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# The many lives of Hailsham's famous phrase, the elective dictatorship

By Tonje Sofie Ranvik

Supervisor: Atle L. Wold

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## Abstract

This thesis has explored how understandings about the concept of the “elective dictatorship” has evolved since Lord Hailsham popularized this phrase in the Dimpleby Lecture of 1976. He argued that the British political system amounted to an elective dictatorship because of changes that had occurred within the political system. Changes such as the absence of limits on the power of the executive and a shift in where parliamentary sovereignty resided within the system. This development was problematic as this ensured a majority government nearly unlimited power to carry out its agenda. His solution was extensive constitutional reform including creating a codified constitution. Following his Dimpleby Lecture, Hailsham returned to the topic of the elective dictatorship in three different publications from the late 1970s and early 1980s. This thesis therefore first studied how Lord Hailsham developed his own argument. It found that Hailsham moderated and changed his argument from focusing on the political system in its entirety to focusing on the judiciary and the legal system. Furthermore, Hailsham did not advocate radical reform in his two publications from the 1980s as he did in the 1970s.

From there, the thesis discussed how the debate about the elective dictatorship had evolved. This by studying the debate thematically during four different prime ministers, Margaret Thatcher (1979-1990), Tony Blair (1997-2007), and Theresa May (2016-2019) and Boris Johnson (2019-). A variety of sources were consulted such as academic books, journal articles and newspaper articles. It found that although references were still made to Lord Hailsham and his publications from the late 1970s, scholars and journalists have expanded upon Hailsham’s argument and in some cases advocate reforms he did not consider necessary to protect against the elective dictatorship. Others have used the term without reference to its originator giving it its own meaning.



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## Chapter 1: Introduction

The British political system and its evolving constitution has been a topic of discussion among scholars, academics and journalists for centuries. There have been aspects and perspectives on the functions of Britain's uncodified constitution. This thesis will discuss and explore a debate on what Lord Hailsham, a barrister and Conservative politician, termed "the elective dictatorship" in the late 1970s.<sup>1</sup> Its focus will be how this debate has evolved throughout the late 1970s to the present. The starting point for this discussion is the Dimpleby Lecture that Hailsham held in 1976 which elevated the discussion to a national level. In his lecture Hailsham argued that the British political system amounted to an elective dictatorship because of challenges within the political system, such as a shift in where sovereignty resided as well as the absence of any legal limits to the power of the government.<sup>2</sup> He advocated the introduction of radical changes such as a codified constitution, a Bill of Rights and an elected upper chamber as measures protecting against the danger of the elective dictatorship. The debate about the elective dictatorship is still relevant today as new interpretations of the term elective dictatorship has surfaced during Theresa May and Boris Johnson's premierships in relation to Brexit.

Hailsham presented his argument at a time in British history marked economic decline and the end of consensus. This also meant that discussions about the different institutions within the political system surfaced such as the party system and the electoral system. Both the Labour Party and the Conservatives had since the end of the second World War been committed to a consensus based on "governmental management of economic demand by Keynesian techniques", full employment, nationalization of certain industries, social welfare programs.<sup>3</sup> However in the early 1970s this consensus broke down because of economic decline due to "stagflation" meaning stagnant economic growth, high unemployment rate and raising inflation.<sup>4</sup> In an attempt to reverse this decline, Edward Heath, the Conservative Prime Minister from 1970-1974, attempted to reverse the economic decline by implementing "neo-capitalist" policies such as a reduction in taxation, privatization of nationalized industries and curtailing trade union power.<sup>5</sup> This proved difficult and in 1974, Heath called a general

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<sup>1</sup> Kavanagh & Riches (ed.). "Hogg, Quintin McGarel." (Oxford University Press, 2019).

<sup>2</sup> Lord Hailsham, "Elective dictatorship," (10.14.1976) Appendix 1, 1-2.

<sup>3</sup> Heyck. "A History of the Peoples of the British Isles," (London: Routledge, 2002), 217

<sup>4</sup> Heyck. "A History of the Peoples of the British Isles," (2002) 286

<sup>5</sup> Heyck. "A History of the Peoples of the British Isles," (2002) 287

election on the question of “Who governs?”.<sup>6</sup> The result of that election was a hung parliament, the first since 1929. Labour secured a small majority, only four seats, with “fewer votes than the Conservatives”, forming a minority government.<sup>7</sup> Vernon Bogdanor, a scholar and authority on British politics and government, argued that the 1974 election challenged some of the established assumptions about the British political system. The first was that Britain was a “geographical homogeneous country” operating with a two-party system, instead of being “territorial diversified”.<sup>8</sup> Secondly the assumption that the electoral system, first-past-the-post, would generate strong governments was challenged. Consequently, discussions about the constitutional arrangement became increasingly important.

It is two years into the Labour minority government that Hailsham held his Dimbleby Lecture on the elective dictatorship. He expressed concern that governments with majority in the House of Commons, elected without majority of the vote could implement legislation that the majority might not want.<sup>9</sup> Following his lecture, Hailsham returned to the theme of the elective dictatorship in three later publications in the period (1978-1983) where he moderated and changed his perspective on the reforms he once considered as necessary protections against the elective dictatorship. As scholars, academics and journalists encounter different versions of Hailsham in their own discussing the elective dictatorship thesis this has also meant.

The research question is therefore:

*How has the understanding of the concept of “elective dictatorship” developed since Lord Hailsham made his remarks in 1976?*

### Delimitation and Purpose

Since this is a thesis within British Studies, and not a thesis in either political science or law, the focus will be on how the understanding of the elective dictatorship has changed. Due to the extensive research in the field of British political life and law, this thesis will look at how the elective dictatorship was understood in academic circles and in the traditional media during the Premiership of four different prime ministers. Hailsham argued that the elective dictatorship was condition of the political system, a stance other scholars and journalists have made since then. It is however more complicated than that, with some scholars discussing the

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<sup>6</sup> Bogdanor. *The New British Constitution*. (North America: Hart Publishing, 2009), 35

<sup>7</sup> Bogdanor. *The New British Constitution*. (2009), 35

<sup>8</sup> Bogdanor. *The New British Constitution*. (2009), 35

<sup>9</sup> Lord Hailsham “Elective dictatorship”. (10.14.1976), Appendix 1, 5-6

elective dictatorship as a theory rather than a fact. This thesis will therefore not discuss whether the British political system have been or is an elective dictatorship as this would be a discussion more fit for the field of political science. The purpose of this thesis is therefore to discuss whether Hailsham's argument continues to be the point of reference as well as how it has evolved beyond Hailsham's definitions and argument.

### Method and Sources

In order to discuss the research question about the development of the elective dictatorship thesis, a historical approach will be used. The thesis starting point is 1976 and Hailsham's Dimpleby Lecture and explores the debate following his remarks to the present. The first main chapter will discuss how Hailsham changed and moderated his argument using four different primary sources, starting with the Dimpleby Lecture. In order to obtain access to this Lecture in its original format, I travelled to The British Film Institute in London to view and transcribe the original footage from the BBC where it was broadcast. The transcribed lecture is attached to this thesis as Appendix 1. The other primary sources from Hailsham are the book *The Dilemma of Democracy: diagnosis and prescription* (1978), a journal article "The Lord Chancellor and Judicial Independence" (1980) and a Hamlyn Lecture, titled *Hamlyn Revised: The British Legal System today*. Following the assessment of Lord Hailsham's argument each chapter will therefore discuss how elective dictatorship was understood during the premierships of four different Prime Ministers. I have chosen to look at the two, arguably most central PMs since 1976, Margaret Thatcher and Tony Blair, and the contemporary ones, Teresa May and Boris Johnson. In these chapters the elective dictatorship will be discussed thematically focusing on the different arguments put forth by scholars, academics and journalists.

The secondary sources used in this thesis consists of books, journal articles, articles from organizations, newspaper articles and opinion pieces. Academic books and journal articles were selected from the field of political science and constitutional law since the elective dictatorship has been a topic within both fields. Newspaper articles were chosen from a variety of different newspapers such as *The Times*, *The Guardian*, *Independent*, *The Telegraph* and *The New York Times*. Some sources have also been retrieved from organizations such as *The Constitution Unit*. This to ensure a broad specter of opinions on the elective dictatorship. It is also worth noting that since the author of this thesis writes in American English, the American standard with month, day, year will be used in the footnotes as well as in the Bibliography.

## Structure

The main part of this thesis will consist of four main chapters. Chapter 2 will, as mentioned focus on Hailsham's argument from 1976-1983. Chapters 3-5 will each focus on different periods from 1979-2019. How the elective dictatorship was discussed during Margaret Thatcher's premiership (1979-1990) will be the focus of chapter 3. The fourth chapter will concentrate on the years 1997-2007 at the time Tony Blair was Prime Minister, and chapter 5, will focus on the years 2016-2020 during Teresa May and Boris Johnson's premierships. The internal structure of each chapter varies since there is some variations in the arguments presented during the different periods discussed in this thesis. The very last chapter, chapter 6, is the conclusion.

## Chapter 2: Lord Hailsham's argument

Lord Hailsham, born Quintin McGarel Hogg (1907-2001) was an accomplished individual working both as a barrister from 1932-1937, and as a Conservative politician serving both as Member of Parliament from 1938-1953 and in the House of Lords. In the House of Lords, he became the 2<sup>nd</sup> Viscount Hailsham following his father who had died in 1953. He was the Viscount until 1963 when he renounced his peerage in order to campaign for the party leadership. Of this, he was unsuccessful. During his first time in the House of Lords, he was appointed First Lord of Admiralty and served as Minister of Education and Minister for Science and Technology. In addition to this, he was the Lord President of the Council from 1957-9, and 1960-4, and the Leader of House of Lords (1960-63). After a brief period as a member of the House of Commons representing the constituency of St. Marylebone, he was appointed Lord Chancellor in 1970, a position he held until 1974. This marked his return to the House of Lords. During Margaret Thatcher's premiership, Lord Hailsham served as Lord Chancellor from 1979-1987.<sup>10</sup> Throughout a varied career, Lord Hailsham had therefore obtained knowledge about how both the political system as well as the legal system in Britain functioned, and he published books, academic articles and held lectures on subjects such as *The case for Conservatism* (1947), the Dimpleby Lecture "Elective dictatorship" (1976) and *The Dilemma of Democracy* (1978). A central concern of Hailsham's which he had raised in many contexts, was the danger of what he termed the "elective dictatorship".<sup>11</sup> Although Lord Hailsham discussed the elective dictatorship prior to his Dimpleby lecture October 14, 1976, this lecture popularized the term "elective dictatorship" and elevated the debate to a national level, which was a point Basil S. Markesinis, a scholar of Law stressed, explaining that the information provided in the Dimpleby Lecture was not necessarily new.<sup>12</sup> Furthermore, since his Dimpleby Lecture, scholars have referred to the Dimpleby Lecture when discussing the elective dictatorship. His argument presented in the Dimpleby lecture is also the first time Hailsham presented his argument in its entirety.

### The Dimpleby Lecture "Elective dictatorship"

The Richard Dimpleby lecture is to this day an annual occurrence where a distinguished and influential speaker is chosen to hold a lecture on the topic of his/her choice in honor of

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<sup>10</sup> Kavanagh & Riches "Hogg, Quintin McGarel." (Oxford University Press, 2019).

<sup>11</sup> *The Times* "Lords Agree to Life Peerage" (12.06.1957), *The Times*. "Hogg fears for British Constitution". (04.16.1969), *The Times* "Bill of Rights Legislation". (02.17.1976).

<sup>12</sup> Markesinis, "Elective dictatorship." (1977), 324, 326-327.

Richard Dimbleby.<sup>13</sup> Richard Dimbleby was a journalist, broadcaster and correspondent and had a great influence on how broadcasting changed in the early 1930s.<sup>14</sup> Lord Hailsham returned to the theme of the elective dictatorship later as well, first in his book, *The Dilemma of Democracy: Diagnosis and Prescription* published in 1978. Then in an article published in 1980 as well as in another lecture, this time a Hamlyn Lecture in 1983. This return to the theme of the elective dictatorship is interesting because Hailsham developed and moderated his remarks throughout the years. His focus has also narrowed from being concentrated on the British political system to focusing on the legal system. After his argument from 1976 is presented, a comparison between his argument from 1976 and 1978 will follow. Since Lord Hailsham returned to the elective dictatorship in 1980 and 1983, this is presented and discussed as well.

On October 14, 1976, Lord Hailsham began his lecture on the elective dictatorship by first acknowledging the work of Richard Dimbleby as well as his character. After these remarks, he introduced his theme for the lecture, the elective dictatorship, and in which context it was relevant stating that:

I have called this lecture ‘Elective Dictatorship’. You may think that a strange title. And you may think it all the stranger when I tell you that I mean by it our own system of government, which we have evolved through the centuries and which we are apt to think of as the best and most democratic.<sup>15</sup>

In his opening remarks, he used the phrase “our own system of government”. Although this statement is specific, it is also broad and indicates that Hailsham’s focus was on the political system “Crown-in-Parliament” in its entirety. The context he presented his argument about the elective dictatorship is within a political system that is very adaptable, one that has become increasingly democratic. This was an important point he returned to when presenting his solution to the elective dictatorship.<sup>16</sup>

Furthermore, Hailsham was not only broad in terms of the scope of his lecture, but also in the themes that he covered. Rather than presenting one issue at the time, he presented the general issues and changes that had occurred in within the British political system and then discussed each one in more detail. This gives the listener an overarching idea of what his

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<sup>13</sup> “The Richard Dimbleby Lecture”. BBC One. 2019

<sup>14</sup> McIntyre, “Dimbleby, Richard Frederick (1913–1965)” (2004).

<sup>15</sup> Lord Hailsham, “Elective dictatorship”. (10.14.1976), Appendix 1, 1

<sup>16</sup> Lord Hailsham, “Elective dictatorship”. (10.14.1976), Appendix 1, 11

central argument is. He began his in-depth discussion by addressing the development of Parliament, then the role of the Prime Minister and elections. His central argument why the British political system could be seen as an elective dictatorship was that the powers Parliament enjoyed were unlimited and absolute. Lord Hailsham referred to this as the “doctrine of the absolute sovereignty of Parliament”.<sup>17</sup> One such power, which he used as an example, was Parliament’s ability to prolong its own life, stating that “[...] in our own time, it has done so twice, quite properly during two world wars”.<sup>18</sup> If Parliament has absolute sovereignty, there are no limits on its power. He went on to explain how this particular power, prolonging Parliament’s life, had not been abused recently, but due to the changes in Parliament’s practice and structure, not placing any limitations on Parliament had become unacceptable.<sup>19</sup> This because there would be nothing hindering Parliament from abusing their power.

