paper argued: 'A fully directly elected chamber would inevitably have a significant impact on the relationship between the two houses' (cm4534. ch8:4). It firmly rejected the idea of a democratically elected House of Lords, as it believed this would undermine the democratic supremacy of the House of Commons and disrupt the balance of the constitution. As an alternative, the Government highlighted the fact that 30% of overseas secondary chambers are created by a system of indirect election using electoral colleges composed of local or regional assemblies. This system of indirect election underpinned second chambers in such countries as France and Netherlands and, significantly, was adaptable to both unitary and federal states.

As already mentioned, House of Lords reform was one component in a programme of constitutional reform aimed at modernising all of Britain's governing institutions. There were new devolved institutions for Scotland, Wales and Northern Ireland, sub-national institutions, such as the London Assembly, and regional development structures. The White Paper argued: 'The relationship of the second chamber to these bodies will need to be a significant part of the Royal Commissions deliberations' (cm4583:Ch7:2).

The Government's initial plan for the House of Lords was that it should be comprised of representatives nominated from the new devolved regions. The White Paper further enforces the point: 'One question that arises is whether the second chamber should have some overt role as a representative of the regions or regional bodies'. (cm4583: Ch7:2). The Government favoured this because it was essentially a nominated Chamber, although the fact that the nominees were indirectly elected from the regions meant that it had a degree of democratic legitimacy. However, because representatives would be indirectly elected from the regions, it had a weaker mandate than the House of Commons and in theory should not provide too stern an opposition to the Executive.

A further argument which the Government gave in favour of nomination as the method of composition was that it believed nomination would expand representation to a wider spectrum of society and bring new specialist skills to the Upper Chamber's existing portfolio of expertise. The method of nomination favoured would involve a central body, such as an Independent Appointments Commission, which would select independent cross-benchers, while political parties would nominate their representatives. An alternative system of nomination considered was the method of functional representation in the Irish Republic, where a spectrum of professions nominated members to the Upper House.

The House of Lords Reform would begin with the abolition of the hereditary Peerage and this would instantly create a new interim Chamber, with Life Peers as the majority element. The Government's principle objective was to ensure that political parity existed

between the Conservative and Labour Parties and that no single party had a monopoly or domination of numbers. In December 1998 the Government calculated that the political balance of Life Peers in the House of Lords was Labour 157 (42%), Conservative 172 (46%) and Liberal Democrats 45 (12%). The Conservative Party still maintained a slight majority, but the Government's objective of achieving broad political parity would be achieved.

The Government's prime objective was to end the Conservative Party's overwhelming numerical dominance of the House of Lords and create a politically balanced and non-partisan Chamber with a more equitable distribution between the parties. So, the White Paper states:` We do not seek to replace the current enormous political imbalance with a mirror image, which favours the Labour party, but with a fairer balance between parties' (cm4583:Ch5:2)

It continued:' We recognise the value and the tremendous contribution made to the work of the House of Lords by the independent cross-bench Peers' (cm4583:Ch6:2) The Government recognised that Cross-bencher Peers made a significant contribution to maintaining the independence of the Upper Chamber. However, it wanted to remove the appointment of Cross-bench Peers from the Prime Minister to the remit of a new Independent Appointment's Commission. The Appointments Commission would be an advisory non-departmental public body comprised of independent members, but with representatives of the three major political parties. The Appointments Commission would appoint Cross-bench Life Peers with regard to maintaining the political balance of the

chamber. In the new interim House of Lords, the appointment of Life Peers would continue under the terms of the 1958 Life Peers Act. Overall the main purpose of the proposals was to end the partisan dominance of the Conservative Party and establish a more politically balanced and independent Chamber.

iii) The House of Lords Act (1999)

The House of Lords Act was passed on 3 February 1999 by the House of Commons and later by the House of Lords, receiving Royal Assent on 11 November 1999. During the passage of the Act, the Government accepted an amendment, tabled by Lord Weatherhill, the Leader of the Cross-bench Peers, suggesting that 10% or 75 of the Chamber's 750 hereditary Peers should be allowed to retain their places in the new interim House of Lords. In *Modernising Parliament: Reforming the House of Lords,* the Government indicated it was minded to accept an amendment for the retention of 10% of the hereditary Peerage. The retention of 10% of hereditary Peers in the Upper Chamber was designed to smooth the transition from a hereditary to an interim Chamber and facilitate the change to the next, as yet unspecified, stage of reform. The Government acknowledged the traditional strengths that the hereditary Peerage brought to the process of government and wanted to harness those attributes for the benefit of the new interim Chamber.

At face value, the Government seemed to backtrack on its Manifesto commitment to abolish the hereditary Peers presence in the House of Lords, but, in *Modernising Parliament-Reforming the House of Lords*, they elucidated their reasons for retaining a

vestige of the hereditary Peerage in the new interim Chamber by arguing: 'such a degree of flexibility, where it promotes a smooth evolution of our constitutional arrangements, is very much in the British tradition of reform' (cm4583:Ch5:3).

However, the main reason for retaining the presence of the hereditary Peerage in the House of Lords was that the Government wished to allay Conservative fears over the pace and extent of reform. The Government acknowledged that an issue as politically divisive as the House of Lords reform could only proceed with the agreement of all major political parties, but especially the Conservative Party. The retention of a minority of hereditary Peers was an acknowledgement of the traditional attributes and qualities that they brought to the character of the Chamber and provided a foundation upon which a new reformed Chamber could be established. The White Paper emphasises the necessity of cross-party agreement when it states: 'if there is consensus the government will make every effort to ensure that the second stage of reform has been achieved by Parliament before the next election' (cm4583: Ch5:3).

The House of Lords Act 1999 abolished the hereditary Peers right to sit and vote in the Upper Chamber, with the exception of 92 Peers elected by the Lords themselves. The 92 hereditary peers contained two non-elected ceremonial office holders, firstly, the Lord Great Chamberlain, who is the Queen's representative in the House of Lords, and, secondly, the Earl Marshal, who is responsible for ceremony. Fifteen hereditary Peers were elected by the whole House of Lords to serve as Deputy Speakers or Committee Chairman. Seventy five Peers were elected by the major parties to retain their places in

the House of Lords of whom 42 were Conservatives, 28 Cross-benchers, 3 Liberal Democrats and 2 Labour Peers. The House of Lords Act created in effect a nominated Chamber based upon Life Peers which suited the Government's objective of creating a stronger Chamber but one which could be controlled by the House of Commons. A subsection of the House of Lords Act gave provision for the first time for Peers to stand and vote in elections to the House of Commons.

iv) The Royal Commission Report (2000): Wakeham Recommends a Nominated Chamber

The Royal Commission's Report, entitled *A House for the Future* (cm4534), was published in January 2000 and recommended a predominantly nominated House of Lords. It recommended a relatively large House of Lords of 550 members, composed of 80% appointed members and 20% elected members. Central to the foundation of an appointed Chamber was the recommendation to create a 12 member, independent, Statutory Appointments Commission. The Appointments Commission would directly select 20% of members, while parties in the House of Commons would nominate the remaining 60% of appointed members. The Appointments Commission would have responsibility for ensuring that the political balance of the Upper Chamber mirrored the votes cast in the previous election and that 20% of members were independent and not aligned to a political party. The Appointments Commission would also be responsible for ensuring that a statutory minimum of 30% women and 6% from ethnic minorities were represented in the Upper Chamber. The Royal Commission recommended the continuation of the 92 hereditary Peers in the interim Chamber before their eventual

removal and endorsed the Government view that no-one party should have an overall majority.

The Wakeham Commission's recommendation of a Chamber with only 20% elected members reflected the unease at the prospect of the House of Lords receiving a democratic mandate. The Royal Commission suggested that the number of elected Peers should be 67, 87 or 195 members; it expressed a preference for 87. The Royal Commission recommended that elections should be based on the 17 regional constituencies used for election to the European Parliament and that elections should be under proportional representation. The first election to the House of Lords would take place on the same day as European Parliament elections and involve the election of all 87 members to the Upper Chamber. After the inaugural first election, 1/3 of members would be up for re-election every 5 years under system of rotating regions. Elected members to the House of Lords would serve a lengthy 15 year term.

The Royal Commission was against direct election to the House of Lords, writing in paragraph 11.6: 'Regardless of its political complexion, the central objection of a directly elected second chamber is that it would by its very nature represent a challenge to the House of Commons' (cm4534). The Wakeham Commission's aversion to an elected Upper Chamber reflected its belief that such a chamber would be armed with a democratic mandate and, therefore, represents a major challenge to the superiority of the House of Lords: 'it would be wrong to restore the fully bi-cameral nature of Parliament of the pre-1911 Parliament' (cm4534, Para 4:7).

The Royal Commission had some interesting and pertinent comments to make regarding the Government's idea for linking the House of Lords to the new devolved regional Assemblies of Scotland, Wales and Northern Ireland. The Royal Commission contended that, although unitary and federal states in other countries used their secondary chambers as forums for regional and function representation, this was inappropriate for the House of Lords in the United Kingdom Parliament. The Royal Commission argued that the United Kingdom was a unitary state, not a federal one, and the relationship of the Westminster Parliament to the component assemblies of the United Kingdom was complex and uneven. The Scottish and Northern Irish Assemblies had extensive legislative powers, while the National Assembly in Wales had limited power over secondary legislation within primary legislation passed at Westminster. England's legislation was formulated at Westminster, while the Greater London Assembly and regional authorities had begun to determine policy dependent on local circumstances.