Moreover, he made the argument that parliamentary sovereignty also had implications for the relationship between the judiciary and legislative branch explaining that Parliament was the dominant branch of the political system.<sup>20</sup> This was problematic since there were no legal limits on Parliament’s power, only moral and political. According to Hailsham, these limitations only went as far as the consciences of the members of Parliament allowed. Periodical elections were according to Hailsham an important political limit of Parliament’s power. Furthermore, the limitations could also be found in the structure, composition and practice of Parliament, which he called “checks and balances”, a term more commonly used to describe the American system of government.<sup>21</sup> However, he argued that due to the changes within the structure and the operation of Parliament the actual use of Parliament’s power had increased. These changes involved an increase in “the scale and range of government” as well as a change in the influence between the different parts of government.<sup>22</sup> He argued that this change had gone so far as to place all power in the executive branch. Therefore, he argued that the “checks and balances” within Parliament had disappeared.<sup>23</sup>

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<sup>17</sup> Lord Hailsham, “Elective dictatorship”. (10.14.1976), Appendix 1, 1 & 2

<sup>18</sup> Lord Hailsham, “Elective dictatorship”. (10.14.1976), Appendix 1, 2

<sup>19</sup> Lord Hailsham, “Elective dictatorship”. (10.14.1976), Appendix 1, 2

<sup>20</sup> Lord Hailsham, “Elective dictatorship”. (10.14.1976), Appendix 1, 2

<sup>21</sup> Lord Hailsham, “Elective dictatorship”. (10.14.1976), Appendix 1, 2

<sup>22</sup> Lord Hailsham, “Elective dictatorship”. (10.14.1976), Appendix 1, 2

<sup>23</sup> Lord Hailsham, “Elective dictatorship”. (10.14.1976), Appendix 1, 2

Hailsham also discussed how parliamentary sovereignty had become the sovereignty of the House of Commons.<sup>24</sup> The effect of this was that power was centralized within the Commons. This centralization was problematic because this change of influence and structure of Parliament contributed to the elective dictatorship. He argued that centralization of power occurred in two different ways. First, he argued that opposition and backbenchers no longer controlled Parliament, which was now in the hands of the “government machine”.<sup>25</sup> The effect of this was that the government led by the cabinet controlled Parliament “and not parliament the government”.<sup>26</sup> Second, he argued that the House of Commons had become increasingly dominant as compared to the House of Lords which he argued was problematic. This because the House of Lords was unable to control the increasing power of a House of Commons controlled by the government. He therefore argued that parliamentary sovereignty had become the sovereignty of the House of Commons.<sup>27</sup> A shift in where parliamentary sovereignty resided had occurred. Sovereignty of Parliament no longer resided with the two chambers of Parliament but had gradually come to reside with the House of Commons and eventually with the government side of the Commons, namely the cabinet and he stated that:

Today the centre of gravity has moved decisively towards the government side of the house. And on that side to the members of government itself, the opposition is gradually being reduced to impotence and the government majority where power resides is itself becoming a tool in the hands of the cabinet. Backbenchers where they show promise are soon absorbed into the administration and so lose their power of independent action.<sup>28</sup>

The shift of sovereignty therefore meant, as mentioned briefly, that the House of Lords was unable to control the increasing power of the executive, and was therefore not an effective “balancing factor”.<sup>29</sup> Most of the arguments Hailsham presented were therefore concerned with how the government and its majority in Parliament used their power. Furthermore, he argued that this centralization of power had increasingly become intolerable. He also argued that this increase in power had implications for the population as a whole. In order to illustrate his point, the increase in the mass of annual legislation and the size of the annual budget were used as examples. He argued that while the annual legislation had been 450 pages in 1911, it

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<sup>24</sup> Lord Hailsham, “Elective dictatorship”. (10.14.1976), Appendix 1, 4

<sup>25</sup> Lord Hailsham, “Elective dictatorship”. (10.14.1976), Appendix 1, 3

<sup>26</sup> Lord Hailsham, “Elective dictatorship”. (10.14.1976), Appendix 1, 3

<sup>27</sup> Lord Hailsham, “Elective dictatorship”. (10.14.1976), Appendix 1, 4

<sup>28</sup> Lord Hailsham, “Elective Dictatorship”. (10.14.1976), Appendix 1, 4

<sup>29</sup> Lord Hailsham, “Elective Dictatorship”. (10.14.1976), Appendix 1, 4 & 5



would be over 13 000 pages of legislation in 1975. This was problematic because this increase meant that each year “there are substantially more and more complicated laws to obey”.<sup>30</sup> Moreover, Lord Hailsham was troubled by the increase in the annual budget and argued that in the 1970s the annual budget was about £50 000 million. This was problematic because there would be an increase in taxation in order to finance the new additions to the budget.<sup>31</sup> This increase in legislation and the annual budget is part of a larger argument Hailsham presented in his lecture, namely how an unlimited government increases its grasp. The majority’s ability to pass legislation without hindrance due to the shift in sovereignty, there are no “checks and balances” thereby facilitating the elective dictatorship.<sup>32</sup>

These changes were in Hailsham’s view examples of how the government had become more centralized, which was something he was very skeptical of. This skepticism was also evidenced in his discussion of the role of the Prime Minister. Due to an increase in legislation and the annual budget, the Prime Minister’s workload increased simultaneously, which was not a positive trend. He argued that the Prime Minister was judged on the quantity rather than the quality of his work and described such a Prime Minister as a “political Stakhanovite”.<sup>33</sup> The term Stakhanovite originated in the Soviet Union and was used as a description of soviet workers who produced more than what was needed.<sup>34</sup> It therefore seems like a central argument to Lord Hailsham was that a government whose only concern is to produce legislation and increase the budget is not able to govern properly, especially if led by a Prime Minister, whose sole focus is on those passing judgement on him/her.

A central theme Hailsham discussed was the powers of the executive branch, led by the Prime Minister. He was skeptical of how these powers were used because the Prime Minister can to some extent manipulate the system with the power, he/she enjoys. An example of this is the power of dissolution, which means that the Prime Minister can dissolve Parliament in order to hold a new election. The power of dissolution can be used by the Prime Minister within the five-year period Parliament is elected for. Hailsham’s concern was that rather than focusing on governing the country, the Prime Minister would focus on the best moment to hold an election that would secure the best outcome for the governing party. The Prime Minister would manipulate the economy, focus on opinion polls and silence criticism in

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<sup>30</sup> Lord Hailsham “Elective dictatorship”. (10.14.1976), Appendix 1, 3

<sup>31</sup> Lord Hailsham “Elective dictatorship”. (10.14.1976), Appendix 1, 3-4.

<sup>32</sup> Lord Hailsham “Elective dictatorship”. (10.14.1976), Appendix 1, 2 & 4.

<sup>33</sup> Lord Hailsham “Elective dictatorship”. (10.14.1976), Appendix 1, 3

<sup>34</sup> Newman “Alexei Stakhanov”. *BBC*. (12.30.2015).

order to win and he argued that this had been a successful strategy.<sup>35</sup> He explored how governments were seldom unseated. Hailsham's argument on the role of elections is central to his overall line of argument, and therefore needs to be cited at length:

Even though the opinion polls have indicated during the greater part of those 30 years, that the government has been less popular than the party of opposition. If we leave out the 1945, it has been nine general elections since the war. Six resulted in a victory for government, and of the six, four were won with substantial or increased majorities. Of the three general elections, which resulted in a change, all three were won by the narrowest margin of seats, either on minority of the vote or the smallest possible majority over their nearest opponent.<sup>36</sup>

He did not specify whether these elections were snap elections. An overview of the chronology of British history, shows however that there were six elections in the period 1951-1976, five of these were snap elections.<sup>37</sup> His concern was therefore not necessarily whether the elections were snap elections, but how large the majority they gained was, explaining that of the three elections, which resulted in a change of government, all were won by "the narrowest margin of seats, either on minority of the vote or the smallest possible majority over their nearest opponent".<sup>38</sup> Although this essentially is about the workings of the electoral system, he does not expand upon that in this context. Hailsham argued that the continuance of the elective dictatorship was possible due to the Prime Minister's manipulation of the economy, the use of dissolution with focus on the by-elections and public opinion polls.<sup>39</sup> It is clear that the problem was a political system, which opened up for such abuse according to Hailsham. His discussion becomes, however, a bit vague because these actions are not classified as abuse of power.

Lord Hailsham continued to discuss elections with focus on election campaigning and a party's ability to implement legislation when winning majority in Parliament, which he defined as the doctrine of mandate and manifesto. The focus of this discussion was the election manifestoes and the mandate the party with majority has in Parliament. His concern was that election manifestos were often written as "an advertisement of pertinent medicine," which aim was to be understandable therefore presenting quick-fix solutions that were treated

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<sup>35</sup> Lord Hailsham "Elective dictatorship". (10.14.1976), Appendix 1, 5-6

<sup>36</sup> Lord Hailsham "Elective dictatorship". (10.14.1976), Appendix 1, 5-6

<sup>37</sup> Burk (ed.): *The British Isles since 1945*. (New York: Oxford University Press, 2003), 244-250

<sup>38</sup> Lord Hailsham "Elective dictatorship". (10.14.1976), Appendix 1, 5

<sup>39</sup> Lord Hailsham "Elective dictatorship". (10.14.1976), Appendix 1, 6

as the absolute truth or as a “pronouncement from Sinai”.<sup>40</sup> Hailsham argued that the propositions presented in the manifesto were often unrealistic, inappropriate and impossible to realize and implement. Once in Parliament the doctrine of mandate takes over. The mandate a government has is based on the majority a party has in the House of Commons through an election.<sup>41</sup> He argued that even with a small majority and a controversial election manifesto, the new government would try to implement their proposals. Party activists often aided by various pressure groups especially want these proposals to pass through Parliament because their support have been secured by making these pledges.<sup>42</sup> He therefore focused on how the electoral system functioned.

It was argued that under the electoral system, First-Past-the-Post (FPTP) an election can be won “on a small majority of the vote”.<sup>43</sup> This because the FPTP-system often generates results where a party can win a majority in Parliament without outright majority of the national vote, hence the allocation of Members of Parliament is not proportional to the percentage of the vote. This is possible because Members of Parliament (MPs) are elected from single member constituencies.<sup>44</sup> He therefore argued that the majority within the House of Commons is able to use the “whole powers of the elective dictatorship”, such as parliamentary sovereignty and the power of dissolution, in order to implement “unpopular measures not related to current needs”.<sup>45</sup> His use of the word “unpopular” is in this context very vague, providing little understanding of what this entailed. It also is not clear whether he considered these measures to be unpopular among the majority of electorate (everyone who can vote) or the majority of those of the electorate who actually cast their vote in the election. Therefore, the House of Commons was not held to account because of, as addressed in a previous paragraph, the absence of an effective second chamber to control it.

Having presented the problem of the elective dictatorship, as he saw it, Hailsham proceeded to present possible solutions. He pointed out that he was not the only one who had criticized the current system and had suggestions for how to improve the political system. A variety of remedies had been put forward, and from different parts of Britain. In Scotland and Wales, nationalists wanted devolution, whereas in England the focus was on creating a Bill of

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<sup>40</sup> Lord Hailsham “Elective dictatorship”. (10.14.1976), Appendix 1, 6

<sup>41</sup> Polyas “Election Glossary” Accessed 12.18.2019

<sup>42</sup> Lord Hailsham “Elective dictatorship”. (10.14.1976), Appendix 1, 6

<sup>43</sup> Lord Hailsham “Elective dictatorship”. (10.14.1976), Appendix 1, 6

<sup>44</sup> Bogdanor, *The New British Constitution*. (North America: Hart Publishing, 2009), 15 & Kavanagh, Richards, Smith, & Geddes, *British Politics*. (New York: Oxford University Press, 2006), 396

<sup>45</sup> Lord Hailsham “Elective dictatorship”. (10.14.1976), Appendix 1, 6

Rights, electoral reform and reform of the House of Lords. Although Lord Hailsham mentioned these possible solutions, he was not convinced that either of them would be enough to solve the central problem of the elective dictatorship, which he argued was the unlimited powers Parliament enjoyed. He therefore argued for an overarching solution, a written constitution that would include elements from all the proposals he discussed.<sup>46</sup>

In his discussion of the different remedies, Hailsham analyzed remedies that other activists had put forth, before presenting his own. Devolution advocated by Scottish and Welsh nationalists were the first proposal he discussed. He argued that if devolution were to be granted, it would have to be a part of a new federal constitution because this would to a certain extent end “absolute central authority”.<sup>47</sup> Despite this, he stated he was against devolution if the aim was separation from the union, something he argued many nationalists wanted. This because he regarded separation as the destruction of the United Kingdom. Separating from the union would not only destroy the country but also be treason to the union and its different parts, as well as treason to the “Christian West”.<sup>48</sup> It was argued that the Christian West was the “defensive against hostile forces” that aimed at destroying the Christian West’s principles and values, as well as the west’s contribution to “human welfare”.<sup>49</sup> It is not clear which destructive forces Hailsham was referring to, however considering the fact that this lecture was given during the Cold War, it could be argued that he was referring to the threat of communism. Furthermore, he argued that splitting up the British Union would not solve the problem of the elective dictatorship, but would instead create three or four elective dictatorships. This separation would also mean that these new countries would be rivals. Simultaneously, he was concerned that not reaching some sort of federal constitution could end up breaking up the union, similar to when Ireland and Britain were separated. Moreover, Lord Hailsham argued that it would be difficult to implement devolution because of the fact that devolution would be granted to regions in England, Scotland and Wales which would require extensive work. In addition to this regional patriotism was not present in England when compared to Wales and Scotland, and therefore make it difficult to implement devolution.<sup>50</sup> He made it clear that devolution was mainly proposed by nationalists in Wales and Scotland as a remedy for the problem of the elective

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<sup>46</sup> Lord Hailsham, “Elective dictatorship” (10.14.1976), Appendix 1, 7 & 10

<sup>47</sup> Lord Hailsham, “Elective dictatorship”, (10.14.1976), Appendix 1, 7

<sup>48</sup> Lord Hailsham, “Elective dictatorship”, (10.14.1976), Appendix 1, 8

<sup>49</sup> Lord Hailsham, “Elective dictatorship”, (10.14.1976), Appendix 1, 8

<sup>50</sup> Lord Hailsham, “Elective dictatorship”, (10.14.1976), Appendix 1, 7-8

dictatorship.<sup>51</sup> Throughout his discussion, the impression is he was more focused on presenting the difficulties with implementing devolution than the benefits. Based on this, it is plausible to argue that his main reason for discussing devolution was that it was a proposal put forth by others. Simultaneously, he argued that he saw the benefits with introducing devolution, such as getting “rid of the whole incubus of absolute central authority”, so long as it did not break up the union. After his discussion of devolution, he turned to other proposals such as a Bill of Rights, electoral reform and reform of the second chamber, which were advocated for in England. Hailsham did not mention specifically who advocated the introduction of these reforms, however, at the time organizations, such as the Electoral Reform Society and the National Committee for Electoral Reform, were important actors in the advocacy of such reforms.<sup>52</sup>

In England advocates focused on other proposals as a remedy for the elective dictatorship. These were a Bill of Rights, electoral reform and reform of the second chamber. Hailsham first addressed the arguments put forward by advocates for a Bill of Rights. They argued that such legislation could put limitations on Parliament and the executive since Members of Parliament and the government would be restrained from repealing or amending the bill because of public opinion. Hailsham argued that this argument was a bit naïve, arguing that MPs and the government might not be restrained by such a legislation. This because the doctrine of parliamentary sovereignty was still intact, so that Parliament controlled by the government, could repeal any piece of legislation. Furthermore, these advocates also argued that a Bill of Rights could “prevent interference with individual rights”.<sup>53</sup> Although Hailsham recognized that there was some merit to this argument, he also argued that there were nothing hindering the either party from including legislation that were not compatible with the Bill of Rights. Therefore, Hailsham was of the opinion that if a Bill of Rights were to have any real effect it would have to be a part of a more extensive solution, a written constitution.<sup>54</sup>

Another remedy Hailsham addressed put forth by English critics of the elective dictatorship was electoral reform. These advocates argued that electoral reform to proportional representation (PR) would create “a balance of parties” and thereby eliminate or

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<sup>51</sup> Lord Hailsham, “Elective dictatorship”, (10.14.1976), Appendix 1, 7

<sup>52</sup> Norton, Philip. *The Constitution in Flux*. (Oxford: Martin Robertson, 1982), 230

<sup>53</sup> Lord Hailsham, “Elective dictatorship”, (10.14.1976), Appendix 1, 8

<sup>54</sup> Lord Hailsham, “Elective dictatorship”, (10.14.1976), Appendix 1, 8-9

control extremism.<sup>55</sup> According to Hailsham, it was not certain that electoral reform would moderate the political landscape. On the contrary he argued that it would create polarization. He used Northern Ireland and European countries, not specifying which countries, as examples of this. Furthermore, he argued that on the whole PR had fostered the growth of extremist groups, such as neo-fascist groups. In addition to this, he argued that proportional representation would not necessarily contribute to frequent alternation of power and used Scandinavia to illustrate this. He explained that their electoral system has “tended to keep a single party in power for periods up to 30 and even 40 years”.<sup>56</sup> Furthermore, he explained that in PR-systems “moderates tend to give concessions to extremists of their own persuasion” instead of moderate opponents because of “the scramble for second preference votes or in the post-election horse trading”.<sup>57</sup> This he argued was not the case in the FPTP where the moderates in the national parties were put in power. It seems like this was more important to Hailsham’s argument, than the proportionality between the seats and share of vote. He was therefore skeptical of reforming the electoral system. This because he did not believe that it would solve the problem of the elective dictatorship at its root, namely the absolute power that Parliament gets under the present constitution.<sup>58</sup> Electoral reform would only mitigate the effects of the elective dictatorship not solve the problem.<sup>59</sup> One could argue that Hailsham’s line of argumentation therefore contradicts his earlier critical comments on majority governments which do not enjoy majority support in the electorate. Based on this, it is plausible to argue that Hailsham is not in favor of electoral reform even though proportional representation could ensure support for legislation among the majority of the electorate.

Where Hailsham was ambivalent on the electoral reform, he thought reform of the House of Lords essential. He argued that this was necessary because one chamber could not be representative for all purposes. Furthermore, House of Lords reform was important because at the time, the upper house was not able to function as an effective check on the executive. However, he argued that at the time, little could be done to change the composition of the House of Lords. Eventually the second chamber would either need to evolve into a more representative chamber or be replaced with something else. Hailsham did not expand much on this, however it seems like he is of the opinion that this is something that eventually would happen by itself if the House of Lords was not replaced before that, which he was a

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<sup>55</sup> Lord Hailsham, “Elective dictatorship” (10.14.1976), Appendix 1, 9

<sup>56</sup> Lord Hailsham, “Elective dictatorship” (10.14.1976), Appendix 1, 9

<sup>57</sup> Lord Hailsham, “Elective dictatorship” (10.14.1976), Appendix 1, 9

<sup>58</sup> Lord Hailsham, “Elective dictatorship” (10.14.1976), Appendix 1, 9-10

<sup>59</sup> Lord Hailsham, “Elective dictatorship” (10.14.1976), Appendix 1, 9-10

proponent of. He presented a new approach to the composition of the House of Lords. This approach would entail the House of Lords having elected members that represent whole regions like the United States' Senate only elected through a system of proportional representation. While Hailsham did not favor PR for the Commons, he did favor PR for the second chamber. He also argued that the House of Commons would continue to “determine the political colour of the executive government” and have control over the finance.<sup>60</sup> In addition to this, representatives to the Commons would continue to be elected by single member constituencies.<sup>61</sup> In light of this, it could be argued that his opposition to electoral reform was only regarding the House of Commons. He did not however not address concerns of a more democratic upper house choosing to challenge the Commons to a greater extent often raised in the debate about reform of the House of Lords.

Lord Hailsham concluded his lecture by providing his own solution to the problem of the elective dictatorship, a written constitution. Although skeptical of many of the remedies he discussed, he argued that they none the less should be a part of a more comprehensive constitutional reform. He stressed that such a solution “might suffice” as a solution to the elective dictatorship.<sup>62</sup> A written constitution would limit Parliament's power and enforce these limits both with legal and political means. Constitutional reform would entail electoral reform, devolution and a Bill of Rights. Constitutional reform in this magnitude would make sure the interests of the regions, minorities and individuals were restored.<sup>63</sup> He claimed that the question was not how to create a written constitution but how to keep it, because of Parliamentary sovereignty. In order to create such a constitution, the existing institutions would have to be used. First, Hailsham argued that a constitutional convention needed to be established in order to advise and discuss how create a constitution. Second, Parliament would create a bill based on the convention's recommendations. If this Bill passed in Parliament, it would be put to a referendum for the whole United Kingdom. In order to amend or alter this new constitution Lord Hailsham suggested that an act would have to be passed by a qualifying majority in Parliament and then put to a referendum.<sup>64</sup> He argued that his aim was continuity within the British political system but that this was no longer possible because of the

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<sup>60</sup> Lord Hailsham, “Elective dictatorship” (10.14.1976), Appendix 1, 10

<sup>61</sup> Lord Hailsham, “Elective dictatorship” (10.14.1976), Appendix 1, 10

<sup>62</sup> Lord Hailsham, “Elective dictatorship” (10.14.1976), Appendix 1, 10

<sup>63</sup> Lord Hailsham, “Elective dictatorship” (10.14.1976), Appendix 1, 10-11

<sup>64</sup> Lord Hailsham “Elective dictatorship” (10.14.1976), Appendix 1, 12

“disruption and dissolution” within the political system.<sup>65</sup> Therefore, in order to achieve continuity change was necessary.

Although Lord Hailsham was thorough in his lecture, he did not discuss the Monarchy in great detail. He explained that this was because according to him “our monarchy is the only part of our constitution which is still working more or less as it was designed”.<sup>66</sup> He argued that the Monarchy was essentially a hereditary presidency, but without the political interference which the Presidency in the United States is subjected to. Moreover, he argued that the Monarchy was part of the cement that held the nation together, and therefore important to keep. Hailsham’s argument is that the political system amounts to an elective dictatorship because a shift in sovereignty has ensured executive dominance of the House of Commons, rendering the House of Lords unable to function as a check on the executive. Furthermore, with an electoral system that tend to generate results where the government has majority in the Commons, without a qualified majority of the vote, can implement the legislation it wants to. Such a system is unbalanced and is therefore in need of comprehensive reform including a written constitution, Bill of Rights, reform of the second house and devolution.

#### The reception of Hailsham’s argument

Lord Hailsham’s Dimpleby lecture attracted much attention and his argument was debated in the media. Excerpts from his lecture and a summary of his main argument was published the following day in *The Times*.<sup>67</sup> Furthermore, his argument was discussed in the Letters to Editor Section of the *Times*, with some arguing in favor of his argument and others criticizing it. Even though the debate about the elective dictatorship was discussed in newspapers, elevating it to a national debate, many of the contributors were scholars within the field, such as Francis Bennion, a constitutional lawyer.<sup>68</sup> Bennion criticized multiple aspects of Hailsham’s argument in 1976 and 1977, even arguing that Lord Hailsham’s use of the phrase the elective dictatorship was wrong in 1977.<sup>69</sup> His argument was that it is inconsistent to describe the British Political system both as dictatorship and as an elective system at the same time. He argued that by doing so, Hailsham was both arguing that there was no constitutional machinery to remove the executive while simultaneously recognizing the elective feature of

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<sup>65</sup> Lord Hailsham, “Elective dictatorship”, (10.14.1976), Appendix 1, 12

<sup>66</sup> Lord Hailsham “Elective dictatorship”, 10.14.1976), Appendix 1, 12

<sup>67</sup> Berlins, “Hailsham Call for written Constitution”. *The Times*. (10.15.1976).

<sup>68</sup> The *Times* “Francis Bennion”, *The Times*. (04.01.2015).

<sup>69</sup> Bennion “Lord Hailsham’s reforms”. *The Times*. (10.21.1976). & Bennion, “Democracy and dictatorship” *The Times Archives*, (04.09.1977).



the system; regular elections.<sup>70</sup> In this instance, Hailsham answered the criticism in a Letter to Editor arguing that there were multiple examples of dictatorships that had used elections as a way of legitimizing their rule, so that it was entirely possible for a system to have attributes from both systems.<sup>71</sup>

One debate that gained momentum following Hailsham's Dimpleby Lecture, was that on electoral reform. Many of the contributors to this debate used his argument that the FPTP-system was an integral part in realizing the elective dictatorship as an argument in favor of electoral reform. Tim Rathbone, a Conservative MP made this argument. He argued that the reason why there were an increased number of people advocating electoral reform was the basic weaknesses of the electoral system.<sup>72</sup> The organization Conservative Action for Electoral Reform argued in a pamphlet for electoral reform in both Houses. Furthermore, they argued for an unbiased inquiry on constitutional issues which they believed would conclude that the present institutions were "inadequate and provide neither representative government not protect against the elective dictatorship".<sup>73</sup> Electoral reform was also discussed in the House of Lords. Here the debate was not necessarily in response to Hailsham, but references were made to him or his argument. A good example of this is when Lord Home advocated for electoral reform of the House of Lords in 1978. This reform would entail a House of Lords where 66% were elected by proportional representation and the rest being nominated to their seats. Home's proposal was a response to the Labour Party's suggestion to remove the House of Lords. Removing the House of Lords would, according to Lord Home remove any possibility of balancing Parliament's power, thereby allowing the government to implement radical changes and bring Britain closer to the situation of the elective dictatorship, as decried by Lord Hailsham.<sup>74</sup>

#### *The Dilemma of Democracy: Diagnosis and Prescription*

Following his lecture in 1976, Lord Hailsham wrote a book on the same issue, *The Dilemma of Democracy: Diagnosis and Prescription*, which was published two years later. In his book Lord Hailsham discussed many of the same factors that contributed to the elective dictatorship as he did in his lecture from 1976, for example the role of the Prime Minister and his/her cabinet and their powers as well as both houses of Parliament.<sup>75</sup> When comparing the

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<sup>70</sup> Bennion, "Democracy and dictatorship" *The Times Archives*, (04.09.1977).

<sup>71</sup> Lord Hailsham, "Democracy and dictatorship" *The Times Archives*, (04.14.1977).

<sup>72</sup> Rathbone, "Devising a fair electoral system" *The Times Archives*. (04.16.1977).

<sup>73</sup> Political Staff in *The Times*, "Electoral Reform urged for both houses". *The Times Archives*. (10.12.1977).

<sup>74</sup> Clark, "Lord Home suggests a reformed revising Chamber". *The Times Archives*. (03.21.1978).

<sup>75</sup> Hailsham of St. Marylebone. *The Dilemma of Democracy: Diagnosis and Prescription*. (London: Fount Paperbacks, 1978), 190-195, 203-211.

argument he made in 1976 with his book published in 1978, it is important to remember that he had time to develop his argument more thoroughly for the book, taking into account the criticism and feedback following the lecture. It is therefore to be expected that he included more aspects of the British political system in the analysis presented in his book. In addition to this, he was also more political in his book than in his lecture in terms of criticizing the Labour party, as well as addressing the debate about the elective dictatorship as it appeared in the media following his Dimpleby Lecture. He was criticized for his use of the term the elective dictatorship, which, as we saw, critics argued was “a contradiction in terms”.<sup>76</sup> Although Lord Hailsham does not mention the name of his critic, it is likely that he is referring to the criticism he received from Bennion in 1977.

The structure of the book is to some extent similar to the structure of his lecture. In both his lecture and his book, Lord Hailsham first outlined the causes of the elective dictatorship, then presented, and discussed the various solutions that had been presented. Hailsham discussed the British political system in detail, including the causes of the elective dictatorship in the first 19 chapters of the book. In these chapters Britain’s decline as well as political principles important to Hailsham and the theoretical framework he used as a foundation for his argument was discussed. The elective dictatorship is discussed throughout the book, however in chapter 20 Hailsham discussed the elective dictatorship more in-depth. At the core, the argument is the absence of any legal limitations of Parliament’s power.<sup>77</sup> He addressed how this had an impact on different political institutions, such as the electoral system, Parliament and the Prime Minister. He therefore argued that in order to limit the unlimited power of Parliament, a constitution was needed. In the following 16 chapters, Hailsham discussed what a new constitution would include. As a part of this devolution and a Bill of Rights were discussed in separate chapters. The role of the different political institutions, such as the House of Lords, the Prime Minister and Cabinet and local government were also discussed. Lord Hailsham presented his three-part prescription in the next four chapters devoting one chapter to each of the three elements in his prescription, a “return to [...] limited government, a period of stability and legislative restraint, and constitutional reform<sup>78</sup>”. In the very last chapter, he discussed how Britain had to adapt to the world. The book, as compared to his Dimpleby offers a more complex, political and thorough discussion of the elective dictatorship.

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<sup>76</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 127

<sup>77</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*. (1978), 125

<sup>78</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*. (1978), 213

The central argument of Hailsham's book is in his own words that "the moment democracy ceases to pay attention to the limitations and restraints which all governments must observe, it ceases to be a form of free government and becomes an organ of tyranny".<sup>79</sup> It could therefore be argued that the reason why he in 1978 continues to discuss the elective dictatorship is that he needs to reeducate the public of the alternative between the elective dictatorship and limited government. This could also be why he quoted the bible verse from 1. Kings 18:21: "And Elijah came unto all the people and said: 'How long halt ye between two opinions? If the Lord be God, follow him but if Baal, then follow him.' And the People answered him not a word".<sup>80</sup> Using such a verse is very poignant as it indicates how important Hailsham considered the choice between limited government, which he considered to be good, and elective dictatorship, which he considered bad to be. He argued that the British people had to choose between "two inconsistent options about the nature of democracy" and how government is to function, stating that it is difficult to choose between the two.<sup>81</sup> The two inconsistent opinions about democracy is the theoretical framework that Hailsham placed his argument within, the theory of limited government and centralized government.

The theories of limited government and centralized democracy are theories about how to govern within a political system. He defined limited government as freedom under law, a term he also used in his Dimpleby Lecture and explained that this was not of his own invention.<sup>82</sup> The theory of Limited Government, holds that central authority should be limited in such a way that these limits cannot be breached by any government. In order to restrict the authority of Parliament and government, these limits would have to be binding, thereby policed by a judiciary branch, a Bill of Rights or checks and balances according to Lord Hailsham.<sup>83</sup> The theory of centralized democracy on the other hand was what Hailsham defined as an elective dictatorship.<sup>84</sup> He argued that centralized democracy was "the natural offspring" of the humanist philosophies, legal positivism and utilitarianism.<sup>85</sup> He argued that the only criterion for political action within utilitarianism is that it is for the common good. Legal positivism holds the view that because Parliament and government enjoys sovereignty they are free to exercise their unlimited powers so long as it is for the common good.<sup>86</sup> Both legal positivism

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<sup>79</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*. (1978), 91-92

<sup>80</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*. (1978), 6 and 1.Kings 18:21

<sup>81</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*. (1978), 9

<sup>82</sup> Lord Hailsham "Elective dictatorship", (10.14.1976), Appendix 1, 1 and Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 11

<sup>83</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 13

<sup>84</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*. (1978), 9

<sup>85</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*. (1978), 11

<sup>86</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 219

and utilitarianism have long a history, legal positivism within the field of law, and utilitarianism within normative ethical theory.<sup>87</sup>

In addition to placing the discussion of the elective dictatorship within the theory of limited government and centralized democracy, Lord Hailsham also placed Britain in a different context in 1978 than he had done in 1976. In 1976, he argued that the elective dictatorship was a result of evolving changes to the structure and operation of Parliament. In 1978 however, a more complex picture of what caused the elective dictatorship was presented. He presented a Britain in economic decline that had experienced loss of dominance on the world stage.<sup>88</sup> This gave Lord Hailsham the opportunity to be more political in his discussion about the elective dictatorship.<sup>89</sup> He stated that he would be accused of bias because the book addressed contemporary politics and for his strong positions on issues. Furthermore, he acknowledged that his examples, based on events from 1974-1978 when Labour was in government, would be somewhat one-sided. However, he argued that a writer with a different viewpoint would reach similar conclusions if he/she based it on similar events.<sup>90</sup> It is plausible to argue that Hailsham was able to legitimize his own criticism of Labour by discussing the political system. In his book, he therefore blamed the economic decline on the Labour Party. In his Dimpleby lecture, he did not go after the Labour Party in the same manner.

His discussion of the cycle of alteration of power presented in chapter 7 is a good example of how he used politics to blame Labour for the economic decline in Britain.<sup>91</sup> Lord Hailsham argued that in his lifetime “there have been four complete periods of Labour Government”.<sup>92</sup> The fifth period had begun in February 1974. He argued that these periods had to some extent followed the same pattern. Therefore, he argued that that there were cycles of alteration of power in the British political system. According to Hailsham the cycle begins when a Labour government takes over after a Conservative government has lost popularity. This new government enacts irresponsible economic policies such as borrowing from abroad or increase taxation. When this government loses support and eventually a general election, a

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<sup>87</sup> Sevel & Leiter, “Legal Positivism” *Oxford Bibliographies*. (05.10.2010). and Duignan & West. “Utilitarianism”, *Encyclopædia Britannica* (02.28.2020).