The Royal Commission stated that the inter-governmental relationship between the United Kingdom's institutions as creating a form of asymmetric quasi-federalism. This militated against the House of Lords becoming a Chamber for the devolved regions and, from this moment on, it became apparent that the new reformed House of Lords could only be part of national legislature governing in the interests of the whole of the United Kingdom.

Throughout the Twentieth Century history of the House of Lords and the previous attempts at reform, including the Bryce Conference (1917), the All Party talks (1948) and the Cross-Party Committee (1967), the issue of composition has proved highly divisive, with each proposition, whether for a nominated or elected Chamber, loaded with explosive possibilities. However, in contrast, the issue of powers, proved relatively straightforward producing general agreement and the Royal Commission (2000) was no different in this regard. The Royal Commission did not recommend the addition of any new legislative or constitutional powers and rejected the idea that existing codes, conventions and powers should be enforced by statute. The Wakeham Commission instead endorsed the existing raft of tacit codes and conventions, in particular the Salisbury Convention, governing the constitutional relationship between the House of Lords and the House of Commons. The Royal Commission did however recommend the establishment of a constitutional committee to examine the constitutional implications of all Public Bills and review the operation of the Constitution.

The Wakeham Report (2000) was received with a deal of derision and apathy by the major political parties and stern criticism from the press. The main focus of criticism centred on its perceived timidity over democracy and the number of elected members it recommended for the House of Lords. The Royal Commission's recommendation of a 20% elected Upper Chamber, meaning a mere 87 out of 550 members, would be elected, meant that democracy played a minimal role in the reform of the Upper Chamber. The Wakeham Commission's designation of a 20% elected Chamber was deemed too minimal to confer any kind of legitimacy or authority on the House of Lords and

disappointed the aspirations of opposition political parties and the popular press who hoped for a much larger democratic element in the reformed House of Lords.

The negative reception which Parliament gave to the report was an indication of the crucial importance of democracy to debates about House of Lords reform and, therefore, an indication that the British Political Tradition was becoming more relevant to the process The Wakeham Commission`s preference for largely nominated Upper Chamber indicated that a Conservative idea of responsibility had dominated the initial reform process. A House of Lords composed of a nominated membership largely decided by the House of Commons would ensure that the House of Lords would not present a major challenge to the executive in the House of Commons. The House of Lords, as a nominated chamber, lacked the democratic legitimacy and authority and this ensured it would be not be in a position to challenge the superior democratic authority of the House of Commons.

The Wakeham Commission report was aimed at reinforcing a conservative idea of responsibility and ensuring that strong executive power would emanate solely from the executive in the House of Commons, which would continue to preside over a weak legislature in the House of Lords. The Royal Commission Report (2000) saw the Government's objective outlined in *Modernising Parliament-Reforming the House of Lords (1999)* of establishing a democratic and representative chamber, as best as achieved through a nominated chamber rather than through an elected chamber, which would threaten strong government.

The Wakeham Report favoured representation through nominated interests, as opposed to representation through election, as the preferred solution to legitimacy. Representation through nomination reflected the first tenet of the British Political Tradition, a conservative notion of responsibility, with power located almost exclusively in the executive; it also reflected the British Political Tradition's limited understanding of representation.

However, it was becoming apparent that only a more liberal form of democratic representation in the House of Lords could achieve the legitimacy necessary for the Upper Chamber to participate in a modern bi-cameral system of government. In a modern constitution underpinned by democracy the House of Lords had to incorporate a democratic elected element to enable it to act as a legitimate secondary and revising chamber to the House of Commons. At the same time, the form of democracy and representation introduced in the House of Lords had to be limited to ensure that the House of Lords mandate did not undermine the superior democratic mandate of the executive in the House of Commons, given that a conservative idea of responsibility remained the sacrosanct principle underpinning reform, with preserving the strong authority of the executive in the House of Commons as the primary aim.. A limited form of Liberal representation was needed to consolidate the elite and hierarchical constitutional relationship between the executive and the House of Lords. Democracy in the Upper Chamber would be limited and reflect the limited and secondary authority of

the legislature in the House of Lords and its deference to the superior primary authority of the executive in the House of Commons.

The Wakeham Report was influenced by the British Political Tradition and motivated strongly by the need to maintain the dominance of the Executive in the House of Commons over the House of Lords. The Wakeham Report favoured a nominated Chamber as this could be more easily circumscribed by the House of Commons and so legitimacy founded upon representation based on nomination was preferred choice. The failure to recognise the importance of electoral representation and democracy and the fact that only this could satisfy the demands of Parliament and confer legitimacy on the House of Lords was a major mistake and a major reason for the failure of both reports.

The House of Lords Act was passed on 3 February 1999 by the House of Commons and later by the House of Lords, receiving Royal Assent on 11 November 1999. During the passage of the Act, the Government accepted an amendment, tabled by Lord Weatherhill, the Leader of the Cross-bench Peers, suggesting that 10% or 75 of the Chamber's 750 hereditary Peers should be allowed to retain their places in the new interim House of Lords. The retention of 10% of hereditary Peers in the Upper Chamber was a designed to smooth the transition from a hereditary to an interim Chamber and facilitate the change to the next, as yet unspecified, stage of reform. The Government acknowledged the traditional strengths that the hereditary Peerage brought to the process of government and wanted to harness those attributes for the benefit of the new interim Chamber.

v) White Paper 2001: The House of Lords Completing the Reform

In 2001 a Department of Constitutional Affairs White Paper entitled *The House of Lords Completing the Reform* (cm5291) proposed a variation on the Royal Commission's recommendation of a nominated Chamber. It proposed a larger Chamber of 600 members, with 120 (20%) chosen by a Statutory Appointments Commission, 332 members nominated by political parties, and reflecting votes cast at the previous election, and 120 members (20%) directly elected. The House of Lords would remain a pre-dominantly nominated Chamber, with 80% nominated and 20% elected. Elections would be based on European multi-member, regional constituencies, using a party list system, and elections would take place on the same day as national General Election to encourage a higher turnout.

The White Paper (2001) also provoked a great deal of criticism from all quarters, even from within the Labour Party itself, with the principle bone of contention once again over democracy. The designation of a minimal 20% elected membership, despite the previous criticism of Royal Commission's recommendations, further antagonised opposition parties. The Shadow Leader of the House of Commons Eric Forth summarised the hostility of Parliament to a nominated Chamber: 'At worst we will have a continuation and indeed institutionalisation of Tony's cronies, and the government should either withdraw the White Paper or at the very least refer it to a committee of both Houses' (cited historysite:2006:2).

The White Paper (2001) was not well received by either the Electoral Reform Society or Charter 88. Ken Ritchie of the Electoral Reform Society stated:

> To have a chamber in which anything less than a substantial majority of members are elected is completely unacceptable. The government started the process of reform in the name of democracy, but now it appears they are reluctant to give up their powers of patronage.

<p align="center">(Cited history site: 2006:2)</p>

The issue of liberal representation by election was becoming central to any notion of reform and provided the only axis around which political parties and Parliamentary pressure groups could hope to coalesce. The Government's failure to address reform through democracy created an impasse in Parliament between the Government, who favoured a nominated Chamber, and the opposition parties, who favoured an elected Chamber. This made the necessary consensus needed for reform impossible and contributed greatly to stagnation of reform. It was only when the importance of representation by election was acknowledged that the stand off between the House of Commons and the Government reduced. The first tenet of the British Political Tradition, that of liberal representation thus became the key to reform.

vi) The Public Administration Select Committee's Report

In February 2002 the Public Administration Select Committee issued a Report (HC 494-1) on House of Lords reform, responding to the White Paper (2001). The Public Administration Select Committee's report is of particular interest because it was the first

body to link the Upper Chamber's legitimacy to democracy and elections and not representation through nomination as the Royal Commission and the 2001 White Paper had done. The Select Committee stated unequivocally that the legitimacy of the Upper Chamber could only be achieved through democracy and that elections to the Upper House were necessary and the avenue by which it could achieve legitimacy and authority as a governing institution.

The Public Administration Select Committee's analysis of this situation, in conjunction with its soundings of MPs, led it to recommend a hybrid Chamber of elected/nominated composition with a majority 60% elected and 40% nominated. The decision of a respected Committee of the House of Commons to opt for a majority elected Chamber broke a psychological shibboleth and was the first open acknowledgement within Parliament that reform could only be achieved through democracy. It was proposed that an Appointments Commission would appoint the remaining 40% nominated members, ensuring that 20% of these would be independent. The Select Committee agreed with previous reports that elections to the new House of Lords should be based on European Constituencies using proportional representation.

Political parties in Parliament and bodies such as Charter 88 and the Electoral Reform Society all concurred that it was the issue of democracy that should determine the outcome of the House of Lords reform. Democracy was directly linked to legitimacy, but it would be the British Political Tradition's idea of limited representation traditionally enshrined in the governing institutions which would prevail. In practice, this would

translate into a form of limited representation in the Upper Chamber which was sufficiently moderated as to guarantee that strong responsible government would continue to emanate from the Executive in the House of Commons. This would allow the continuation of elite and unequal distributions of power between the Executive and the legislature and continue to   determine the discourse and processes of Parliament.

vii) Parliamentary Voting on Reform

The Labour Government used democracy as a convenient argument for removing the hereditary Peerage from the House of Lords, but only wanted limited representation in the House of Lords to maintain the dominance of the Executive. In its haste to achieve the first tenet of the British Political Tradition, strong authoritative government founded upon a conservative notion of responsibility, it had neglected the second tenet of the British Political Tradition, a sufficient degree of limited Liberal representation to confer legitimacy on the Chamber. The conservative notion of responsibility translated into practice meant that the House of Lords reform aimed at maintaining the strong and exclusive concentration of executive power in the House of Commons, but supplemented by a more efficient but ultimately limited, House of Lords.

Democracy underpinned the supremacy of the House of Commons, but the Government was fearful that, by extending democracy to the Upper Chamber, it would empower it with the authority to challenge the House of Commons. The Government feared that a democratic House of Lords would weaken the authority of the executive and,

consequently, favoured a nominated Chamber without a clear democratic mandate was weaker and could be more readily constrained by the House of Commons.

The Government failed to appreciate that more than a semblance of democracy is necessary to bestow legitimacy upon governing institutions and that an overwhelmingly nominated Chamber totally lacked that legitimacy which was needed for government. In reality, the only method by which the House of Lords could achieve legitimacy for its participation in a bi-cameral system of government was through democracy, but, inevitably, that democracy would be shaped by the British Political Tradition. This would mean a limited form of liberal representation and democracy, whereby, even though the House of Lords was elected, its powers would be limited to ensure it remained a junior and subservient constitutional partner to the House of Commons. To achieve this limited form of Liberal representation, the House of Lords would have to be elected on a totally different basis to the House of Commons, using different constituencies, perhaps a different electoral system and certainly campaigning on a different mandate, based on its limited secondary powers. On this basis, it would remain a distinct, but secondary, elected Chamber.

The Government did not proceed with either the Royal Commission Report (2000) or its own White Paper (2001), but, instead, established a Joint Committee of both Houses of Parliament. The terms of reference of the Joint Committee was to recommend a range of options for the House of Lords, varying from a fully-nominated chamber, through a

hybrid elected/nominated Chamber, to a fully elected Chamber; subsequently, Parliament would vote on all the options.

In 2003 the Joint Committee published its report (HL: 17, 2002-03) recommending 7 possible options for the composition of the House of Lords to be voted upon by both Houses. On the 22 January 2003 both Houses debated the options with striking differences emerging between the Houses over how the Chamber should be composed. Lord Chancellor Lord Irvine summarised the consensus in the Lords, stating: 'Plainly the dominant view of this House expressed over the past two days is in favour of an all appointed House'. (HL: 831) In contrast speaking in the closing debate in the Commons, Parliamentary Secretary Ben Bradshaw argued (HC: 270)

> In this debate a large majority of members have spoken in favour of a largely or wholly elected upper House. In doing so, they have reflected the opinion of the country and the findings of surveys that   has been conducted by Members of this House.

The debates in the Houses of Parliament revealed a gulf between the House of Lords, which reverted to type and favoured an appointed Chamber, and the House of Commons, which favoured an elected Chamber. The fact that the House of Commons debate indicated a preference for a largely elected Chamber was very significant and suggested that the democratic will of the nation was in favour of an elected Chamber. However, Prime Minister Tony Blair, speaking on the 29 January 2003, reiterated the Government's

preference for a nominated Chamber and their suspicion that a hybrid or elected Chamber would make the House of Lords a potential rival to the House of Commons: 'Do we want an elected House, or do we want an appointed House? I personally believe a hybrid between the two is wrong and will not work'. The Prime Minister further stated: 'I think the question on election is whether we want a revising chamber or a rival chamber'. (LLN: 2006/07:7)

On February 4 2003 both Houses voted on the Joint Committee's 7 options for the House of Lords. The House of Lords voted overwhelmingly, by a 3 to 1 majority, in favour of an appointed Chamber, while the House of Commons rejected all 7 options. The House of Commons resoundingly rejected a fully appointed Chamber by 323 to 245 votes, but came close to endorsing the majority elected options. A fully elected Chamber was defeated by 289 to 272 votes, while the 80% elected option was even closer, being defeated by 28 to 281 votes. The House of Commons voting figures suggested that it disagreed with the Government and was strongly against a nominated Chamber, expressing instead a preference for an elected House of Lords. It was clear that the House of Commons saw legitimacy as being bound up with the second tenet of the British Political Tradition, that of Liberal representation, and democracy and was lending its weight towards the momentum for an elected Chamber.

In September 2003 the Department of Constitutional Affairs published a Consultation Paper entitled *Constitutional Reform: the Next Steps for the House of Lords* (Cp 14/03). The Consultation Paper, bizarrely in view of the previous heated opposition, advocated

an appointed Chamber, with an even larger nominated element. The Consultation Paper's aversion to democracy evoked still further hostility from Parliament and within the Labour Party. As such, it became apparent that an appointed Chamber was simply untenable. On March 19 2004, Lord Falconer, Secretary of State for Constitutional Affairs conceded defeat in an interview with BBC radio's *Today* programme saying: 'It became clear the bill wouldn't get through the Lords. The Lords have indicated they are going to resist. The Leader of the Conservative Party said he would fight every part of our programme'. (LLN; 2006/07; P17) The issue of democracy had created a quagmire and, until the Government reconciled reform with democracy, it would continue to alienate Parliament and stall the process of reform. In the midst of the impasse, and with a General Election due in 2005, the Government abandoned House of Lords reform.

viii) The Government Tries Again

It was clear that only a reform founded upon democracy and as a consequence Liberal representation could provide a solution to the deadlocked process and this was the only route through which consensus could be built with the opposition parties. A cross-party working committee, under the chairmanship of Jack Straw, was created to take a fresh look at reform based on democracy. To supplement the cross-party committee examining composition, another joint committee of conventions was established to examine the other side of the reform equation, the House of Lords powers. The Joint Committee's brief was to examine the possibility of codifying the network of codes and conventions that govern the Lords' relationship with the Commons. These included the Salisbury

Convention, the time it takes government business to be attended to, the exchange of amendments and the Lords' power over secondary legislation.

On July 11 2006, in a speech to the Hansard Society entitled ` The Future of Parliament ` (cited: LLN: 206/07:p39), Jack Straw stated publicly for the first time the Government's idea of a hybrid chamber, with a largely elected element. He stated : 'My sense is that we should be able to build a consensus around the idea of a House that is split 50% elected and 50% nominated phased in over along period, perhaps as long as 12 or 15 years'. Straw further contended (LLN: 2006/07:p38): 'Crucially the shift must be one which leads to a House which does not threaten the primacy of the Commons, but is more representative of the society we live in'. Straw's words reflected the Government's new-found resolve to build a consensus with Parliament based on democracy, but reiterated an on-going theme of the British Political Tradition, that democracy, and indeed representation, must be limited, so as not to undermine the supremacy of the House of Commons, in effect of the Executive. Jack Straw's sentiments indicate a preference for a limited form of democracy, supplementing a strong Executive in the House of Commons and that reflected the reassertion of the British Political Tradition in relation to House of Lords reform.

The cross-party working group produced a report in October 2006 which reflected the new significance of democracy and a limited form of representation to the reform process. The cross-party report recommended a hybrid Upper Chamber comprised of 50% elected and 50% nominated members, with the size of the Chamber reduced by a

third, from 750 members to 450 members. In an echo of the Royal Commission (2000), the cross-party group recommended election under proportional representation based on European Parliamentary constituencies, using an open list system. Elections to the House of Lords would take place on the same day as British General Elections and elected members would serve a non-renewable term of 3 Parliaments, equating to a 12 year term. Elections would be staggered over 3 Parliamentary cycles to ensure both turnover of membership and that no one political party would sustain an overwhelming majority of members in the Upper Chamber. A Statutory Appointments Commission would be responsible for nominating the other 50% of members. The Appointments Commission would consist of nine members, of whom 3 would be chosen by political parties, which would have responsibility for ensuring that appointments represented the diverse socio-political and economic strands of the nation.

The objective of the cross-party group was to achieve a politically balanced, non-partisan, chamber with sufficient independence and expertise to contribute towards the efficiency of bi-cameral government. A degree of democracy, through limited representation was necessary to bestow legitimacy on the Upper Chamber and allow it the authority to act as an effective secondary chamber, scrutinising the legislation of the Executive in the House of Commons.

The cross-party working group document was the first attempt directly to inject a degree of limited democracy into the reform process and put it at the centre of reform. The cross-party group's findings proved highly influential for the Government's White Paper of

February 2007, entitled *The House of Lords: Reform*, (cm7027) after which both the House of Commons and the House of Lords debated the issue and held a free vote. As was the case in the 2003 vote on the House of Lords reform, the Houses of Parliament voted on the options, ranging from a fully-nominated Chamber, through various hybrid elected/nominated options to a fully-elected Chamber. On this occasion, and following the findings of the cross-party group and the White Paper, the Government loaded the dice in favour of a largely elected Chamber by letting it be known to Parliament that it favoured a substantially elected Upper Chamber. This further indicated that a limited form of democracy and representation was the key to reform.