<sup>88</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 25

<sup>89</sup> Hailsham’s focus on Britain’s decline can also be explained by the phenomenon of declinism that emerged in the 1950s. This is addressed in the book *The British Isles since 1945* edited by Kathleen Burk, p. 69-75

<sup>90</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1987) 17-18

<sup>91</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*. (1978), 50-52

<sup>92</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*. (1978), 50

Conservative government will take over and try to remedy the situation. However, the policies implemented takes time to bear fruit and this government will lose popularity when the effects of the policies are few and a Labour government takes over and the cycle begins all over again.<sup>93</sup> Although he argued that there had been an economic decline, this was a part of a national decline in Britain. He argued that Britain in its entirety was in decline not only the economy. Britain's loss of influence at the world stage with the end of the British Empire was one such change that contributed to the decline.<sup>94</sup> Therefore, even though the Labour party was blamed for the economic decline, he argued that the economy was not the only cause for the national decline. Other causes for the decline were social, moral, constitutional and political.<sup>95</sup> Examples of how political Hailsham was can also be found in his discussion of the electoral system. In his very brief discussion of gerrymandering he argued that some safe seats in "Labour-held cities in England hold about 20,000 votes" while "Conservative or marginal seats represent 100,000 or more".<sup>96</sup> Although he acknowledged that the Boundary Commission stopped most of the extreme attempts of gerrymandering, he argued that since House of Commons is the ultimate decider, Labour had been able to use their small majority and he therefore accused Labour Home secretaries for gerrymandering.<sup>97</sup>

Gerrymandering was just a small part of his discussion of the electoral system. Most of the discussion was centered on the functions of the FPTP-system and the doctrine of mandate and manifesto which he also discussed in his Dimpleby Lecture. Hailsham explained in his book how the FPTP not always produce proportional results, which means that a party can get a majority in Parliament with a minority of the vote.<sup>98</sup> Even though he explained how this was problematic, he also argued that he did not take issue with it so long as two conditions were fulfilled. The first was that so long as there were no coherent majority made up by one party, he did not have an issue with a government reflecting "the views of the largest organized minority".<sup>99</sup> The other was that it was logical that Members of Parliament represented single member constituencies. He saw however no advantage in that the Commons and the government having unlimited powers, arguing that at some point "a return

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<sup>93</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy* (1978), 50-52

<sup>94</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 25

<sup>95</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 212-213

<sup>96</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 131

<sup>97</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 131

<sup>98</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978) 160-161 and Lord Hailsham "Elective dictatorship", (10.14.1976) Appendix 1, 6

<sup>99</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 129

to the separation of power” was needed.<sup>100</sup> According to Hailsham this point was reached once a government represented “by a small minority of the votes, and with a slight majority in the House, regards itself entitled, and according to its more extreme supporters, bound to carry out every proposal in its election manifesto”.<sup>101</sup> This is essentially the doctrine of mandate and manifesto discussed by Hailsham in the Dimpleby Lecture as well. The doctrine of mandate holds is that the election result, how much of a majority a party has in Parliament, is the government’s mandate to implement legislation. The doctrine of election manifesto is as mentioned the pressure and expectation from pressure groups to implement every proposal in the election manifesto which is made possible by the mandate they have in Parliament. Hailsham also made this point in discussions of other aspects of the British political system.<sup>102</sup> To this problem he did not advocate for electoral reform in general elections to the House of Commons. Instead he argued for a return to the theory of separation of powers. This would however entail a proportionally elected second chamber.<sup>103</sup>

The doctrine of mandate was also discussed as a part of an argument about how the parties select candidates to constituencies. This because how these candidates were selected may shed light on how they will use their mandate once serving as MP. He therefore outlined how the selection process had evolved within in his own party, the Conservative Party and in the Labour Party. He explained how the Maxwell Fyfe reforms implemented in the late 1940s changed the selection process of candidates to the different constituencies within the Conservative Party. The Maxwell Fyfe reforms put strict limitations on the contributions from MPs and candidates to the local associations, meaning that local constituency associations could not depend on wealthy contributors to finance elections. Consequently, recruitment of new members became increasingly important in order to finance elections. Furthermore these reforms paved the way for young people without wealth and social status to be selected as candidates.<sup>104</sup> Therefore, Lord Hailsham argued that these reforms made sure that candidates were democratically approved through an extensive process, first in the Central Office, then the local selection committee and the party executive. Even though he was generally positive about the changes these reforms introduced, he also acknowledged the vulnerabilities within

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<sup>100</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 129

<sup>101</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 129

<sup>102</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 65 & 144

<sup>103</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 129

<sup>104</sup> Zig “Democracy and Reform in the Conservative Party.” *Journal of Contemporary History* (1978), 666.

these committees such as favoring possible candidates that are extreme in one direction or another, as well as being vulnerable to feuds or cliques.<sup>105</sup>

Hailsham's presentation of how the Labour party selected candidates, was only focused on the current situation, arguing that some trade unions controlled some Labour seats, describing these as "feudal baronies".<sup>106</sup> Because of this and the support candidates/MPs receive from trade unions, he argued that members are "scarcely free to exercise an independent vote".<sup>107</sup> He went even further, and argued that Labour safe seats were especially vulnerable to being infiltrated by extreme groups who in some instances wanted to control how the candidate could vote in Parliament. Hailsham's concern was therefore that if these candidates and once elected, MPs were controlled by trade unions, extremist groups and money, their ability to be independent were in question and therefore also the mandate they had received. Although Hailsham's concerns are valid, it comes off as a bit political since he discussed the evolving democratic changes within this own party, while presenting Labour's selection method and relationship with trade unions as problematic. Furthermore, he did not address his own bias in this discussion.

The relationship between the Labour party and the trade unions was also addressed in a chapter about the national parties in Britain. There he argued that so long as the Labour Party continued its close relationship with the trade unions, it could not be fully democratic. This, in combination with their focus on "class warfare, its misrepresentation of the class structure, its discriminatory legislation and penal tax proposals," is why Lord Hailsham argued that these traits could lead to centralized democracy.<sup>108</sup> He argued that the economic consequences of these tendencies did not contribute to prosperity or growth. Centralized democracy/government is what he described the elective dictatorship as in his first chapter.<sup>109</sup> Based on this it could be argued that Hailsham was more concerned with the emergence of an elective dictatorship from the left in British Politics than the right. It is if nothing else a good tactic of advocating for a change in government. Furthermore, it is plausible to argue that Hailsham moved quite far towards seeing the elective dictatorship as more of a result of a certain type of political practice than as a problem with the political system.

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<sup>105</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 128

<sup>106</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 128

<sup>107</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 128

<sup>108</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 38

<sup>109</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 9

Hailsham was not only concerned with lobbies and the special interest groups' influence on MPs, he voiced concern about how the British political system was vulnerable to a takeover by extremists. A takeover is that the system is infiltrated by some outside force, which aim is to destroy the present order, which could occur because of the vulnerabilities within the system. One vulnerability with the political system was how the government, even with a small majority could get legislation which not necessarily had support in the electorate passed through Parliament. In this discussion of the threat of takeover, he continued his tactic of being political because his discussion of the two possible ways a threat of a takeover could occur were aimed at the Labour Party.<sup>110</sup> The first was how the party caucuses could be infiltrated and candidates with extreme views could be elected into Parliament and that way take over Parliament gradually. Furthermore, he argued that trade union elections could be manipulated to such an extent that the trade union is represented by extremists.<sup>111</sup> This would be problematic due to the influence the trade union had on political parties.<sup>112</sup> He therefore argued that political parties could be threatened to implement extreme policies. As aforementioned, Hailsham expressed concern with the close ties between the trade unions and the Labour Party. The other possibility of a takeover is by influence of extreme parties on the far right and far left such as the National Front and the Communist Party. He argued that if either party got narrow majority in Parliament, they would govern as a dictatorship. Although he argued that the danger was remote, it was still there. It is for this reason that Hailsham was concerned about the influence by extremists in the political parties, especially focused on the Labour party, arguing that Labor was more vulnerable to influence by extremists. The reason for this was according to Hailsham that the left wing of the Labour party was extreme. The consequences of a takeover were quite serious because these extremists were opportunists who would exploit the situation. Consequently, he argued that there had to be some sort of limits to this danger.<sup>113</sup> Furthermore, he also argued that it is essential to see the threat of takeover in the context of the ideas and factors that contribute to the elective dictatorship.<sup>114</sup> The danger of takeover is not discussed in his Dimpleby Lecture. What Hailsham did discuss both in his Dimpleby Lecture and his book was the role of the monarch, which we now turn to.

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<sup>110</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 65-68

<sup>111</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 65-68

<sup>112</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 65

<sup>113</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 66

<sup>114</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978) 69



Hailsham stated in his lecture that he would not discuss the role of the monarch in much detail because this institution functioned as it was supposed to, namely be a head of state with no party affiliation, which he argued was an advantage.<sup>115</sup> The role of the monarchy was however discussed in more detail in this book. Here he discussed the importance of the symbolic function of the monarch as a symbol of unity, values and traditions.<sup>116</sup> The main focus was however on the on the constitutional function of the Crown which was to be a part of the machinery of government, such as guaranteeing a newly formed government that their authority is legitimate. The monarch was the protector of the constitution in all situations, especially against a military junta or a dictator who tried to take power. This constitutional function of the Monarch was important to Hailsham, who later in the chapter described the crown as “the ultimate guarantor and trustee of the constitution”.<sup>117</sup> Furthermore, he argued that the powers of the Monarch were protected by a fail-safe mechanism. One such fail-safe was that parties select their own leader which “safeguards the sovereign against the embarrassment of having to choose between individuals”.<sup>118</sup> Another example he used to explain how the fail-safe worked was the power of the Monarch to refuse dissolution of Parliament to a Prime Minister. If a Prime Minister asked for dissolution of Parliament following a general election, and the Monarch refused, the fail-safe would ensure that the Monarch would not be defeated. This because in the event that that such a situation would emerge, the Prime Minister who was refused dissolution would resign, and although the Monarch would have to find a new Prime Minister, if there were no forthcoming candidate, a new general election would be held, and Parliament and the electorate would make the ultimate decision.<sup>119</sup> The implication of this was that the Monarch remained non-political which was important to ensure the continuation of the role of the Crown. He argued that a monarch might make some errors, but so long as the Monarch does not manipulate the system in order to gain personal power and leaves the ultimate decisions with the electorate, the monarch will be protected by the fail-safe mechanism.<sup>120</sup> In other words, Hailsham’s focus was on the constitutional function of the monarch, not its symbolic function. He argued that the Crown is an important institution that needs to be protected since it is the guarantor of the constitution. It could be argued that this is the reason Hailsham discussed this institution

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<sup>115</sup> Lord Hailsham “Elective dictatorship”, (10.14.1976) Appendix 1, 12

<sup>116</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 141

<sup>117</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 146

<sup>118</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 145

<sup>119</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978) 146

<sup>120</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 145

although it functions as it is supposed to and is not directly related to the problem of an elective dictatorship.

The role of the judiciary was discussed in more detail in Lord Hailsham's book than in his Dimpleby Lecture. In his lecture, he focused on how the judiciary's position had weakened in comparison to Parliament and brought up the role of the judiciary when discussing how to enforce a Bill of Rights.<sup>121</sup> The importance of an independent judiciary is more in focus in his book. He argued that the independence of the judiciary is as fundamental in order to maintain a free society as "multiplicity of parties" and representative government.<sup>122</sup> This independence was increasingly important as the area of political control was extended. Furthermore, he argued that while the judiciary branch had been protected by Parliament against the danger of dismissal by the Monarch, the situation was quite different in 1978 since the judiciary was attacked directly and indirectly in Parliament by back benchers and ministers. Consequently, the judiciary should be safeguarded from the executive and legislative branch. Making sure that "justiciable issues were left to the courts" would realize this goal.<sup>123</sup> By justiciable Hailsham meant that the issues dealt with in courts "are dependent on genuine ascertainment of facts, or upon the strict application of [...] rule of law" and issues that do not require a "subjective opinion" of a judge.<sup>124</sup> It was therefore important that the judiciary remained impartial.

Hailsham also addressed the argument that the role of the judiciary should be extended. This argument was voiced by among others, Lord Scarman, a barrister, judge and peer in the House of Lords.<sup>125</sup> Hailsham argued that Lord Scarman went too far. One of the reasons he gave for this was that because of intrusive decisions by the state, litigants would seek decisions from the courts which "must have sensitive political consequences".<sup>126</sup> Such a role was unavoidable because even if the courts refused to give judgement or decline jurisdiction, their choice of not being involved is in fact taking a "decision as controversial in its implication as if" they were involved.<sup>127</sup> Moreover, he argued that the government majority had essentially become the rubber stamp of the government since a shift in parliamentary sovereignty had ensured the government dominance over the majority in the Commons. This

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<sup>121</sup> Lord Hailsham "Elective dictatorship", (10.14.1976) Appendix 1, 8.

<sup>122</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 104

<sup>123</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 106

<sup>124</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 106

<sup>125</sup> Sedley "Lord Scarman" *The Guardian*, (12.10.2004).

<sup>126</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 107

<sup>127</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 107

makes it difficult for the courts to make distinctions between acts of ministers and subordinate authority, and Acts of Parliament, since the distinctions becoming artificial. Furthermore, Acts of Parliament “cannot be rejected by the courts as illegal”.<sup>128</sup> According to Hailsham, the most important thing is that the issues the courts decide on are justiciable even though the judgements they arrive at involve consequences that are political sensitive. Therefore, the fear that judges would be involved in party politics were only valid if judges were to decide on issues that were not based on facts, legal rules or were subjective. This combined with how a shift in where sovereignty resided made it difficult to distinguish between cases based on Acts of Parliament or acts of ministers, is why Hailsham were not in agreement with Lord Scarman’s argument that the judiciary’s role should be extended. He was adamant however that justiciable issues should not be in the hands of the executive or the legislative but in the judiciary and argued that it was important that the judiciary remained independent in order to defend the rights of minorities and individuals.<sup>129</sup> Hailsham did not advocate any reform, merely restating his belief that the judiciary should be independent.

Lord Hailsham discussed and advocated many of the same solutions in both his lecture and his book, namely devolution, a Bill of Rights, House of Lords reform and a written constitution.<sup>130</sup> The presentation of these solutions was however rather different in his book because he presented them as part of a more comprehensive and overarching solution. His comprehensive solution was a “three part prescription” in order to solve the vulnerabilities within the British political system.<sup>131</sup> The first part of this prescription was a return to the theory of limited government. He argued that limited government was the “golden thread which will unite our policies into a coherent whole”.<sup>132</sup> The second part of his prescription was a period of stability and legislative restraint, and the third constitutional reform. He argued that all these prescriptions were interrelated. For instance, a period of stability and restraint was needed prior to a constitutional reform, which would institutionalize limited government.<sup>133</sup>

In the discussion about a return to limited government, legal positivism and limited government were presented as opposite theories of government, an argument briefly made in

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<sup>128</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 107

<sup>129</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 106 & 108

<sup>130</sup> Lord Hailsham “Elective dictatorship”, (10.14.1976) Appendix 1, 7-12 and Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 129-130, 135, 137, 139-140, 165-169, 171 & 174

<sup>131</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978) 213

<sup>132</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 213

<sup>133</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 213

the first chapter. A return to limited government would entail limiting the power of the executive and the legislative branch by putting in place limits that government and Parliament cannot cross. In order to ensure that these limits are not crossed, it was argued that these need to be enforced either through institutional and political checks and balances, or like those enshrined “in the American Bill of Rights”.<sup>134</sup> Hailsham argued that if a return to limited government were to be lasting it had to be built into the constitution similar to the American constitution.<sup>135</sup>

A period of stability and legislative restraint, the second part of the prescription was necessary in order to recover from economic decline and constant change, as well as in order to return to limited government. Stability and legislative restraint meant that there could not be a constant reform of laws. In order to achieve legislative restraint and stability, Hailsham argued that both major parties had to reduce the production of new legislation. He explained that if he were to create an election manifesto, he would promise a reduction in public expenditure, taxation and reduce the introduction of new legislation as much as possible, except for constitutional change. This would give the “people of Britain a breather for a change”.<sup>136</sup> Although this would be ideal, Hailsham argued that this would not be possible in every field. Important change within constitutional law could for instance not be avoided, or at the very least creating the machinery making change possible were important.<sup>137</sup>

The third part of the prescription, a codified constitution was discussed throughout the book. Issues such as devolution, a Bill of Rights and membership in the European Economic Community were presented as developments which could pave the way for a codified constitution. One of the reasons for introducing a codified constitution was to limit the powers of the government and the House of Commons which would solve the problem of the elective dictatorship. Furthermore, a codified constitution would formalize what is considered basic law and what is considered constitutional law. This distinction is important because constitutional law can only be altered through a comprehensive process for instance, a two-thirds majority in both houses, whereas basic law can be amended by simple majority in Parliament. In addition to this, the power of the legislative branch will be limited. It is for these reasons that Hailsham argued that the establishment of a codified constitution would

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<sup>134</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 219

<sup>135</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 221

<sup>136</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 223

<sup>137</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 223-224

institutionalize the theory of limited government.<sup>138</sup> He argued that these limits would need to be policed by a judiciary branch, a Bill of Rights or checks and balances.<sup>139</sup> Devolving authority to lower tiers of government was also part of Hailsham's solution. He would like to see regional assemblies established in Northern Ireland, Wales, Scotland and the regions of England.<sup>140</sup> Furthermore, a written constitution would also provide the necessary scrutiny by the judiciary on the power of the executive and the legislative branch needed to hold them accountable.<sup>141</sup>

In order to obtain a written constitution, a Royal Commission would need to be established. This Royal commission would create a proposal for a Constitutional bill which would be placed before Parliament and then have it ratified through a referendum. Hailsham argued that the process would make the constitution codified since Parliament would not be able to alter or amend it through the same process as before the constitution was ratified.<sup>142</sup> In his vision for a written constitution, amending the constitution would involve the use of referenda. Even though Hailsham want a limited constitution, a constitution that restrict Parliament's ability amend and repeal legislation, he does not want to set up a separate constitutional court. His reasoning is that the of the judiciary will not differ from their current role although he argued that their role would be somewhat extended in terms of passing judgement on "questions of constitutional law [...] at every level".<sup>143</sup> This is somewhat contradictory to his remarks earlier in his book, where he did not want the role of the judiciary to be extended. This on the grounds that there had been a shift in where sovereignty resided which made it difficult to distinguish between Acts by ministers and Acts of Parliament and the fear of involving the judiciary in party politics. It is however plausible to argue that these concerns would be unfounded since the establishment of a written constitution would challenge the doctrine of Parliamentary sovereignty.