On March 2007 the House of Commons voted 337–224 in favour of a wholly elected Chamber, a large majority of 113. It also voted for an 80% elected chamber by 305 – 267 votes, a majority of 38, and rejected all other options. The House of Commons first vote for an 80% elected Chamber won by 38 votes and showed it was in favour of a largely elected Chamber, but the 113 vote majority for a 100% elected Lords was resounding and proved it was strongly in favour of a 100% elected Chamber. The House of Lords, in contrast, voted by a huge majority of 240 for a fully nominated Chamber and rejected the 80% elected option by 222 votes and the 100% elected option by 204 votes.

Although the House of Lords was strongly against an elected Chamber, the House of Commons, as the democratic arm of the constitution, did as always hold primacy, and it was obvious that House of Lords would become an elected chamber. The British Political Tradition`s emphasis upon a limited form of liberal representation had become crucial to

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the reform process and indispensible to completing House of Lords reform. In this vein, The Director of 'Unlock Democracy' a group who emerged from Charter 88 illustrated the pivotal importance of democracy to reform. Peter Facey argued: 'The question is no longer whether the government will complete reform, but when' (cited White Paper 2007: Intro: p8)

The 2008 White Paper: Towards an Elected Chamber

In July 2008 the Ministry of Justice published *An Elected Second Chamber: Further Reform of the House of Lords* (cm7438), a White Paper on House of Lords Reform, in which the Government outlined a blueprint of options for making the House of Lords a democratic Chamber. The White Paper reflected the findings of the cross-party working group and, ironically, in its objective to introduce democratic representation, also drew inspiration from the ideas contained in the previously derided Wakeham Report (2000).

An Elected Chamber Second Chamber: Further Reform of the House of Lords (2008) concurred with previous reports regarding the powers of the Upper Chamber, defining them as involving the scrutiny of legislation, conducting investigations and holding government accountable. The White Paper outlined four principles underpinning democracy in the Upper Chamber: firstly, that the Chamber must be elected on a different representative basis to the House of Commons; secondly, it should bring a degree of independence to its deliberations; thirdly, its members should serve a long term of office; and, lastly, the elected composition of the Upper Chamber should bear some degree correlation with the opinion of the electorate, while also representing minority views.

An Elected Second Chamber: Further Reform of the House of Lords, as the name suggests, was the first White Paper with a specific objective of introducing elections to the Upper Chamber and was an indication that reform proposals were endorsing the dominant ideas of the British Political Tradition. As mentioned earlier, the White Paper in its objective to establish an elected Chamber attempted to resurrect and build upon the ideas contained in the Wakeham Report (2000) stating: 'The Wakeham Commission conducted much detailed research, and this and its conclusions have proved invaluable in informing discussion within the cross-party group and within the government'. (cm7438: foreword: p2)

The White Paper is a consultative document proposing ideas for the reform of the House of Lords that could take between 12 and 15 years to complete. Although this is clearly a long-term process and many things, particularly with regard to constituencies and electoral systems, have yet to be decided, it appears to provide proposals upon which reform can be initiated and which a future Parliament would be content to implement.

The White Paper builds upon the Royal Commission's (2000) recommendation that elected members of the second Chamber should serve single non-renewable terms of between 12-15 years, with each member being elected in thirds, and serve 3 electoral cycles. The White Paper also concurred with the Wakeham Report that there should be large, multi-member, constituencies with staggered elections, but taking place on the same day as General Elections, and not European elections as the Wakeham Commission

proposed, to encourage a higher turnout. In the event of General Elections being held in close proximity to each other, the Government proposed the novel idea of a rider, whereby, in the event of election within 3 years of the previous one, there would not be an accompanying election to the House of Lords. This is to ensure a long tenure of office for newly elected members by guaranteeing them a minimum of nine years and guarantee the long-term continuity needed for the role of the Second Chamber.

The current House of Lords has 746 members, making it larger than the House of Commons, which has 644 members. The proposed new Second Chamber would be smaller than the current House of Commons, with the Government favouring 400–450 members based on the average daily working attendance. In contrast, the Conservative Party believe there is a strong case for a Chamber of 250–300 members. This would bring the House of Lords in line with other secondary chambers across the world whose membership is traditionally smaller than the first chamber, such as France whose Senate numbers 331, while its primary chamber has 577 members.

There would be direct elections to the Upper Chamber, based upon first-past-the-post, Alterative Vote, Single Transferable vote or List system, but, as yet, there is no consensus about which is the best electoral system to employ. The Conservative Party favour the traditional first-past-the-post system used for the House of Commons, while the Liberal Democrats express a preference for the Single Transferable vote or an open list system. The Labour Government, in an attempt to achieve consensus, remained uncommitted, but indicated some preference towards an open or semi-open list system. The Labour

Government had indicated the voting system must be straightforward and easy for voters to understand. The issue of the electoral system is highly significant and will decide the number and size of the constituencies, with Government statistics projecting that a first-past-the-post or Alternative Vote system could create 140 constituencies for a fully elected Chamber and 112 for an 80% elected chamber. A Single Transferable Vote system would mean 24 constituencies and a List system would replicate the 12 constituencies used for European elections.

The Government proposes that the Boundaries Commission should have the task of creating the new larger constituencies needed for election to the Second Chamber. The electoral system will also decide the political balance of the chamber, with a first-past-the-post or Alternative vote system opening the possibility of a party achieving a majority in the Upper Chamber, while Single Transferable Vote and List systems make a more equitable balance of parties in the Chamber likely.

In the absence of any consensus regarding the electoral system, the outcome of the 2010 General Election took on a major significance. The 2010 General Election produced a hung Parliament and, consequently, forced the Conservative Party to form an alliance with the Liberal-Democrats to establish the first coalition government seen in Parliament since 1940. As already mentioned, the Conservative and Liberal-Democrat Parties each put detailed proposals for an elected House of Lords in their Manifestos and, therefore, can claim a democratic mandate of a sort to implement reform. Both Parties want an elected Upper Chamber, but diverge over the electoral system to be used, with the

Conservative Party favouring a first-past–the-post electoral system, while the Liberal democrats favour Proportional Representation. At the time of writing, the Conservative-Liberal Coalition Government has reached a compromise and favour a wholly or mainly elected Chamber, elected by Proportional Representation. It is likely that an 80% elected Chamber will emerge as, throughout the reform process, all Parties have been keen to maintain an appointed element to ensure a broad spectrum of representation is achieved and a degree of independence is maintained.

The model of democracy which will underpin these changes seems clearly to reflect the British Political Tradition. Democracy in the House of Lords will consist of a limited form of Liberal representation and. while this will confer a degree of democratic legitimacy upon the authority of the Upper Chamber, the limited nature of representation will ensure it plays a clearly secondary role to the superior authority of the House of Commons, which will remain dominated by the Executive.

Conclusion

Since 1997, New Labour has instigated a wide-scale programme of constitutional reform which has altered the nature of the constitution. Of all the constitutional innovations, reform House of Lords has proved the most complicated and contentious, and indeed resistant to change. This chapter demonstrates how the British Political Tradition continued to be a dominant idea providing the institutional framework within which all ideas for House of Lords reform were interpreted.

The House of Lords Act 1999 should have marked the beginning of a two-stage process of reform, beginning with the abolition of the hereditary Peerage and then introducing radical reform to establish a *democratic and representative* chamber. The first-stage, abolition of the hereditary Peerage, was a simple process and represented the most radical transformation of Upper Chamber's composition in its history. The second stage of reform, involving deciding whether to replace the hereditary Peerage with an elected/nominated Chamber, proved a controversial issue provoking much debate.

In a bi-cameral system of Parliamentary government the British Political Tradition underpins a system of elite, top-down government, in which the executive in the House of Commons supposedly provides strong and responsible government, with over weak legislature and a largely acquiescent the House of Lords. This is a dominant feature of the British system of bi-cameral government shaping the discourses and processes of Parliament. An objective of reform was to retain these features of bi-cameral government for stability and continuity. An elected House of Lords would confer a degree of democratic legitimacy on the House of Lords and enable it to challenge the existing constitutional status quo and, thus, strong government. For this reason, the Labour Government favoured a nominated Chamber to restrict the authority of the House of Lords to question the dominant executive in the House of Commons. During the House of Lords reform process, the first tenet of the British Political Tradition, the emphasis upon a Conservative notion of responsibility, crucially dominated the reform process and ensured that the idea of strong government, with the executive dominating the legislature, shaped all ideas about representation.

As such, throughout the House of Lords reform process, a Conservative idea of responsibility has been dominant and the Labour Government`s objective has been to maintain the existing constitutional settlement, with a dominant executive presiding over a weak legislature. The Labour Government`s apprehension about how the second tenet of the British Political Tradition, that of limited Liberal representation, would disrupt existing executive–legislative relations has restricted reform.. The Government settled into a comfort zone and opted for a *representative*, as opposed to a *democratic*, Chamber and, consequently, the House of Lords since 1999 has in effect been an appointed Chamber. This has not impinged on either its efficiency or competency. Indeed, the evidence suggests that since 1999, shorn of the hereditary element which inhibited its legitimacy, it has felt a greater confidence to challenge the Government's legislation. The House of Lords inflicted 36 defeats on proposed legislation in the 1999-2000 sessions and between 2001-02 and 2006-07 continued to inflict on average 60 defeats per session. The House of Lords has been confident and assertive enough to challenge major legislation and, for example, obliged the government to use the 1949 Parliament Act to pass the Sexual Amendment Act (2000) and the Hunting Bill (2005).

After the 1999 House of Lords Act, the forces of constitutional conservatism began to dominate the process. The Labour Government remained satisfied with an existing constitutional status quo of an appointed House of Lords, co-governing in a secondary, subservient, role to a dominant executive. Prime Minister Tony Blair's lackadaisical attitude to an elected House of Lords further entrenched the dominance of the existing

status quo of an appointed Chamber and meant that the reform process sauntered on rather aimlessly. However, despite the efficiency of the House of Lords, it simply lacked legitimacy, because it was appointed, not elected. Democracy and the creation of an elected Chamber were necessary to confer legitimacy on the Upper Chamber and, without it, reform could never be complete. The White Paper of 2008 highlights the significance of democracy to the process, stating: 'Direct Election of individuals plainly would confer more legitimacy than an indirect system' (cm7438:Ch4:24). It was obvious that democracy and a limited Liberal form of representation was the key to reform over and above either nomination or indirect election and once the genie of democracy was out of the bottle it took on an unstoppable momentum.

To summarise, since the House of Lords Act (1999) the British Political Tradition has continued to be the dominant idea underpinning governing institutions and shaping the discourse and processes of politics. Consequently all ideas for reform have been produced within the context of the British Political Tradition. The success or failure of ideas for the reform of the House of Lords have been dependent on how much they conform to the British Political Tradition and whether they provide stability and continuity.

It appears that the democracy that will emerge in the House of Lords will adhere to the dominate idea of the British Political Tradition and be founded on limited representation, ensuring that it will be deferential to the elite top-down authority of the House of Commons and, thus, a conservative notion of responsibility. Democracy will align with

the other tenet of the British Political Tradition, a limited idea of representation in the sense that it will be elected, but on a separate and discreet basis, to the Commons, using different constituencies and a different electoral system and specifically to perform the functions of a limited secondary Chamber.

Conclusion

The objective of this thesis has been to show through an historical narrative how the British Political Tradition has shaped development of the House of Lords over time. The historical method adopted in this thesis is synonymous with orthodox approaches to the British Political Tradition and involves the use of a narrative to detail how ideas evolve and shape the development of institutions. The historical/narrative approach adopted in this thesis chronicles how ideas become instantiated within institutions and become a tradition by providing the parameters within future generations of actors work and interpret ideas. The virtue of a narrative approach is that it allows flexibility, because it reifies neither ideas nor the institutions, but illustrates how both ideas and institutions organically evolve together. Although critiques of the British Political Tradition adopt a similar historical methodological approach, they diverge sharply over which idea(s) shape the British Political Tradition.

Bevir and Rhodes in their book *Interpreting British Governance* (2003) use an epistemologically interpretist approach to conclude that the British Political Tradition is a congruence of Whig, Tory, Liberal and Socialist ideas running concurrently. However they fail to substantiate their argument by providing evidence through an historical narrative of how these ideas have shaped British democracy.

An objective of this thesis is to rectify this omission by demonstrating how the British Political Tradition has played out in the narrative of individuals and, subsequently, how

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its ideas have become instantiated within institutions. As such, although this thesis adopts Bevir and Rhodes methodological approach using an historical narrative to examine how ideas shape institutions, it diverges from their conclusion that a variety of ideas about democracy and governance have shaped the British Political Tradition. In contrast, the aim of this thesis has been to demonstrate that the stability of institutions and the unity and persistence of idea(s) within the British political system indicate that there is a dominant British Political Tradition.

The main argument of this thesis is that the British Political Tradition has been the dominant idea underpinning the constitutional development of the House of Lords. To illustrate that argument the thesis, firstly, conceptualised the British Political Tradition as a dominant, though contested, idea of democracy, initiated by individuals, and, secondly, chronicled how that idea of democracy came to shape the House of Lords powers and authority as a governing institution. Throughout the thesis, the focus was upon the House of Lords' political powers as one of the governing institutions of Parliament and how the British Political Tradition shaped those political powers and defined its constitutional position as one of the three governing pillars of the constitution alongside the Crown and the House of Commons.

Evans in *Constitution-Making and the Labour Party* (2003) defines the British Political Tradition as an: `all-party elite tradition which is founded upon a conservative view of responsibility and a limited liberal view of representation ` (2003:16). Evans argues that the British Political Tradition is an elite tradition of democracy which has created a top-

down dispersion of power and inscribed a `*government knows best*` (2003:16) mantra into governing institutions. It is argued that the British Political Tradition is founded upon a conservative notion of responsibility which is designed to establish strong, authoritative power within governing institutions. A liberal idea of representation underpins democracy, but is limited to ensure minimal participation by elected representatives in government and an unequal distribution of power between the executive and the legislature within Parliament. Power continues to be concentrated in the upper echelons of government.

Throughout the historical narrative of the House of Lords and the British Political Tradition, this thesis demonstrates how a conservative idea of responsibility, aimed at achieving strong, responsible, government, has always been dominant over ideas of representation. A conservative idea of responsibility, historically rooted in the pre-democratic liberal constitution, has been instrumental in shaping the elite, and limited, ideas of democracy which characterise the British Political Tradition.

Evans argues that the British Political Tradition is a dominant idea which becomes inscribed into governing institutions and: `underpins the institutions and decision-making processes of the British Political system ` (2003:16). The principle of elitist, top-down government determines the discourses and processes of government and establishes dominant characteristics, which reinforce the hierarchical, top-down diffusion of power. These include:

- Majoritarian or a `first-past-the-post electoral system

- Executive dominance of the legislature

- Inequalities of power resources

- Low levels of participation in the system of government

- A centralised unitary state

The House of Lords has retained a position as one of the governing institutions of the British Constitution since the Thirteenth Century. Alongside the House of Commons, it remains one of the two Chambers of the English Parliament and, consequently, has had a direct role in the governing of the nation for seven hundred years. The Crown and the Houses of Lords and Commons represent the trinity of governing institutions at the heart of the constitution. This thesis has concentrated on the role of the House of Lords, in relation to the House of Commons and the Crown, from the 1688 Glorious Revolution, charting its political development throughout the periods of Liberal constitution and Mixed Government up to the 1832 Great Reform Act. Subsequent chapters chronicled the House of Lords development throughout the period of Liberal democracy in the Nineteenth and Twentieth Centuries. The objective has been to illustrate the importance of the House of Lords to Parliament and the Constitution and show how its political power and influence have embodied dominant ideas of elite power, which, in turn, influenced the model of elite, top-down, democracy that emerged.

The British Political Tradition is a dominant idea of democracy which underpins the institutions and processes of British Government. That tradition embodies a principle of

elite top-down government and has been a constant and reoccurring theme, with an ability to reinvent itself as Parliament evolved from a liberal to a liberal-democratic constitution. During the Liberal Constitution from 1688 to 1832, the House of Lords used its power and prestige as the chamber, representing the interests of an aristocratic elite, to ingrain those ideas of elitism and top-down power into Parliament in the age of Constitutional Mixed Government. The idea of elite top-down power so evident in the liberal constitution evolved and eventually shaped the model of elite, top-down, democracy which emerged in the Nineteenth Century.

The British Political Tradition: A Contentious Concept

Chapter Two analysed the main contributions to the development of the concept of the British Political Tradition, all of which see it as an idea of democracy with attendant empirical practice. The objective was to identify the salient aspects of various approaches to the British Political Tradition and, in doing so, to develop an approach which is utilised throughout this thesis. Firstly, an assessment was made of the first major contribution to discussions of the British Political Tradition contained in the work of Birch, who in *Representation and Responsibility (1964)* argues that the British Political Tradition can be defined as an accumulation of ideas about representation and responsibility. This chapter also examined Birch's contention that the concept of representation focuses upon the degree to which representatives of the people share in the policy decisions of Parliament and his further view that *responsibility* involves the extent to which government responds to public opinion and is responsive to public demands.

The second chapter also examined Beer's contribution to the British Political Tradition contained in *Modern British Politics (1965),* where he argues, in a similar vein to Birch, that an assimilation of ideas about representation and collectivism shape the British Political Tradition. Beer argues that ideas of representation, resonating with specific times and circumstances, shaped the British Political Tradition and further illustrates how collectivism created the impetus for disciplined political parties to emerge and dominate Parliament. During the development of democracy in the UK, this provided the basis for executive dominance of the legislature in the House of Commons and established the framework for a new hierarchy within Parliament. The argument that the values of elite power which dominated in Parliament were also widely accepted by civil society was also taken from Beer.

Following a critique of Beer's ideas, the chapter then analysed Greenleaf's grand vision of politics contained in the epic three volume *The British Political Tradition (1983a; 1983b; 1987).* This section argued that the skill of Greenleaf and the quality of his work lies in his ability to see how the dominant ideas of Libertarianism and Collectivism operate in empirical practice. This section argued that Greenleaf, more than any other academic, exemplifies how an idea, in this case collectivism, can shape the discourse and processes of the House of Commons and be directly translated into detailed legislative practice. This thesis adopts Greenleaf`s view that ideas which are inscribed into institutions gain sufficient credence as to become dominant and subsequently shape empirical practice.