Although Hailsham did state that changes should only occur after discussion and that his proposals were merely suggestions for reform, he arguably downplayed the consequences of establishing a written constitution.<sup>144</sup> He argued that even with a written constitution, the main institutions would remain intact such as bicameral legislature, Queen and Cabinet as

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<sup>138</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 223-224

<sup>139</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 219

<sup>140</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 228

<sup>141</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 226

<sup>142</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 227

<sup>143</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 228

<sup>144</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 226

well as Common Law and Statute. The only major change would be that “the tendency to elective dictatorship would have been reversed”.<sup>145</sup> It is difficult to know exactly why Hailsham decided to not fully discuss the implications of establishing a written constitution, although it is plausible to argue that his reason might have been that the solutions he presented and reforms he envisioned were ahead of its time. Furthermore, it might also be to reassure sceptics that constitutional reform would not be as comprehensive as some would argue it was.

Hailsham focused more on changes to Britain’s economy as well as loss of dominance on the world stage in his book than in his Dimpleby Lecture. In the last chapter in his book, he returned to Britain’s role in the international community as another reason why Britain needed to change their political system. He argued that even though Britain had ceased to be an empire, it still had a responsibility to the international community to be an example. A part of this responsibility was to get its “house in order”.<sup>146</sup> By this, he meant that Britain had to take responsibility for how it used resources such as borrowing money without repaying. He argued that Britain had to contribute if solving world poverty were to be possible.<sup>147</sup> Throughout this book, the main objective was to find a solution to the elective dictatorship, therefore, it is very likely that by “house in order” Hailsham meant solving problems he outlined, with the solutions he proposed. He does, however, not link Britain’s role in the international community to the elective dictatorship other than to state that Britain needed to get its house in order. Including a chapter on Britain’s role in the international community might therefore be a way of motivating change within Britain, so that the it would be possible for Britain to engage and contribute on the world stage.<sup>148</sup>

As evidenced by this comparison between Lord Hailsham’s argument in 1976 and 1978, his discussion of the elective dictatorship was more political and partisan in 1978. His criticism of the left was more intense. While Hailsham’s partisanship might increase support among those who agreed with him politically, his argument could be weakened among reformers on the left, which considered his argument as less convincing because of the partisanship. Presenting his argument within a book format also allowed Hailsham to discuss various aspects of the elective dictatorship more in-dept such as the civil service and the judiciary, as well as aspects of the political system not directly related to the elective

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<sup>145</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 228

<sup>146</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 232

<sup>147</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 232

<sup>148</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*,(1978), 233

dictatorship such as the role of the monarchy and Britain's role in the international arena. Although there were some differences between his Dibleby Lecture and his book, however, his main argument remained the same. The British Political system amounted to an elective dictatorship due to the absence of limits on the power of the executive and legislative branch, which again emanated from the doctrine of Parliamentary sovereignty. The main solution also remained the same: establishing a written constitution. Hailsham continued his discussion of the elective dictatorship in a journal article in the *Cambrian Law Review* in 1980 titled "The Lord Chancellor and Judicial Independence".

"The Lord Chancellor and Judicial Independence".

In his journal article, his discussion of the elective dictatorship is rather different compared to his earlier publications. Although he discussed the role of the judiciary as a part of a discussion about the two theories of democracy; the elective dictatorship and limited government in his book, the main focus of his article was on the importance of an independent judiciary.<sup>149</sup> Similarly to previous publications, he believed the elective dictatorship to be false and limited government to be the "true tradition" when it comes to the foundation of governance.<sup>150</sup> Due to a shift in where parliamentary sovereignty resided, the fusion of the legislative and executive branch or the "executature" as he described it, it was important that the judiciary remained independent.<sup>151</sup> This fusion of the legislative and executive also made the British political system vulnerable to becoming an elective dictatorship because such governance was characterized by incompetence and oppression by strong central governments "backed by [...] organized political minorities" could not be protected just by universal franchise.<sup>152</sup> An independent judiciary was necessary since it was essential in a free society.<sup>153</sup>

The main difference between his publications in the late 1970s and his article from 1980 is that, in his latest work, he does not advocate reform of the political system in any way. This could of course be explained by the fact that his discussion was focused on the importance of judicial independence and how to maintain that, rather than how to reform the current system.<sup>154</sup> He did argue that an independent judiciary was important to ensure that the government and House of Commons did not overstep their limits without explaining how

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<sup>149</sup> Hailsham of St. Marylebone, "The Lord Chancellor and Judicial Independence." *Cambrian Law Review*, (1980), 40

<sup>150</sup> Hailsham of St. Marylebone "The Lord Chancellor and Judicial Independence." (1980), 40

<sup>151</sup> Hailsham of St. Marylebone, "The Lord Chancellor and Judicial Independence," (1980), 40

<sup>152</sup> Hailsham of St. Marylebone, "The Lord Chancellor and Judicial Independence," (1980), 40

<sup>153</sup> Hailsham of St. Marylebone, "The Lord Chancellor and Judicial Independence," (1980) 40-41

<sup>154</sup> Hailsham of St. Marylebone, "The Lord Chancellor and Judicial Independence," (1980), 40

these limits were established in the first place.<sup>155</sup> A more plausible explanation is therefore that Hailsham changed his position on extensive constitutional reform. Because of this apparent lack of focus on reform, his article seems rather like a defense of the current system through a historical approach. He outlined the major changes that have occurred within the judiciary dating back to the Act of Settlement (1701) to the present. It is in the Act of Settlement that the independence of the judiciary is first expressed. This piece of legislation established that senior judges could not be removed by the Crown instead removal required “an Address to the Queen agreed by both Houses in Parliament”.<sup>156</sup> Although this was an important development, Hailsham argued that the Act of Settlement was too naïve to solve the problem of reconciling “three divergent and to some extent inconsistent requirements”.<sup>157</sup> These were public accountability, “efficiency in the administration of justice” and judicial independence.<sup>158</sup> Efficiency had to do with the judiciary’s ability to execute their responsibilities due to limited resources. The Act of Settlement to a certain extent contributed to this, because the situation in 1701, was quite different from the situation in 1970s Britain. He explained that judges in 1701 only worked part time, and that their salaries and funds they received reflected this. When the jurisdiction of the courts increased as well as the number of criminal cases, the judiciary’s function changed.<sup>159</sup> Consequently, it was difficult for the judiciary to fulfil their responsibility since they did not have enough means to function properly.

Hailsham outlined the major changes in the role of the judiciary in the 1900s. He argued that one of the main changes was that in the 1930s the use of Common Law had decreased and the use of “subordinate legislation with statutory force” increased.<sup>160</sup> At the time the judiciary had therefore come to accept that Parliament increased the administrative functions on “ministers and subordinate authorities” and also that these “should make their own decisions and pursue their own policies free from judicial interference”.<sup>161</sup> In the 1970s, Hailsham argued that this had led to an increase in the constitutional cases presented to the courts because of the activity of the executive and legislative branch “intruding or progressing [...] into almost every branch of human society”.<sup>162</sup> The judiciary had however, begun

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<sup>155</sup> Hailsham of St. Marylebone, “The Lord Chancellor and Judicial Independence,” (1980), 48

<sup>156</sup> Courts and Tribunals Judiciary, “Independence,” Accessed 03.30.2020

<sup>157</sup> Hailsham of St. Marylebone, “The Lord Chancellor and Judicial Independence,” (1980), 41

<sup>158</sup> Hailsham of St. Marylebone, “The Lord Chancellor and Judicial Independence,” (1980), 41

<sup>159</sup> Hailsham of St. Marylebone, “The Lord Chancellor and Judicial Independence,” (1980), 43

<sup>160</sup> Hailsham of St. Marylebone, “The Lord Chancellor and Judicial Independence,” (1980), 45

<sup>161</sup> Hailsham of St. Marylebone, “The Lord Chancellor and Judicial Independence,” (1980), 45

<sup>162</sup> Hailsham of St. Marylebone, “The Lord Chancellor and Judicial Independence,” (1980), 45



overthrowing and criticizing ministerial decisions such as judges at the Court of Appeal. Due to this increase of cases brought forth to the courts and the confidence among within the judiciary to criticize and overthrow ministerial decisions, there has been substantial criticism towards the judiciary branch by for instance ministers, politicians and trade unions. Hailsham was of the opinion that the public had become increasingly frustrated with the “encroachment of government and [...] the majority in the House of Commons on individual freedom”.<sup>163</sup> The independence of the judiciary is therefore the remaining protection of minority groups and individual rights and therefore needs to be protected.

Hailsham therefore discussed how three different political systems reconciled public accountability and efficiency with judicial independence, in order to illustrate the difference between the current British system, and two systems on the opposite side of the scale. He argued that the current system, a somewhat middle ground solution, was the best quipped to ensure judicial independence. At one end of the scale he discussed a system where the judiciary is completely subordinate political leadership, essentially the technical arm of the government such as in 1970s Eastern Europe and the Soviet Union. This type of arrangement was called centralized democracy, a phrase he used as a synonym of the elective dictatorship in his book as well.<sup>164</sup> On the other end of the scale, the system is based on complete separation of power. In such systems judges are often appointed by the executive but the funds/money for the judiciary is found in the legislative branch. The consequence of this is that the judiciary does not have the funds and infrastructure to operate efficiently. Hailsham is of the opinion that the judiciary should not be completely cut off “from the political world”.<sup>165</sup> Simultaneously, he does not think it should be “self organised and self perpetuating”.<sup>166</sup> He therefore wants a middle ground between the two extremes, which can be found in the British system.<sup>167</sup>

This middle ground is a system where the Department of State had the responsibility for the judiciary. The Minister would have the responsibility of jurisprudence and legislation as well as the efficiency of the courts. The only problem one could encounter with such a system is that it would be too political. In the current system, however, this problem has been solved, because the Lord Chancellor sits in the House of Lords and is required to take the

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<sup>163</sup> Hailsham of St. Marylebone, “The Lord Chancellor and Judicial Independence”, (1980), 46

<sup>164</sup> Hailsham of St. Marylebone, “The Lord Chancellor and Judicial Independence”, 47 and Hailsham of St. Marylebone, *The Dilemma of Democracy*, (1978), 9

<sup>165</sup> Hailsham of St. Marylebone, “The Lord Chancellor and Judicial Independence”, (1980), 47

<sup>166</sup> Hailsham of St. Marylebone, “The Lord Chancellor and Judicial Independence”, (1980), 47

<sup>167</sup> Hailsham of St. Marylebone, “The Lord Chancellor and Judicial Independence”, (1980), 47

judicial oath. While Hailsham recognized the importance of not having political judges, he argued that the real danger was the elective dictatorship. The reason for this was that when politicians argue that they are above the law, they neglect their responsibilities which is to represent the interests of the people who elected them, essentially “setting themselves above the people”.<sup>168</sup> Consequently, democracy will cease to exist according to Hailsham. While universal franchise is one element of democracy, political pluralism and a theory of limited government are other important elements. He argued that in order to make sure that the executive and legislative branch do not overstep the limits to their power, a strong judiciary is required so that accountability is ensured.<sup>169</sup>

As evidenced in this comparison, his second article marked a clear shift in Hailsham’s focus and argument. Where he in his previous publications focused on the entirety of the British political system, his article focused on the judiciary branch and its role only. Furthermore, he did not advocate any of the constitutional reforms which had formed such an important part of his solution to the elective dictatorship in his earlier publications. This might therefore indicate a shift in his perspective on the British Political system. In 1983, Hailsham addressed the issue of the elective dictatorship in another lecture, in which the focus was again on the British Legal system.

#### The Hamlyn Lecture: *Hamlyn Revisited: The British Legal System Today*

In 1983, Hailsham was invited to give the Hamlyn Lecture, a series of presentations which were established in 1948 by the Hamlyn Trust. The Hamlyn Trust was created by Emma Warburton Hamlyn in the memory of her father. Miss Hamlyn died in 1941 and it was not until 1948 that the trust was finally established. Its objective was based on Emma Hamlyn’s wishes expressed in her will, and was to provide knowledge and understanding of British Law in comparison with other European countries so that the British people would know the privileges they enjoyed due to British Law and customs. This objective was realized through public lectures held by legal practitioners, judges, academic lawyers and other eminent speakers.<sup>170</sup> Therefore, lecturers were asked to expound on the merits of the British Legal system, and they could not select a theme of their choosing such as in a Dimpleby Lecture. These lectures continue to be held today.<sup>171</sup> Lord Hailsham was chosen to hold the 35<sup>th</sup>

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<sup>168</sup> Hailsham of St. Marylebone, “The Lord Chancellor and Judicial Independence”, (1980), 48

<sup>169</sup> Hailsham of St. Marylebone, “The Lord Chancellor and Judicial Independence”, (1980), 48

<sup>170</sup> Greer. “The Hamlyn Trust.” *Amicus Curiae* 1998, 03.12.2012. & Honoré. “Hamlyn, Emma Warburton (1860–1941), benefactor.” *Oxford Dictionary of National Biography*. (09.23.2004).

<sup>171</sup> Sherr “The Hamlyn Lectures”. *Cambridge Core*. Accessed 01.24.2020.

lecture, titled *Hamlyn Revisited: The British Legal System Today*.<sup>172</sup> His main objective, presented in the first chapter of the lecture in its published form, was to give an account of the current state of the British Legal system. He explained that because of this, the situation in which the Hamlyn Lecturers now operated was vastly different than Miss Hamlyn's vision had been in 1941.<sup>173</sup> This lecture is consulted in its published form, in a book format. It is therefore divided into different chapters each addressing the different themes Hailsham discussed.

In the second chapter, titled "First Shock: The Common People" he discussed how the demographic within Britain changed since 1941. His argument was that because the British population had become less homogenous, what Miss Hamlyn referred to as "common people" in her will would therefore not be an accurate description of the British people.<sup>174</sup> Moreover, Hailsham discussed Britain's role on the international arena in chapter three, titled "Second Shock: The International Dimension". An important point he made in this chapter was that there had been a change in the international climate from the 1940s to the 1980s. He also discussed how the constitutional institutions functioned.<sup>175</sup>

Hailsham's discussion of the constitutional institutions continued in chapter four, titled "Third Shock: Elective dictatorship".<sup>176</sup> In this chapter, he discussed how the working parts of the constitution had changed since the 1940s. He explained that while the constitutional institutions on the surface seemed similar there had been a change.<sup>177</sup> One of the examples he gave for this was how House of Lords reform from the 1950s had changed the composition of the second chamber which had contributed to the increased popularity and efficiency of the House of Lords.<sup>178</sup> Even though some of the changes he presented were for the better, he also presented changes that were problematic such as the increase in the size of government spending and legislature. He argued that public expenditure and the mass of legislation had increased extensively as compared to the inter-war period which governments formed by both major parties were guilty of.<sup>179</sup> This was a repetition of his argument from the Dimpleby Lecture from 1976, where he argued that this change was concerning since it increased the

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<sup>172</sup> This lecture is consulted in its published form.

<sup>173</sup> Hailsham of St. Marylebone, and The Hamlyn Trust. *Hamlyn Revisited: The British Legal System Today*. The Hamlyn Lectures. (London: Stevens 1983), 2-3.