Next an assessment is made of the contribution of Marsh who builds on key concepts alluded to in previous work on the British Political Tradition. This section analysed how Marsh builds on Birch and Beer's contention that the British Political Tradition is an aggregate of ideas about representation and responsibility, but argues that both fail to acknowledge that all the ideas of representation and responsibility they discuss are underpinned by a dominant idea. Marsh argues that the British Political Tradition is the dominant idea about democracy in the UK and involves a limited liberal idea of representation and a conservative notion of responsibility. He further contends that this dominant idea has underpinned elitist, top-down governing institutions, permeated discourse and processes and inscribed a "government knows best" mentality within UK Parliamentary democracy. Finally the contribution of Hall in *Political Traditions and UK Politics* (2011) is assessed who extends Marsh`s argument of a dominant idea further by examining how the ideas contained in political traditions have historically impacted on the UK political system.

The British Political Tradition remains a contentious concept which has neither been fully conceptualised, nor thoroughly empirically grounded. An objective in this thesis has been to rectify this by providing a clear conception of the British Political Tradition as a theory of democracy and demonstrating through empirical practice in the House of Lords how an elitist top-down idea of power, has dominated thinking and practice in relation to Parliament and the constitution.

As the British Political Tradition remains such a contentious concept that has neither been fully conceptualised nor empirically grounded it has been open to challenge from alternative ontological and epistemological approaches. This thesis also addresses the alternative contribution to the British Political Tradition advocated by   Bevir and Rhodes who use an ontologically anti-foundationalist and epistemologically interpretist approach to reject approaches to the constitution advocated by adherents of the British Political Tradition. An analysis is made of Bevir and Rhodes' argument that the British Political Tradition involves a plethora of Tory, Whig, Liberal and Socialist traditions running concurrently, bearing similarities but without any one idea being dominant. This chapter suggested that their choice of traditions is narrowly defined and that they fail to justify why these traditions have been identified, while ideas, such as collectivism, are ignored. The absence of a consideration of representation is a major weakness in their discussion ideas and institutions and it is disputable whether the propagating of an interpretist theory, with its theory of concurrent ideas, could be translated and demonstrated by empirical practice in Parliament.

House of Lords: A pillar of the Constitution

Chapter Three introduced the House of Lords, chronicling its history and examining its importance as a governing institution of constitution. This chapter briefly assesses its origins as an elite council of Magnates summoned by the Crown and charts its constitutional development through the centuries. The chapter focuses specifically on the years following the Glorious Revolution 1688 and analyses in detail the House of Lords power over the constitution during the age of Mixed Government between 1688 and

1832. This Chapter analysed the Constitutional Theory of Mixed Government which entered England during Tudor times and reached fruition during the Liberal Constitution 1688 – 1832. The aim was to illustrate the fact that Parliament was historically a representative institution with the Crown symbolising the nation, the House of Lords representing the wisdom and power of aristocracy and the House of Commons the industry of the people. The chapter illustrated how each institution had an allotted governing function, but that the House of Lords, as the institution embodying the power and prestige of the aristocracy, had powerful constitutional authority, because it was the only institution that could co-ordinate the Crown and the House of Commons into the unity and harmony needed for the efficient governing of the nation.

The Constitutional Theory of Mixed Government was the only attempt in Parliamentary history to theorise the role of the House of Lords in relation to the Constitution. The theory of Mixed Government specifically allots a pivotal role for the House of Lords in a balanced constitution and, because this theory became translated into constitutional practice during the Liberal constitution 1688 – 1832, it is argued that it provided a foundation for further analysis of the constitution. During these years the House of Lords reached the zenith of its political power and prestige over Parliament and during this time it ingrained ideas of elite government into Parliamentary government.

This Chapter assessed the archaic electoral system that prevailed in relation to the Liberal constitution between 1688–1832, examining ideas of representation and responsibility and how it defined the constitutional relationship between the House of Lords and

Commons. The system of election through rotten boroughs and the variety of limited franchises available to the electorate provided an embryonic form of representation during the Liberal constitution, which was open to manipulation by political elite. The House of Lords control over the membership of the House of Commons through rotten boroughs allowed it the means by which it could coerce and manipulate the electorate to get favoured candidates elected. The House of Lords used it powers of patronage to gain direct control over both the electorate and the Members of the House of Commons and used it to ensure the lower chamber was malleable to the will of the House of Lords. Representation was limited and easily manipulated, specifically to ensure the House of Lords hegemony over the Commons continued and that strong responsible government would emanate from the upper chamber by the Peerage monopoly of the Ministry.

Chapter Four examined the House of Lords from 1790 to the Great Reform Act of 1832. This chapter analysed the House of Lords during the age of radicalism, as a wave of radical ideas swept across Europe and America in the late Eighteenth Century The aim of this chapter was to identify the reasons for democracy's introduction into Parliament and then assess the options facing Parliament which reflected alternative liberal and radical ideas of democracy. The chapter chronicled events leading up to the 1832 Great Reform Act and showed how the ideas of the British Political Tradition, which stressed elite, top-down, democracy, triumphed over the new ideas of popular sovereignty and a participatory idea of democracy, with a ` bottom up` distribution of power, advocated by radicals. This section illustrated the significance of representation to Parliament by illustrating how the transition from a rural to an urban economy created a rupture and

meant that Parliament was no longer representative of the nation. Democracy was the means by which Parliament could reconnect to the nation and govern efficiently

Liberalism became the adopted model of democracy because it dovetailed with existing institutions and endorsed the conservative notion of strong responsible government, already dominant and evident in the Liberal constitution. As Evans contends: (2003:16): 'Much of the normative discussion on constitutional and political tradition in the main has been couched in terms of an elitist versus participatory views of democracy.' This chapter outlined the reasons why the elitist idea of democracy prevailed over participatory democracy and continued the momentum throughout the evolution of democracy in the Nineteenth Century.

Chapter Five analysed the effects of the First Reform Act (1832) over the operation and development of Parliament. This chapter addresses how the British Political Tradition and the effects of elite top-down democracy impacted on Parliamentary institutions and altered the balance of power from the House of Lords towards the House of Commons. Democracy moved the pendulum of strong responsible power away from an oligarchy of Peers in the House of Lords, supported by the Crown, towards the executive in the House of Commons supported by free and fair elections.

Despite the shift in the gravitas of power from the House of Lords to the executive in the Commons, certain principles of elite Government already inscribed into the institutions of the Liberal constitution, and especially in the House of Lords, became enshrined in the

new liberal democratic constitution. The idea of the Member of Parliament as an independent and autonomous agent, and not a delegate of the electorate, continued into the age of democracy and, ensured that power continued to be concentrated within the corridors of Parliament and away from the wider populace.

Democracy inside the House of Commons directly led to party discipline and the subordination of members of the Commons to the party whips. This created a new form of top-down, hierarchical, power within political parties and this new form of hierarchy was further compounded by the disciplining of the party MPs through the whip to achieve a majority in the Commons necessary to form government. This confirmed a conservative notion of responsibility by allowing the executive to dominate the legislature to ensure strong government. Democracy informed by the British Political Tradition allowed the replacement of elite government by an oligarchy in the House of Lords, with elite government by the Cabinet dominating the House of Commons through the party whip. The principles of elite, top-down, government, using existing institutions, prevailed and metamorphosed from the Liberal constitution through to democracy, producing a strong, authoritative executive in the House of Commons. Representation was limited and designed to maintain the existing strong authority of the executive in the House of Commons. The extension of the franchise through the 1867 and 1884 Reform Acts was also limited and motivated by principles of elitism. The extension of the franchise was initially conditional upon property qualifications which ensured a subtle elitism still existed in democracy by establishing a link between the franchise and wealth.

From the inception of the 1832 Great Reform Act, a conservative notion of responsibility created an increasingly strong executive which gained ascendancy and dominance over the legislature in the House of Commons. The liberal idea of representation decreed that Parliament should be a platform for all opinions and interests, with the executive made directly accountable to Parliament. In reality, far from the grail of executive accountability to Parliament, the disciplining of political parties ensured the executive dominated the House of Commons. The liberal idea of representation and the degree to which representatives could participate in governing affairs was intentionally limited to guarantee the authority of the executive. The House of Lords, through its power of veto, was the only constitutional check, stopping the total monopoly of the executive over the legislature.

Towards the last quarter of the Nineteenth Century, tensions became apparent between an increasingly assertive government introducing collectivist measures, and the House of Lords, acting in its guise as watchdog of the constitution, which culminated in constitutional crisis and the eventual passage of the Parliament Act (1911). The 1911 constitutional crisis was a collision between two traditions of strong government. The House of Lords represented property and the old tradition of elite, oligarchic, government, while the House of Commons represented the new constitution of democracy and the will of the people. However, the British Political Tradition and ideas of elite and top-down government underpinned both approaches and ensured that the 1911 Constitutional crisis was a struggle to define which chamber of Parliament should be the dominant executor of power.

The Parliament Act 1911 was a triumph for democracy as it ensured that the executive in the House of Commons would gain supremacy over the House of Lords. However it was an idea of democracy which was limited, as the executive was only accountable to the electorate at periodic elections.

The House of Lords in the Twentieth Century

Chapter 6 examined the ramification of the Parliament Act 1911 over the House of Lords and the constitution. This chapter illustrated how the Parliament Act 1911 represented a watershed in the constitutional history of the House of Lords by transforming its constitutional relationship with the House of Commons. The Parliament Act, by removing the Upper Chamber's power of veto and authority to intervene in finance bills, ended most of the Upper Chamber's powers in relation to the House of Commons.

The Parliament Act consolidated the authority of the executive in the House of Commons. As such, the House of Lords became a junior and subservient Chamber to the House of Commons for the first time in constitutional history. The Parliament Act fitted very happily with the British Political Tradition and represented an instalment in the process of limited democratisation, inscribed with ideas of elite and top-down government, which commenced with the 1832 Great Reform Act.

The House of Lords between 1911 and 1951 adapted to its new constitutional role as a junior and subservient constitutional partner to the House of Commons. The new

constitutional status quo created the need for a reappraisal of the House of Lords powers and composition in the face of a dominant executive rooted in the House of Commons. The Bryce Commission (1917) was charged with the task of establishing a new constitutional role for the Upper Chamber in the face of an overtly dominant executive in the House of Commons. The Bryce Commission's recommendations take on special relevance because it defined the Upper Chamber's powers and role in the constitution throughout the Twentieth Century. The Bryce Commission recommended four powers for the House of Lords these were:

- Revision and amendment of legislation

- Initiation of Bills of a non-controversial character

- Full and free discussion of legislation

- Interposition of so much delay (and no more) over legislation-

A very significant recommendation of the Bryce Commission was the idea that the House of Lords should become an elected Chamber. This, once again, had potential ramifications for the constitutional balance of power between the Houses of Lords and Commons. The House of Commons feared an elected House of Lords would have an electoral mandate which would potentially undermine the democratic mandate of the House of Commons. Conversely, the House of Lords feared that an elected Chamber would disrupt its hereditary composition. Both Houses of Parliament had a vested interest in resisting an elected Chamber; for the House of Commons it was to maintain its monopoly of power and for the House of Lords to retain it hereditary composition...

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Given this new interpretation of elite, top-down government, the House of Lords, in the face of an overwhelmingly dominant House of Commons, reinvented itself in a new constitutional role, as a secondary Chamber for the revision and amendment of government legislation. The House of Lords zeal to reinvent itself as a revising Chamber was motivated by its desire to avoid becoming an elected Chamber, so retaining its hereditary composition. The House of Lords, in embracing its limited secondary revising powers, was motivated by values associated with the British Political Tradition; its objective was to survive and maintain its hereditary composition in the face of an overtly dominant executive in the House of Commons.

During the inter-war years from 1918–1939, the House of Lords served as a chamber of revision for mostly Conservative governments which dominated the House of Commons However, this era also saw the election of the first minority Labour Government in 1924 and, in its wake, the introduction of a new ideology of Socialism/Social Democracy into Parliamentary politics. The Labour Party's ideals of public ownership and the state managed economy were, in theory, a direct challenge to the House of Lords and its traditional ideals of private property and Libertarianism.

The first majority Labour Government 1945–1951 introduced a significant programme of nationalization and laid the foundations for the post-war managed economy and universal welfare state. The Attlee Government passed a huge swathe of legislation in a short period of time to which the House of Lords was ideologically opposed. The House

of Lords was challenged, in its capacity as secondary Chamber for the revision and amendment of legislation, to pass legislation it found ideologically abhorrent. The Upper Chamber was faced with a choice to be either a co-operative chamber or an intransigent chamber for the revision and examination of the Labour Government's legislative programme. The House of Lords' solution to the quandary was to devise the Salisbury Convention which established a new raft of codes and conventions which decreed the upper chamber's limited powers of revision and allowed it to serve any government in the House of Commons as a junior secondary revising chamber.

During the years from 1911 to 1951, the Parliament Act (1911) had transformed the House of Lords from a Leviathan into a relatively benign Chamber and the Salisbury Convention further enforced the domination of the Executive over the House of Lords. The Salisbury Convention's most important tenet was that the Upper Chamber would not intervene in legislation that had appeared in an elected government`s manifesto. This convention came to dominate the constitutional code between the Lords and Commons and determined how the unelected House of Lords dealt with a Labour Government's legislative programme to which they were ideologically opposed. The House of Lords accepted, without condition, its diminished constitutional role and used the Salisbury Convention to pass legislation it opposed.

Chapter Seven chronicled in detail the relationship between the Labour Party and the House of Lords throughout the Twentieth Century and analysed how the Labour Party's ideology of social democracy/Socialism shaped its ideas about constitutional reform. The

Labour Party's ideological foundations have historical origins in two rival, and distinct, traditions of Fabianism and Syndicalism. The Fabian tradition advocated the utilization of existing governing institutions of Parliament for the implementation a Socialist/Social Democratic programme. The Syndicalist tradition expressed scepticism about the ability of existing Parliamentary governing institutions to implement a Socialist legislative programme and, alternatively, proposed the use of extra-parliamentary pressure to achieve the grail of a socialist/social democratic society. A key reason why the Fabian tradition became dominant within the Labour Party was because its ideas adhered more to the British Political Tradition, than did Syndicalist ideas. Elite, top-down government translated into practice involved utilizing the strong authority of the executive with its dominance over the legislature to pilot a social democratic programme through Parliament.

The House of Lords as an unelected and hereditary chamber representing the interests of private property should, in theory, have had its existence challenged by a Labour Government's social democratic ideology, which advocated state ownership. The fact that no such constitutional realignment occurred was because the Labour Party influenced by its Fabian tradition, accepted the British Political Tradition's ingrained view of democracy and the need for a dominant executive to preside over a weak legislature in the House of Lords to ensure strong government.

The Labour Party was prepared to tolerate the continuation of an unelected, hereditary, Upper Chamber to preserve the dominant authority of the executive in the House of

Commons, which was necessary to implement a social democratic programme. This explains the Labour Party's traditional conservatism towards the House of Lords and its reluctance to offer an alternative to an unelected House of Lords, or to implement any constitutional reform which altered the House of Lords composition or powers. The acceptance by the Labour Party of this existing status quo, marked by strong, executive government, reflected the elitist, top-down, view of democracy already inscribed into Parliament and tacitly accepted by the Labour Party when it formed a Government.

Chapter Seven analysed how the British Political Tradition shaped the Labour Party's approach to the House of Lords from 1951 to 1997. The Labour Government 1945-51 established the parameters for that post-war constitution, ensuring that, during these years, the British Parliament had in the words of Satori: `extremely feeble bicameralism [which]… shades into unicameralism` (1994:188) Parliament resembled a unicameral system of government as an overtly strong executive in the House of Commons dominated an ever-weaker legislature in the House of Lords.

During the Labour Government of 1945-51, ideas of the managed economy and a universal welfare state became established as orthodox economic and social policy. These ideas created the foundations of the post-war collectivist state and provided the economic stimulus for thirty years of economic growth. The rise of collectivism and the state-managed economy necessitated government intervention in the economy, which further increased the need for a strong executive in the House of Commons. Collectivism created the need for a strong executive with the capacity to implement wide-scale interventionist

legislation needed to establish a social democratic society. A constitutional status quo was established by which the House of Lords authority was curtailed to allow the executive the scope it needed to implement collectivist legislation.

From 1951 to the 1970s economic prosperity gave legitimacy to the post-war constitution and ensured the stability of governing institutions. The executive dominance of the legislature banished the House of Lords to the periphery of politics as it wielded minimal influence over the executive and, consequently, evoked little motivation for constitutional reform. However, gradual economic decline, which finally manifested into economic crisis in the 1970s, discredited collectivist economic ideas and undermined the credibility of governing institutions to govern efficiently. This brought into question the ability of governing institutions to be representative and govern efficiently and undermined the credulity of the constitution.

Chapter Eight examined the constitutional reform of the House of Lords following the election of New Labour in 1997. The objective of this chapter was to illustrate how the British Political Tradition has continued to reinvent itself in the late twentieth and early twenty first Centuries to provide a blueprint for the reform of the Upper Chamber. The argument of this chapter is that the British Political Tradition historically consists of two composite elements: a limited liberal idea of representation; and a conservative idea of responsibility. Both are necessary for successful reform of the House of Lords. Since the election of New Labour in 1997, ideas for the reform of the House of Lords have been dominated by a conservative idea of responsibility and have neglected the second

essential composite, of the British Political Tradition, a limited liberal idea of representation. The Labour Government's neglect of limited liberal representation led to a stalling of the reform process and a constitutional quagmire and it was only when the issue of democracy and representation was addressed that the reform process gained credibility and momentum

The House of Lords Act (1999), abolished all but 92 hereditary peers, and created the biggest transformation in the House of Lords composition seen in 700 years. This reform succeeded in achieving the Government's aim of removing the Conservative Party's inbuilt majority and creating a politically balanced Chamber for the first time in the House of Lords history.