<sup>174</sup> Hailsham of St. Marylebone, *Hamlyn Revisited: The British Legal System Today*, (1983), 7

<sup>175</sup> Hailsham of St. Marylebone, *Hamlyn Revisited: The British Legal System Today*, (1983), 19

<sup>176</sup> Hailsham of St. Marylebone, *Hamlyn Revisited: The British Legal System Today*, (1983), 25

<sup>177</sup> Hailsham of St. Marylebone, *Hamlyn Revisited: The British Legal System Today*, (1983), 27

<sup>178</sup> Hailsham of St. Marylebone, *Hamlyn Revisited: The British Legal System Today*, (1983), 25

<sup>179</sup> Hailsham of St. Marylebone, *Hamlyn Revisited: The British Legal System Today*, (1983), 28

power of Parliament and the government.<sup>180</sup> One difference is however that in the Dimbleby Lecture and his book, Hailsham was more critical of the Labour party than in his journal article and Hamlyn Lecture. By using this and other examples of changes within the political system first presented in his previous works, it could be argued that these changes were examples of how elements of the elective dictatorship were present in the political system 1980s. This despite him not using the term elective dictatorship throughout the chapter.

Another important argument that resurfaced was the argument about the doctrine of manifesto and mandate first presented in the Dimbleby Lecture in 1976. In the Hamlyn Lecture, he argued that because of the increase in power, recent governments, even though they were not supported by the majority of the electorate, claimed they had a “[...] ‘mandate’ to enact every item of its manifesto into law” without considering the “criticisms of it in debates” or the practical difficulties of enacting the manifest into law.<sup>181</sup> Furthermore, he argued that “none of these features can be scrutinized without some disquiet by any lover of parliamentary institutions”.<sup>182</sup> In other words, Hailsham argued if one loved the British parliamentary institutions, the increase in the executive’s increase in power and disregard of criticism as concerning. He expressed similar concerns in his Dimbleby Lecture, his book and in in his journal article.

Hailsham also briefly discussed other issues such as devolution and local taxation in the British political system as examples of changes that created questions about the “constitutional arrangements”.<sup>183</sup> He questioned for instance whether a unitary state was a better option than some form of devolved government. He also discussed the role of pressure groups in the legislative process.<sup>184</sup> All these issues were discussed in his Dimbleby Lecture and his book however he did link these directly to the elective dictatorship in his Hamlyn Lecture. Although Hailsham discussed some of the same arguments as in previous works, his perspective was rather different when compared to the Dimbleby Lecture and his book. While arguing that these changes needed to be dealt with through some sort of reform, he argued that his proposals had been ignored. He argued that that if accepted this would be either as

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<sup>180</sup> Lord Hailsham “Elective dictatorship”. (10.14.1976), Appendix 1, 3-4

<sup>181</sup> Hailsham of St. Marylebone, *Hamlyn Revisited: The British Legal System Today*, (1983), 28

<sup>182</sup> Hailsham of St. Marylebone, *Hamlyn Revisited: The British Legal System Today*, (1983), 29

<sup>183</sup> Hailsham of St. Marylebone, *Hamlyn Revisited: The British Legal System Today*, (1983), 29

<sup>184</sup> Hailsham of St. Marylebone, *Hamlyn Revisited: The British Legal System Today*, (1983), 30-32

piecemeal as a result of a crisis.<sup>185</sup> Simultaneously, he argued that in essence the British political system was better compared to other system, stating that:

Our unwritten constitution is more flexible and sophisticated than any of your written constitutions shackled by rigid amending formulae. Whatever the defects of the present House of Lords, and whatever the desirability (as I think) of replacing it with an elected second Chamber [...] it is a useful body as it stands, and does much to mitigate the shortcomings of the House of Commons. Whatever the arguments for proportional representation [...] our two main parties are right to suspect, as undermining the stability of the executive government and democracy itself, any changes likely to produce a multiplicity of parties. [...] None the less we can still claim to live under a system inherently more agreeable than any other that I can personally think of.<sup>186</sup>

Even though he expressed the desire for House of Lords reform, this passage indicates a shift in Hailsham's thinking on the political system. In his earlier work, the Dimpleby Lecture and the book *The Dilemma of Democracy* extensive constitutional reforms were presented as essential in order to hinder the elective dictatorship whereas in his journal article and the Hamlyn lecture this is no longer the case. It is however important to note that Hailsham had a positive outlook on the British political system in all his proposals when compared to other systems, he was not prepared to argue that it was so optimal as he clearly thought at the time he delivered the 35<sup>th</sup> Hamlyn Lecture.

Hailsham continued to discuss how the British legal system had changed from 1940s focusing on three separate themes which in the published format is discussed in separate subsections/chapters. In chapter five, "Fourth Shock: Due Process of Law" he discussed how the due process of law had changed in the British system.<sup>187</sup> He discussed the differences between continental systems and the British system, as well as comparing the British and the American system.<sup>188</sup> In chapter six, "Fifth Shock: From Contact to Status" a specific legal theory developed by Henry Maine, an English jurist, was discussed.<sup>189</sup> Maine's theory is about how law in a society evolve. According to Lord Hailsham, Maine's argument was that in a primitive society laws were based on someone's status rather than on a contract between

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<sup>185</sup> Hailsham of St. Marylebone, *Hamlyn Revisited: The British Legal System Today*, (1983), 29

<sup>186</sup> Hailsham of St. Marylebone, *Hamlyn Revisited: The British Legal System Today*, (1983), 30

<sup>187</sup> Hailsham of St. Marylebone, *Hamlyn Revisited: The British Legal System Today*, (1983), 37-38

<sup>188</sup> Hailsham of St. Marylebone, *Hamlyn Revisited: The British Legal System Today*, 1983, 35-36

<sup>189</sup> Ratcliffe. "Henry Maine." *Oxford Essential Quotations*, (2012).

the individuals. He argued however, that by 1983, the process had reversed so that laws were based on status instead of contract.<sup>190</sup> One important example of how legislation was increasingly becoming status legislation was how Parliament regulated the relationship between an employer and an employee. This relationship was regulated in such a way to “restrict freedom of contract in the interest of the [...] weaker party”.<sup>191</sup> This indicated a shift towards the status of the parties in contract negotiations. Hailsham explained that Parliament almost always favored the employee and emphasized “inalienable rights in place of freely negotiated terms.”<sup>192</sup> This is a good example of how Lord Hailsham had become more focused on the legal aspect of British institutions. The language he uses here is more difficult to comprehend for someone who does not have experience within the field of law.

The changes that had occurred in the British criminal justice system from 1941 to 1983 was the topic of discussion in the seventh chapter “Sixth Shock: Law and Order”. Hailsham’s argument was that the system was ultimately better, although there were more delays in the court proceedings.<sup>193</sup> Furthermore, he discussed how the lawgiver has a responsibility to limit actions that are wrong but still can be justified morally “irrespective of criminal sanction”.<sup>194</sup> Consequently, the lawgiver has a responsibility to provide means for people who are dissatisfied with their situation so that they can achieve their objectives in a legitimate manner. Lord Hailsham argued that if this was not the objective that would lead to people to commit actions outside of the law.<sup>195</sup>

Hailsham argued in the concluding remarks of his Hamlyn Lecture, that in 1983, there were fewer differences in terms of class, as well as the standards of “material well-being” than in the early 1940s. These are factors, which he argued had contributed to the continuance of British life, institutions and laws.<sup>196</sup> What is interesting is however, how he does not “[...] find anything in the essential structure of our institutions or our laws [...] which I should wish to alter” despite devoting a part of his lecture to a discussion of the elective dictatorship.<sup>197</sup> This is an important difference to his earlier publications where the elective dictatorship were discussed, where he emphasized the need for reform. As mentioned, one reason why he did

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<sup>190</sup> Hailsham of St. Marylebone, *Hamlyn Revisited: The British Legal System Today*, (1983), 58-59

<sup>191</sup> Hailsham of St. Marylebone, *Hamlyn Revisited: The British Legal System Today*, (1983), 59

<sup>192</sup> Hailsham of St. Marylebone, *Hamlyn Revisited: The British Legal System Today*, (1983), 59

<sup>193</sup> Hailsham of St. Marylebone, *Hamlyn Revisited: The British Legal System Today*, (1983), 73&75

<sup>194</sup> Hailsham of St. Marylebone, *Hamlyn Revisited: The British Legal System Today*, (1983), 72

<sup>195</sup> Hailsham of St. Marylebone, *Hamlyn Revisited: The British Legal System Today*, (1983), 72-73

<sup>196</sup> Hailsham of St. Marylebone, *Hamlyn Revisited: The British Legal System Today*, (1983), 84

<sup>197</sup> Hailsham of St. Marylebone, *Hamlyn Revisited: The British Legal System Today*, (1983), 84

not advocate reform might be that Lord Hailsham served as Lord Chancellor during Thatcher's government. Not advocating reform might be an attempt at avoiding the same criticism, that the British political system was an elective dictatorship during Thatcher's Premiership.

### Conclusion

Hailsham moderated his argument and narrowed his focus in his discussion about the elective dictatorship. His earlier publications, his Dimbleby Lecture (1976) and the book (1978) were focused on the British political system in its entirety and the changes that made the system vulnerable to the elective dictatorship. In order to protect against the elective dictatorship, he advocated the introduction of radical reforms such as a written constitution, an elected upper chamber and a Bill of Rights. Once Thatcher became Prime Minister in 1979 his viewpoints seemed to change. Hailsham focus in his journal article (1980) and his Hamlyn Lecture (1983) were on the judiciary and the legal system. Although recognizing that there were elements of the elective dictatorship present in the system, he did not advocate reform. Furthermore, he was also more careful of criticizing the opposition of being an elective dictatorship in his journal article (1980) and his Hamlyn Lecture (1983) than in his Dimbleby Lecture and book. Now that Hailsham's argument has been presented, the next chapters will discuss how other scholars and academics as well as the traditional media have interpreted and understood his argument, where a crucial question will be: which version of Hailsham did they refer to? As Hailsham himself moderated and changed his argument, this also means that his famous phrase – the elective dictatorship – has been and is open to different interpretations of what Hailsham really meant. The following chapter will focus on how academics and the media understood Hailsham's argument during Margaret Thatcher's Premiership.

## Chapter 3: Margaret Thatcher in office, 1979-1990: More power to the government

Margaret Thatcher who had served in House of Commons, as well as in Edward Heath's administration in the early 1970s, won a leadership contest with Heath and became the leader of the Conservative Party in February 1975 well on her way to become Britain's first female Prime Minister. A Britain in decline meant that the Labour government faced difficulties managing a situation with high levels of inflation. This combined with trade unions who were not willing to cave on their demands initiating strikes meant that the Labour government faced a number of challenges the winter 1978-1979, known as the "winter of discontent" which effected the election campaign in 1979.<sup>198</sup> The General Election of 1979 was won by the Conservatives and Thatcher became Prime Minister with a majority of 44 MPs.<sup>199</sup> Although, the two first years of her premiership were difficult due to high levels of unemployment, she gained a reputation of being a strong leader. This due in part to her commitment to the policies she implemented, such as trade union reform and tax cuts. She was therefore also called "the Iron Lady" as a description of her leadership.<sup>200</sup> During Thatcher's premiership and immediately afterwards, scholars, academics and journalists continued to discuss the elective dictatorship thesis. In the traditional media, the elective dictatorship was discussed in reports from debates in both Houses of Parliament and in letters to editor which occurred consecutively throughout Thatcher's premiership. The academic view of the elected dictatorship was expressed both in journal articles and books on the British Constitution both during Thatcher's premiership and shortly after her resignation in 1990. Scholarship on the elective dictatorship in the 1980s and early 1990s tended to focus on multiple themes: parliamentary sovereignty, the two-party system and electoral system, Bill of Rights arguments and the role of the select committees.

### Parliamentary sovereignty

In academic literature as well as in the traditional media, many contributors to the debate argued that the main reason why the elective dictatorship was made possible, was because of the doctrine of parliamentary sovereignty. Co-authors John Dearlove and Peter Saunders discussed debate that emerged in the 1970s about what was fundamentally wrong with the British Constitution and the different perspectives in the debate. Dearlove and Saunders,

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<sup>198</sup> Evans. *Thatcher and Thatcherism*. The Making of the Contemporary World. (London: Routledge, 2013). 11-14

<sup>199</sup> Audickas, Cracknell & Loft, "BRIEFING PAPER Number CBP7529, UK Election Statistics: 1918-2019: A Century of Elections". *House of Commons Library* (02.27.2020) 10

<sup>200</sup> Gov.UK "History Past Prime Ministers: Baroness Margaret Thatcher". Accessed 05.03.2020.



discussed the elective dictatorship in their discussion of what they called “Establishment perspective of the Constitutional authorities”.<sup>201</sup> Here they presented and discussed what the establishment considered to be wrong with the British Constitution. Lord Hailsham and his Dimpleby Lecture “Elective dictatorship” and Lord Denning and his Dimpleby Lecture “Misuse of Power” were presented as examples of the establishment’s perspective.<sup>202</sup> Parliamentary sovereignty was seen as the fundamental problem of the constitution because of the absence of legal checks on the powers vested in Parliament. This due to the shift in where parliamentary sovereignty resided. Furthermore, Dearlove and Saunders argued that constitutional authorities were concerned about the emergence of party politics and state intervention which they argued were because of the established constitution. Constitutional authorities considered this to be disastrous for the Britain and the economy.<sup>203</sup> They also argued that constitutional authorities for a long time were content with the political system since it produced responsible party government and considered the electorate as an “adequate check” on the executive.<sup>204</sup> This was however not the case in the 1980s, when constitutional authorities were not content with this check.

Constitutional authorities therefore wanted to limit parliamentary sovereignty by establishing a written constitution “with judicial review and the entrenchment of a Bill of Rights as some kind of higher law”.<sup>205</sup> Dearlove and Saunders also discussed and assessed the different proposed solutions by the constitutional authorities. They argued for instance that behind the claim that a Bill of Rights would protect human rights, there was a political and partisan motif to restrict the role of the state because of the theory of limited government. Dearlove and Saunders argued that supporters of the introduction of a Bill of Rights regarded the state as “the only real threat to individual freedom and liberty [...] because freedom is defined negatively as simply involving an absence of *public* and legal restraint on individual action”.<sup>206</sup> Dearlove and Saunders’ assessment of this perspective is important since it not only clarifies that this is one perspective on constitutional reform, but also a debate that is very subjective. Moreover, the process of setting up a Constitutional Commission followed by a referendum, establishing a written constitution, as well as how to create a balanced constitution was discussed. A balanced constitution would entail strengthening the House of

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<sup>201</sup> Dearlove and Saunders *Introduction to British Politics* (Oxford: Polity Press, 1984), 83

<sup>202</sup> Dearlove and Saunders *Introduction to British Politics*. (1984) 83

<sup>203</sup> Dearlove and Saunders *Introduction to British Politics*. (1984) 84

<sup>204</sup> Dearlove and Saunders *Introduction to British Politics*. (1984) 85

<sup>205</sup> Dearlove and Saunders *Introduction to British Politics*. (1984) 85

<sup>206</sup> Dearlove and Saunders *Introduction to British Politics*. (1984) 86

Lords as well as ensuring that the House of Commons would remain free from control by the government.<sup>207</sup>

In their concluding remarks about constitutional authorities, they express concern of the constitutional authorities' priorities because in their view the proposals advocated by constitutional authorities do not enhance democracy. In fact they argue that in the constitutional authorities concern of limiting "the parliamentary sovereignty is an attempt to limit democracy itself".<sup>208</sup> As an example of this, Dearlove and Saunders argued that in the attempt to secure a more independent House of Commons, there is an "attempt to revive the pre-democratic nineteenth-century liberal constitution".<sup>209</sup> Furthermore, they argued that the motivation of the constitutional authorities were to limit state intervention as well as party politics because of "a preference for the freedoms and liberties available to some in the context of the 'naturally' self-regulating and ordered free market of capitalism".<sup>210</sup> It is therefore clear that Dearlove and Saunders were more concerned with understanding the underlying motifs and the theoretical foundations of Hailsham and other constitutional authorities built their arguments on, than presenting their own views on constitutional reform.

This focus also becomes apparent in their discussion of the perspective among the Social Democrats and the Liberals who argued for electoral reform. It was argued that the SDP and the Liberals had similar viewpoints as the established constitutional authorities because of their awareness "of the political and economic issues of adversary party politics and the elective dictatorship".<sup>211</sup> Their proposals are therefore similar to the constitutional authorities' proposals. One important difference is however that the SDP-Liberal alliance was more political than legalistic in their approach to constitutional change.<sup>212</sup> Dearlove and Saunders focus on the underlying factors and motifs of the different perspectives is therefore different compared to the scholars discussed below who discussed parliamentary sovereignty and the elective dictatorship in relation to Thatcher's policies.

### Parliamentary sovereignty and Thatcher's policies

Many contributors have put forth the argument that the Thatcher government acted as an omniscient government because of parliamentary sovereignty. Vernon Bogdanor, a

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<sup>207</sup> Dearlove and Saunders *Introduction to British Politics*. (1984), 88-89

<sup>208</sup> Dearlove and Saunders *Introduction to British Politics*. (1984), 89

<sup>209</sup> Dearlove and Saunders *Introduction to British Politics*. (1984), 89

<sup>210</sup> Dearlove and Saunders *Introduction to British Politics*. (1984), 90

<sup>211</sup> Dearlove and Saunders *Introduction to British Politics*. (1984), 91

<sup>212</sup> Dearlove and Saunders *Introduction to British Politics*. (1984), 91

scholar and authority on British politics and government, used Dicey as a foundation of for his discussion. A.V. Dicey, a jurist and constitutional theorist, wrote extensively on the British Constitution in the late 1800s. He was arguably *the* reference for a long time when discussing the British constitution.<sup>213</sup> Bogdanor argued that Dicey would reject the “misinterpretation” that the sovereignty of Parliament should be “equated with the power of an omniscient government” capable to do what it wanted without taking into account the public’s opinion.<sup>214</sup> Thatcher’s policies towards local government was concerning because Thatcher’s aim of restoring the authority of the state had removed power from local government which challenged constitutional conventions about local government. These hold that local authorities should be directly elected, responsible for delivering some public services and “have the right to raise their own revenue”.<sup>215</sup> Because of this disregard for constitutional conventions, he argued that it had to be defined by the concept of elective dictatorship.<sup>216</sup> He linked this to Hailsham, arguing that a omniscient government was what Hailsham had warned would turn into the elective dictatorship.<sup>217</sup> The argument that the elective dictatorship would be the outcome if the parliamentary sovereignty were left unchecked was addressed by Bogdanor in an article from 1989 and in his book *Politics and the constitution: Essays on British government* (1996).

Examples of policies that challenged these conventions were the Rates Act of 1984 and the Local Government Act of 1985. The 1984 Rates Act limited local authorities’ ability to be financially independent because it limited the maximum rates that local authorities were able to collect. The Local Government Act of 1985 abolished six metropolitan county councils, as well as the Greater London Council.<sup>218</sup> Furthermore, he argued that the Thatcher government operated with an understanding of the constitution in which Britain was a unitary state where Parliament had the power to change any “political relationship”, for instance that between the central government and local authorities.<sup>219</sup> This is a contradiction to Dicey who argued that governments who considered themselves to be omnipotent was a misinterpretation of parliamentary sovereignty. Based on this it is plausible to argue that Thatcher’s use of her majority to implement her policies was only a small part of the reason that Bogdanor argued

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<sup>213</sup> Cosgrove. “Dicey, Albert Venn (1835-1922), Jurist.” *Oxford Dictionary of National Biography*, 2004.

<sup>214</sup> Bogdanor. *Politics and the Constitution: Essays on British Government*. (Aldershot: Dartmouth, 1996), xiv

<sup>215</sup> Bogdanor, *Politics and the Constitution*, (1996), 165

<sup>216</sup> Bogdanor, “The Constitution” in *The Thatcher Effect: A decade of Change*, ed. Kavanagh and Seldon (New York: Oxford University Press, 1989), 133 and Bogdanor. *Politics and the Constitution*. (1996), 21

<sup>217</sup> Bogdanor. *Politics and the Constitution* (1996), xiv

<sup>218</sup> Bogdanor. *Politics and the Constitution*, (1996), 13-14

<sup>219</sup> Bogdanor, Vernon. *Politics and the Constitution*, (1996) 24 and Bogdanor “The Constitution”, (1989), 137

that Thatcher's government had to be understood through the concept of elective dictatorship. His main reason was that Thatcher had disregarded an important part of the British constitution, constitutional conventions in her quest to restore authority to the state. This would of course not be possible if she did not have majority in Parliament.

Addressing the introduction of the poll tax in 1989-1990, Butler, Adonis and Travers took a similar approach to that of Bogdanor, discussing parliamentary sovereignty and the elective dictatorship, but solely focusing on the poll tax implemented during her premiership. Their argument, however, resembled that of Bogdanor: the Thatcher government was more preoccupied with the principle of parliamentary sovereignty than other constitutional conventions that included local government.<sup>220</sup> Implementing the poll tax was an important building block towards Thatcher's goal of central rule. Furthermore, they contended that the main fault-line in British political rule in the 1980s was the tension between local and central government, of which Thatcher favored the latter. The implementation of the poll tax is an example of the Thatcher government's determination to restrain local autonomy because it removed power from local authorities.<sup>221</sup> Parliamentary sovereignty and loyalty from a majority in the House of Commons meant that Thatcher encountered little resistance in getting the poll tax legislation passed, corroborating the perception of her government as an elective dictatorship. In 1990 however, MPs came to view the poll tax as a vote-loser and therefore repealed the legislation. Of this change, Butler, Adonis and Travers stated that "when by contrast, two years earlier most of them had regarded it in a more neutral light, there was no similar check on the 'elective dictatorship'".<sup>222</sup> The year 1990 therefore illustrated another important point made by Butler, Adonis and Travers that the elective dictatorship was "[...] an autocracy conferred and removable by election" because Conservative MPs rebelled against their leader.<sup>223</sup> It is not clear whether they meant general election to Parliament or a party leadership election. The latter is however plausible since they explained that in 1990, multiple factors coincided such as a credible alternative to the poll tax, a leadership election and a plausible challenger. At this point, the Conservatives no longer considered themselves "electorally invulnerable" and this eventually contributed to Thatcher losing support within her party.<sup>224</sup> Furthermore, since the rebellion against Thatcher came

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<sup>220</sup> Butler, Adonis and Travers *Failure in British Government* (New York: Oxford University Press, 1994), 267-268.

<sup>221</sup> Butler, Adonis and Travers *Failure in British Government*. (1994) 270-271

<sup>222</sup> Butler, Adonis and Travers *Failure in British Government*. (1994) 244

<sup>223</sup> Butler, Adonis and Travers *Failure in British Government*. (1994) 245

<sup>224</sup> Butler, Adonis and Travers *Failure in British Government*. (1994), 245

while the Conservatives were in office with a majority it could be argued that what this demonstrates the limitations of the elective dictatorship. This because the PM relies on the backing of the majority in the Commons, and if enough MPs find that the winds are changing, and the unpopularity of the PM increases, this parliamentary basis for “autocracy” might disintegrate.<sup>225</sup>

In their book, they also presented two different aspects of why they thought Britain had an elective dictatorship. The first was the absence of any “checks and balances faced by a government with a secure hold on the Commons”.<sup>226</sup> They argued that there was little opposition in the civil service as well as in Parliament, describing the bureaucracy as a rubber-stamp of the government’s policies.<sup>227</sup> By this they meant the lack of scrutiny in the process prior to implementing the poll tax by select committees in both houses who decided to focus on other issues.<sup>228</sup> Furthermore, despite the extensive debates of the Local Government Finance Bill in the House of Commons, extensive scrutinizing of the amendments and vocal critics, the government encountered little opposition. The reason for this was in part the majority the Conservative government had in House of Commons. In addition to this, it illustrated the government’s dominance over Parliament in terms of the control they had over procedure. This because the poll tax legislation gave “sweeping ‘Henry VIII’ clauses”.<sup>229</sup> These are clauses in a bill that provides ministers with powers to “amend or repeal provisions in a bill, using secondary legislation, which is subject to varying degrees of parliamentary scrutiny”.<sup>230</sup> Furthermore, the government also enlarged the standing committee tasked with examining the Bill in order to preserve the government’s majority.<sup>231</sup> The other aspect of the elective dictatorship “exposed by the poll tax” was the freedom granted to a government with a loyal parliament to rewrite the Constitution.<sup>232</sup> Butler, Adonis and Travers argued that “the doctrine of the rule of law and an acceptance of established conventions” were included in the “traditional understanding of the Constitution” based on Dicey’s works.<sup>233</sup> The introduction of the poll tax therefore illustrated that these conventions do not have constitutional force constrain the government. Thatcher’s policies showed that these could be altered; the

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<sup>225</sup> Butler, Adonis and Travers *Failure in British Government*. (1994), 245

<sup>226</sup> Butler, Adonis and Travers *Failure in British Government*. (1994), 303

<sup>227</sup> Butler, Adonis and Travers *Failure in British Government*. (1994), 303

<sup>228</sup> Butler, Adonis and Travers *Failure in British Government*. (1994) 227-228

<sup>229</sup> Butler, Adonis and Travers *Failure in British Government*. (1994), 239

<sup>230</sup> Parliament.uk “Henry VIII clauses”. Accessed on 05.30.2020.

<sup>231</sup> Butler, Adonis and Travers *Failure in British Government*. (1994), 233, 239

<sup>232</sup> Butler, Adonis and Travers *Failure in British Government*. (1994), 304

<sup>233</sup> Butler, Adonis and Travers *Failure in British Government*. (1994) 304

government enacted a constitutional reform by redefining the role of local government which was problematic because Thatcher therefore breached long standing conventions. Butler, Adonis and Travers therefore argued that there was need for re-constructing the limitations of the constitution, of which the established conventions were an important part.<sup>234</sup>

The powers of the executive and the question of the elective dictatorship was also debated in the media. *The Times* reported on debates within the House of Commons revolving of course on government policies. One of these debates that the Times transcribed was a debate over the Local Government and Land (No.2) Bill, where the Conservative MP Rippon argued that this piece of legislation was an example of what Hailsham had referred to as elective dictatorship.<sup>235</sup> Another House of Commons debate in December 1983 about the rate-capping bill, essentially placing a limit on how much local authorities could increase taxation, saw a rebellion amongst some Conservative MPs. They argued that it raised constitutional issues. Geoffrey Rippon argued that this bill was a classic example of the elective dictatorship, without much explanation as to why he thought so. It is, however, plausible to argue that it was because of the implications this bill would have for organization of local government. Another Conservative MP, Anthony Beaumont-Dark, argued that it in fact was a constitutional bill because the consequence of its implementation is that the government and selected civil servants would run local government.<sup>236</sup> This is very similar to the centralization Butler, Adonis and Travers explained was important to Thatcher. Based on this it could be argued that when a government introduces policies that are in breach of established conventions, that is an act of dictatorship according to the contributors discussed so far.

Rani Dhavan Shankardass, an author and historian, presented a similar argument, although not with focus on the conventions. She argued that the Thatcher government's policies discussed above such as the rate-capping, the poll tax and the increase in value-added tax strengthened the state because the government were in control of the local government. This "justified" in her view "the use of phrases like 'authoritarian populism' and 'elective dictatorship'".<sup>237</sup> Her argument is therefore a bit different, because rather than focusing on why Thatcher was able to implement these policies, she argued that these policies strengthened the state because the government were in control of the local level.

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<sup>234</sup> Butler, Adonis and Travers. *Failure in British Government*. (1994) 303-304

<sup>235</sup> *The Times* "Tory MP attacks financial provisions and elective dictatorship in Bill" 03.07.1980

<sup>236</sup> *The Times* "Tory MPs attack rates capping Bill", 12.23.1983.

<sup>237</sup> Shankardass. "Ten Years of Thatcherism in Historical Perspective: Conservatism in Britain." *Economic and Political Weekly* (1989), 2855.

Other aspects of Thatcher's premiership were also discussed in relation to parliamentary sovereignty. Howell Raines argued in an article in the *New York Times*, that a "debate about authoritarianism and the concentration of power" had resurfaced as Thatcher won her third general election in 1987.<sup>238</sup> Her win made her the longest serving British prime minister of the 20<sup>th</sup> century. It was argued that criticism of Thatcher from the opposition who were concerned that Thatcher would use her majority of 101 MPs in the Commons to initiate extensive changes to housing, health care and education simultaneously cutting back on public expenditure. This they argued would facilitate an elective dictatorship. Furthermore, members of the Conservatives also criticized Thatcher describing her as authoritarian and as a centralist. Robert D. Waller, a campaign polltaker for the Conservatives, argued that there was something to the criticism. He argued that she for instance could not handle opposition within her own party easily which was why many of her original cabinet members had been replaced. Moreover, he argued that the centralism of Thatcher's policies of curbing the authority of local government was especially concerning to Conservatives who linked centralism with socialism. Despite this, Waller argued that this criticism would not be likely to stop Thatcher if she continued to remain popular and deliver on her promises. This as well as criticisms that Thatcher had reduced the Cabinet to a rubber stamp, is why Raines argued that the debate would continue so long as Thatcher remained in office.<sup>239</sup>

In a letter to editor in *The Times* in 1983, P. M. Roth also raised concerns about the elective dictatorship, linking it to the Conservatives, their election campaign and landslide victories. Roth was concerned about the Conservatives efforts to frame Labour as an extinct party while simultaneously belittling the Alliance's attempt at creating an alternative. Moreover, he argued that a landslide victory was not problematic in itself. However, in the absence of any effective check on the government from the House of Lords or a written constitution, this becomes a problem due to their large majority, and Roth described the state of affairs as an elective dictatorship. Furthermore, he argued that the election campaign foreshadowed a presidential-style politics that would be dangerous for the "political future for Britain".<sup>240</sup> Roth's concerns were therefore that the style of Thatcher's governance, which he described as presidential, could be dangerous because of the absence of any checks on her power.

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<sup>238</sup> Raines "A Thatcher Milestone Spurs Debate on Her Forceful Style". *New York Times*. (05.01.1988).

<sup>239</sup> Raines "A Thatcher Milestone Spurs Debate on Her Forceful Style". *New York Times*. (05.01.1988).

<sup>240</sup> *The Times* "Profit and loss at the Polls". (07.09.1983).

Dearlove and Saunders discussion of parliamentary sovereignty and the elective dictatorship is rather different compared to the discussion of the parliamentary sovereignty and elective dictatorship in relation to Thatcher's policies. It is however of importance as it discussed the underlying motifs and factors of the different perspectives in the debate about British constitution. The other contributions focused on Thatcher and her policies. One central argument put forth was Thatcher's disregarded of important constitutional conventions in her efforts to curb the power of the local authorities. According Bogdanor and Butler, Adonis, and Travers, this was problematic as it changed the constitutional framework. Although this would not have been possible without a majority in the Commons, it is rather different compared to Hailsham's argument about parliamentary sovereignty in his early Dimpleby Lecture and book. As discussed in chapter 2, his focus was more on the large majorities generated by the FPTP-system, which enabled governments to implement unpopular legislation. The next section will discuss arguments about the elective dictatorship related to the two-party system and the electoral system.

#### The two-party system and the electoral system

In the 1980s and the early 1990s, much of the debate about the two-party system has revolved around the polarized system at the time. In the early 1970s, concerns about the two-party system surfaced at a time of increased polarization between the two parties, the end of consensus, high unemployment rates and growth of nationalism in Wales, Northern Ireland and Scotland. Political scientists, politicians, police chiefs and military personnel "began to complain about 'elective dictatorship' and 'adversary politics'".<sup>241</sup> This perspective on the political system in Britain is called the adversary party politics thesis and have been discussed by both Dearlove and Saunders and politics scholar Philip Norton. Some scholars, journalists and politicians have also argued that electoral reform can be a way of restoring moderation to the polarized system as well as a way to limit the elective dictatorship.

Complaints about the adversary party system had according to Dearlove and Saunders sprung out of criticism of mass democracy, and excessive demands from society and trade unions, rooted in adversary politics. S.E. Finer, a political scientist, defined adversary politics as the contest between two main rival parties in the British political system, Labour and the Conservatives.<sup>242</sup> Finer argued that it represented a "confrontation of extremisms" between

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<sup>241</sup> Dearlove and Saunders *Introduction to British Politics*. (1984), 3

<sup>242</sup> Pulzer. "Finer, Samuel Edward (1915–1993), political scientist." *Oxford Dictionary of National Biography*. (09.23.2004); Accessed (04.21.2020).



the two parties.<sup>243</sup> Dearlove and Saunders therefore argued that most political scientists “no longer praise the responsibility of our party system but instead talk of, and condemn, our system of ‘adversary politics’, where an ‘electoral auction’ is said to lead to an irresponsible ‘elective dictatorship’”.<sup>244</sup> They argued that the election turned into an “electoral auction” or more specifically a “policy auction” because of the unfairness of the electoral system which has parties bidding “for popular support” through their election manifesto.<sup>245</sup> In essence, therefore, supporters of the adversary politics thesis argue that it is the party system that contributed to an elective dictatorship in Britain and not necessarily the principle of parliamentary sovereignty. This is an important difference compared to Hailsham who, in his works from the late 1970s, saw a shift in parliamentary sovereignty to be the essential reason why the elective dictatorship was possible.