However, the removal of the hereditary Peerage, with no blueprint about whether to replace it with an elected or nominated Chamber, indicated that the Labour Party's principle objective was the removal of the House of Lords inbuilt Conservative majority, rather than any specific aim to reform the Upper Chamber's composition or powers. This had a direct consequence on ideas for reforming the composition of the House of Lords and the merits and drawbacks of having an elected or nominated Chamber.

A conservative idea of responsibility decreed that the supremacy of the executive over the legislature should be a sacrosanct principle to be maintained at all costs and this strongly influenced arguments that were in favour of either an elected and nominated Chamber. The argument for an elected House of Lords was underpinned by the view that

an elected Upper Chamber should have a democratic mandate which could enable it to challenge the supremacy of the executive in the House of Commons. This, of course, challenged the existing constitutional status quo reinforced by the British Political Tradition of an elite executive, drawn largely from the House of Commons, dominating the legislature of two Houses of Parliament and an unequal distribution of power.

The Government believed an elected Upper Chamber had the potential to unhinge the balance of constitution and move the pendulum of power away from the House of Commons and towards the House of Lords. Therefore, the Government instead favoured a nominated second Chamber in order to ensure that the Upper Chamber did not have a mandate that could challenge the executive's monopoly of legislature. A House of Lords membership that was nominated would also have the added advantage of ensuring the government retained powers of patronage over the Upper Chamber and could make it malleable to the House of Commons will.

The House of Lords which emerged following the House of Lords Act (1999) has always been, in effect, a nominated Chamber and, as a consequence, remains a secondary revising Chamber to the ascendant and dominant executive in the House of Commons. The dominance of the Executive in the House of Commons over a continually weak legislature in the House of Lord fulfilled the first pre-requisite of the British Political Tradition, that of a conservative notion of responsibility, but it did not fulfil the second requirement of the British Political Tradition, that of a limited representation. The lack of democratic representation in the Upper Chamber severely undermined the reform process

and meant the that House of Lords had to incorporate a degree of democratic representation, if the Upper Chamber was to achieve the legitimacy needed to participate in government. The failure of the House of Lords reforms to address the issue of representation subsequently undermined the reform process; only an elected Chamber could confer legitimacy on the reformed House of Lords.

The 2008 White Paper examined the various proposals for an elected Chamber. It became apparent that any proposal for an elected Chamber, almost inevitably, must accept the tenets of the British Political Tradition, meaning that the dominance of the executive in the House of Commons over the legislature in the House of Commons must be maintained and the Upper Chamber must acknowledge its secondary and limited authority as a supplementary Chamber to the House of Commons.

Kelso in *Parliamentary Reform at Westminster* (2009) describes the objective of reform as being to enhance the efficiency and effectiveness of institutions. Kelso distinguishes between efficiency and effectiveness, describing efficiency as being aimed at streamlining the workings of Parliament, while effectiveness is aimed at enhancing the ability of Parliament to hold the executive to account.

Since the passing of the House of Lords Act (1999), the Upper Chamber has no longer felt its powers and legitimacy to be undermined by its hereditary composition, nor inhibited by an inbuilt Conservative majority. As a result of the removal of all but 92 of the hereditary Peers, the House of Lords since 1999 has been a largely nominated

chamber, with no one party having control. The fact that the House of Lords is now a nominated and politically non-partisan chamber has allowed it a greater sense of freedom and legitimacy and it has been more assertive in using its secondary revising powers to intervene in the legislation of the House of Commons.

From 1999-2006 the House of Lords inflicted 274 defeats on House of Commons legislation, of which only 42% were overturned by the House of Commons. The House of Lords gained whole or major concessions in 40% (110 defeats) of legislation and achieved minor concessions in over 17% of Bills. In this context, Russell (2009) argues that the House of Lords Act (1999) ` did not weaken the House of Lords but strengthen it ` (2009:2) and made the Upper Chamber a more representative and assertive chamber. From this perspective, the House of Lords reforms have improved the efficiency of Parliament and emboldened the Upper Chamber to use its revising powers to either fine-tune Commons legislation or oblige the government to acquiesce over legislation that did not have overwhelming Commons support. The House of Lords reform has not altered the effectiveness of Parliament. The House of Commons executive still dominates the legislature and, although the House of Lords has won many concessions, these were minor points of legislation or major issues such as the prevention of Terrorism Bill (2005), where the Government did not have the whole-hearted support of Parliament. The executive in the House of Commons remains in a dominant position.

The House of Lords will eventually become an elected chamber, using different, larger, constituencies than the House of Commons, with one third of the members elected at a

time, and with a restricted mandate as a revising Chamber. Elections to the House of Lords should be as different as possible from those to the House of Commons to ensure that the Upper Chamber has a weaker, inferior, mandate to the House of Commons. The Conservative Party favour elections by the first-past- the- post system, while the Liberal-Democrats favour election by proportional representation. The election of a Conservative/Liberal Coalition Government in 2010 means there is a strong possibility of the Conservative Party compromising and allowing a system of Proportional Representation to be introduced for elections to the House of Lords. However, in the eye of the worst economic crisis seen since the 1930s, it would seem fair to conclude that Constitutional reform of the House of Lords will remain on the backburner at present.

In May 2011 the Conservative/Liberal Coalition Government produced The House of Lords Reform Draft Bill (Cm8077), the most recent White Paper for House of Lords reform. The White Paper was introduced by the Coalition Government`s Deputy Prime Minister Nick Clegg and its contents endorse nearly all the recommendations contained in the 2008 White Paper. The House of Lords Reform Draft Bill (2011) recommends a 300 member upper chamber consisting of 80% elected and 20% nominated members. The White Paper (2011) proposes that elections should be over three electoral cycles beginning in 2015 with members serving over a single non-renewable term of 15 years and elections taking place on the same day as elections to the House of Commons. The Appointments Commission would appoint the 20% nominated membership introducing 20 members at each election totalling 60 members after the three 3 cycles are completed. The White Paper (2011) proposes that the Upper Chamber should retain the name `The

House of Lords` and also recommends that the Church of England should retain a presence with 12 Bishops allowed to sit as ex-officio members.

The House of Lords Reform Draft Bill (2011) recommends a system of Proportional Representation as the favoured method of election to the upper chamber. It suggests that members to the House of Lords should be elected using Single Transferable Vote in large multi-member constituencies. At the time of writing there remain tensions between the Conservative and Liberal Parties particularly over the electoral system for reform House of Lords. There are still contentious issues to be resolved if the Conservative/Liberal Government is to achieve its stated objective of having the first elections to the House of Lords in 2015.

Prime Minister David Cameron sees House of Lords reform as a ` third term issue` (cited: Russell: 2009:124), meaning elections to the Upper Chamber could yet occur after 2020. This continues a reoccurring theme throughout the House of Lords reform since the Parliament Act (1911). Peter Riddell succinctly summarises reform throughout the Twentieth Century when he writes: `[T]he solution to the long-term future of the House of Lords is always after the next election, and has been for half a century ` (cited in Russell:2009:125) The purpose of this thesis has been to demonstrate that there is a dominant idea of elite democracy underpinning the institutions and processes of British politics. To reiterate, the UK democracy is an elitist, or leadership, democracy, which is founded upon a limited liberal idea of representation and a conservative notion of responsibility, producing elitist top-down institutions and an unequal distribution of

power. An historical examination of the House of Lords and its place in the constitution reveals how the dominant idea of the British Political Tradition shaped the discourses and processes of governing institutions. The argument of the British Political Tradition can be directly used as an explanatory tool to define the organic development of institutions and can be supported by empirical practice. The British Political Tradition shaped the House of Lords, but the relationship between ideas and institutions is also to a degree reciprocal. The Upper Chamber's existing ideas of elite, top-down, government already ingrained by the British Political Tradition constrain, but do not determine, how new ideas of representation and responsibility are put into practice.

The Liberal Constitution 1688–1832 marked the zenith of the House of Lords power over the constitution and ensured that, ideals of elitist power became inscribed into Parliament. Those ideals of elitism were so dominant and enshrined into governing institutions that the model of democracy that emerged in the Nineteenth Century was the one that was most synonymous with the principles of elite power created by the House of Lords during the liberal constitution from 1688 to 1832. The idea of democracy which emerged following the 1832 reform Act was limited and served to maintain the accepted status quo of elite top-down government and a stoical reverence to the superior authority of the personnel serving within institutions. As Marsh contends:

> This view of democracy shaped the development of the British political System
> in the Nineteenth Century and, although contested still affects it in two ways.
> First these institutions still exist, relatively unchanged, they are the institutional

embodiment of the British Political Tradition and the context within change is discussed. Second the British Political Tradition is still the dominant discourse about democracy in the UK. (Cited Marsh: 2003:8)

Marsh contends that institutions such as the House of Lords are the living embodiment of the idea(s) of the British Political Tradition. A view of elite democracy has shaped the historical development of the House of Lords, and indeed the House of Commons, and this continues into the twenty first century to be an inalienable principle driving ideas for reform. The dominance of the British Political Tradition does not mean institutions such as the House of Lords do not evolve and reinvent themselves. The British Political Tradition is an idea with a chameleon like capacity to change through different ages and consequently it gives institutions the flexibility to evolve. The evidence suggests that this argument endorses Masterman's hypothesis, referred to in the introduction, that institutions such as the House of Lords are a conscious product of the ideals, values and principles of the national psyche which become translated into political practice.

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