Moreover, the authors argued that the two-party system made consensus, cooperation and moderate policies difficult. This because of simplifications of issues so that there were only two contrasting options for the electorate to choose between. Furthermore, they explained that some critics of the adversary politics were concerned that the two-party system could lead to reversals of economic policy. This because once a government from an opposing party is formed, this government will enact a different strategy for the economy thereby reversing the economic policies of its predecessor. An increase in polarization in the absence of an influential third party did not make this any better. Such policy about-turns have been intensified by the cycle of alternation of power since a party taking over the reins of government claims a mandate to implement its manifesto.<sup>246</sup> In order to deliver on its election commitments, the ruling party would seek to implement unreasonable economic policies but eventually will have to enact responsible policies. These may not bear much fruit as they are interrupted by a new general election. How the economy intersected with the electoral cycle - the so-called “political-business cycle” - was therefore of interest to critics of adversary politics because the normal economic cycle was interrupted and therefore hindered steady growth.<sup>247</sup> Third parties such as the Liberals and the Social Democrats, first expressed concern about the adversary politics.<sup>248</sup> This had however some “party political consequences” according to Dearlove and Saunders, because those who were “critical of

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<sup>243</sup> Brown, McLean, & McMillan. “adversary politics.” In *A Concise Oxford Dictionary of Politics and International Relations*: (Oxford University Press, 2018).

<sup>244</sup> Dearlove and Saunders *Introduction to British Politics*. (1984) 48

<sup>245</sup> Dearlove and Saunders *Introduction to British Politics*. (1984) 50

<sup>246</sup> Dearlove and Saunders *Introduction to British Politics*. (1984) 49-50

<sup>247</sup> Dearlove and Saunders *Introduction to British Politics*. (1984), 50-51

<sup>248</sup> Dearlove and Saunders *Introduction to British Politics*. (1984), 49-51, 90

governments involvement creating political-business cycles” were critical of state intervention, a position the Conservatives held.<sup>249</sup> It could also be argued that since the criticism of adversary politics have been made from different parties on the political spectrum, this was a general argument against sudden changes in economic policy by any party. Labour’s turn to monetarism in the mid 1970s is a good example of this. Denis Healey, the Chancellor of the exchequer at the time, proposed strict economic measures. These included wage restraints, reductions in expenditure and moving towards a balanced budget.<sup>250</sup>

Philip Norton focused on what subscribers to the “adversary party politics thesis” argued would be a remedy for the adversary system: electoral reform.<sup>251</sup> According to Norton, the debate about electoral reform was elevated by the emergence of the Social Democrats and the Liberal Party. It was not until the 1970s that electoral reform was advocated for by organizations linked to the Conservatives and the Labour Party, such as Conservative Action for Electoral Reform (1974) and a Labour Study Group on Electoral Reform (1976).<sup>252</sup> Norton argued that in addition to the reasons that electoral reform would create a fairer electoral system and eliminate the adversary politics, there were partisan reasons for both Labour and the Conservatives to advocate the introduction of electoral reform. The Conservatives were concerned about a socialist government being formed, and the Labour Party claimed that they benefited the least from the FPTP-system. The Social Democrats and the Liberals were both aware that their chances to form an alliance and a lasting government increased under a proportional representation electoral system. The alternative to the existing system, was therefore proportional representation (PR), since it would encourage more cooperation between the parties since it would increase proportionality.<sup>253</sup> Furthermore, given that the current voting patterns remain the same, under an PR-system, continuity of policy would be ensured since no party would “obtain an overall majority” in Parliament.<sup>254</sup> It is therefore necessary that political parties cooperate more than under a FPTP-system.<sup>255</sup>

Both Norton and Dearlove and Saunders discussed the validity of the adversary politics thesis. Dearlove and Saunders concluded that one should be careful making the link between the economic decline and the reversals of economic policy with adversary politics.

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<sup>249</sup> Dearlove and Saunders *Introduction to British Politics*. (1984), 51

<sup>250</sup> Evans. *Thatcher and Thatcherism*. The Making of the Contemporary World. (London: Routledge, 2013), 13

<sup>251</sup> Norton. *The Constitution in Flux*. (Oxford: Martin Robertson, 1982), 108

<sup>252</sup> Norton. *The Constitution in Flux*. (1982), 230

<sup>253</sup> Norton. *The Constitution in Flux*. (1982), 230-231

<sup>254</sup> Norton. *The Constitution in Flux*. 1982: 234

<sup>255</sup> Norton. *The Constitution in Flux*. 1982: 234

This because other political institutions have an impact on economic policy than the party system.<sup>256</sup> Furthermore, it is also argued that multiple studies, studying the existence of the political-business cycles in Britain, found that there were little evidence that such cycles are caused by the adversary politics. This might be why Dearlove and Saunders argue that

the New Right emphasis on adversary politics and an overload of demands has been more of a critique of democracy in Britain than it has ever been a rigorous description of, and explanation for, British politics.<sup>257</sup>

Norton, discussed the policy reversals and found that this were not as present in the current system as critics of the system argued it was, quoting Professor Richard Rose, who argued that “the party government in Britain is best characterised by the dynamics of a moving consensus”.<sup>258</sup> This meant that the party in opposition would not necessarily reverse measures implemented by their predecessors once in government.<sup>259</sup>

A similar argument was made by Bogdanor. Although he did not discuss the adversary politics thesis, he did discuss how the Conservative Party’s position on proportional representation changed in the years 1974-1979 in his book, *The people and the Party system: The Referendum and Electoral Reform in British Politics*. He argued that Conservatives began to question whether it was right that a government, in the early 1970s a Labour government, with the support of only 39 per cent of the vote could implement policies that had implications for the whole population. He explained that Hailsham “coined the phrase ‘elective dictatorship’” to describe such a situation.<sup>260</sup> Bogdanor argued that proportional representation was one way to avoid the elective dictatorship and was therefore appealing to some Conservatives.<sup>261</sup>

An article from 1993 on the topic of electoral reform as a remedy for the elective dictatorship, which provides a thorough and good review of the case for electoral reform in Britain, was written John A. Zecca, at the time a student at University of California, later to become a Juris Doctor at Hastings College of Law.<sup>262</sup> In the opening remarks of the article, the main problem with the current electoral system is expressed with a quote from *The*

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<sup>256</sup> Dearlove and Saunders *Introduction to British Politics*. 1984: 54

<sup>257</sup> Dearlove and Saunders *Introduction to British Politics*. 1984: 64

<sup>258</sup> Norton. *The Constitution in Flux*. (1982), 234

<sup>259</sup> Norton. *The Constitution in Flux*. (1982), 234

<sup>260</sup> Bogdanor. *The People and the Party System: The Referendum and Electoral Reform in British Politics*. (Cambridge: Cambridge University Press, 1981), 157

<sup>261</sup> Bogdanor, Vernon. *The People and the Party System* 157

<sup>262</sup> Nasdaq “John Zecca, Executive Vice President, Global chief Legal and Regulatory Officer”.

*Dilemma of Democracy* where the functions of the electoral system, FPTP is discussed. Here, how the system generates narrow majorities and facilitates a two-party system where the parties become increasingly polarized is presented as a cause of concern.<sup>263</sup> This feature of the electoral system was also expressed by Norton, Bogdanor and Dearlove and Saunders. Zecca presented electoral reform as a remedy for the elective dictatorship and argued that it would among other things, improve the democratic process in Britain because polarization within parties would be restrained.<sup>264</sup>

Although Zecca's focus is on electoral reform, the foundations of the British constitution, such as the sovereignty of Parliament is also discussed. He argued that due to parliamentary sovereignty, and an electoral system, FPTP, favoring the two main parties, Labour and the Conservatives there were little wish for extensive electoral reform. Consequently, there have been only limited electoral reform in Britain.<sup>265</sup> Furthermore, it was argued that in order to limit partisan influence in the electoral system, some measures have been put in place, such as the Boundary Commission responsible for redrawing constituencies and the Speaker's Conference responsible for amending the constitution. Both these institutions are advisory and therefore have limited influence over these processes and can therefore not limit partisan influence completely.<sup>266</sup>

Moreover, Zecca argued that argued that most of the parties had "a geographic area of electoral strength".<sup>267</sup> Therefore there was little motivation to broaden party appeal by electing a leadership with members from other regions outside the area of electoral strength. This led to extreme elements within the parties exerting more influence when forming the election manifesto thereby excluding more moderate elements. Consequently, the party platform does not have the support of the majority of party members. This bears some similarity to Hailsham's argument, presented in his Dimpleby Lecture and book, about the doctrine of election manifesto and mandate. As discussed in chapter 2, Hailsham was concerned about the influence of extreme elements in the political parties. Furthermore, this continuity is not necessarily sustained since succeeding governments can undo the changes of the present government under a different mandate. The alteration of power between Labour and Conservative government meant that there was little continuity of government policies

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<sup>263</sup> Zecca, "Avoiding 'Elective Dictatorship' in the United Kingdom" 425.

<sup>264</sup> Zecca, "Avoiding 'Elective Dictatorship' in the United Kingdom" 458

<sup>265</sup> Zecca, "Avoiding 'Elective Dictatorship' in the United Kingdom" 425-426, 427-428

<sup>266</sup> Zecca, "Avoiding 'Elective Dictatorship' in the United Kingdom" 434-436

<sup>267</sup> Zecca, "Avoiding 'Elective Dictatorship' in the United Kingdom" 442

since the two parties had different economic strategies. This undermined the main argument of FPTP-system, namely that it creates stable governments.<sup>268</sup> Zecca's argument seems a bit dated however, since the Conservatives had been in power since 1979. Moreover, he argued that under the current electoral system voter influence is diluted in constituencies where more than two candidates stand for election, since the likelihood that the winning candidate receive support from the majority of the electorate decreases. Because of the government's dominance in the House of Commons, MPs from the opposition often encountered difficulties with getting legislation important to their constituency passed through Parliament, thereby diluting voter influence.<sup>269</sup>

Based on this, Zecca argued that the electoral system should be reformed from the FPTP-system to a proportional representation system, A PR-system would improve the democratic process in Britain because it would restrain polarization within parties as well as between the governing party and the electorate.<sup>270</sup> He argued that Britain should adopt Single Transferable Vote (STV) as the new electoral system. This system operates on multi-member constituencies, with each party listing as many candidates as there are member in the constituency. Voters rank candidates according to their preference which is an important part of the election of candidates which ensures that no votes are wasted. The STV-system secures election of the candidates from constituencies as well as make sure that the polarization is reduced "by recognizing the substantial number of voters whose voices are lost under 'first past the post'".<sup>271</sup> Furthermore, it would ensure more stable government if the definition is broader than "continuity between succeeding governments" because it moderates "ideological elements" through more diversity.<sup>272</sup> Although Zecca does not refer directly to the elective dictatorship throughout his article it is plausible to argue that he is of the opinion that the elective dictatorship will be avoided by electoral reform. Not only does the title indicate this, but he refers to multiple arguments Hailsham himself put forth, as well as identifying problematic characteristics of the current system also identified in *The Dilemma of Democracy*. Yet, Hailsham never advocated the introduction of electoral reform for elections to the House of Commons. Zecca's use of Hailsham's argument about the elective

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<sup>268</sup> Zecca. "Avoiding 'elective Dictatorship' in the United Kingdom" 442-443

<sup>269</sup> Zecca. "Avoiding 'elective Dictatorship' in the United Kingdom" 439

<sup>270</sup> Zecca. "Avoiding 'elective Dictatorship' in the United Kingdom" 458

<sup>271</sup> Zecca. "Avoiding 'elective Dictatorship' in the United Kingdom" 459

<sup>272</sup> Zecca. "Avoiding 'elective Dictatorship' in the United Kingdom" 459

dictatorship is therefore evidence of how the term elective dictatorship is being used beyond Hailsham's intended function.

Electoral reform as a solution to the elective dictatorship was also debated in the traditional media. An article about Roy Jenkins speech to the Guildhall banquet of the City Committee for Electoral Reform, by Fred Emery, the Political Editor of *the Times*, presented Jenkins arguments for electoral reform. Roy Jenkins, a former Labour politician who later formed the Social Democratic Party, argued that achieving electoral reform by the middle of the 1980s was essential.<sup>273</sup> If this were not the case, Jenkins argued that the Labour Party would use the "present system to come 'very close to a recipe for an elective dictatorship'".<sup>274</sup> Moreover, he was also of the opinion that electoral reform would create a more moderate center in British Politics and that governments formed under a PR-system would be more in line with the wishes of the people. Emery addressed how Jenkins singled out the Labour Party not focusing on the fact that the Conservative majority only had the support of a third of the electorate.<sup>275</sup>

The two-party system and the electoral system are linked and has therefore been discussed together in this section. Adversary party politics is at its core a criticism of a system that has become increasingly polarized which could lead to the elective dictatorship. In order to restore moderation to the political system as well as limiting the possibility of the elective dictatorship, electoral reform has been presented as a solution. Zecca took great use of Hailsham and his argument as presented in *The Dilemma of Democracy* about electoral reform, in his own discussion. By doing so, Zecca used Hailsham's argument beyond what Hailsham had intended as he never advocated the introduction electoral reform for general elections. This is significant as it shows how Hailsham's argument about the elective dictatorship was used to advocate for reforms Hailsham did not advocate the introduction of.

### A Bill of Rights

The debate about the incorporation of a Bill of Rights surfaced in the 1960s and 1970s as state intervention increased and some scholars came to question whether Parliament could protect individual rights.<sup>276</sup> In this debate there have been various arguments for and against a Bill of Rights. Norton addressed and discussed this debate in his book. He argued that while some

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<sup>273</sup> Emery "Electoral Reform likely soon, Mr. Jenkins says". *The Times*. 18.03.1981, Anthony Howard, "Jenkins, Roy Harris, Baron Jenkins of Hillhead (1920–2003), politician and author." 04.01.2007

<sup>274</sup> Emery "Electoral Reform likely soon, Mr. Jenkins says". *The Times*. 18.03.1981

<sup>275</sup> Emery "Electoral Reform likely soon, Mr. Jenkins says". *The Times*. 18.03.1981

<sup>276</sup> Norton. *The Constitution in Flux*. (1982) 244-245

writers argued that Parliament was the protector of “individual liberties”, others did not even ascribe this as one of the “functions of Parliament”.<sup>277</sup> He argued that Lord Scarman’s Hamlyn Lecture from 1974 and Hailsham’s Dimpleby Lecture (1976) had ensured that the case for a Bill of Rights gained prominence.<sup>278</sup> When discussing the case for a Bill of Rights he focused on Hailsham and what he called the “elective dictatorship thesis”, arguing that it was the best known argument in the case for a Bill of Rights.<sup>279</sup> Norton quoted a passage from the Dimpleby Lecture where Hailsham argued that as sovereignty had come to reside with the government and not with Parliament, the executive had come to control the other parts of the political system, such as the judiciary and Parliament.<sup>280</sup> This meant that the government could introduce legislation that “Parliament did not and could not challenge or consider effectively”.<sup>281</sup> Norton’s classification of Hailsham’s argument as a thesis is important as some have discussed it as an established fact.

Norton also presented the case against a Bill of Rights. Those who did not advocate the introduction of a Bill of Rights argued that it would change the role of the judiciary which would have wider powers. There were also concerns that the judiciary would become increasingly political. Furthermore, they also argued that it would be difficult to implement since there were little agreement between the different parties of what would be considered fundamental rights. It was also argued that a Bill of Rights was not necessary as Britain had signed the European Convention on Human Rights.<sup>282</sup> In his conclusion Norton presents his own view concluding that arguing that Britain lacked the features that would provide popular support and acceptance of a Supreme Court as the legitimate body to “decide cases of constitutional dispute”.<sup>283</sup> He does not specify which features these are. Norton therefore concludes that “if Britain suffers from the effects of an ‘elective dictatorship’ the remedy must come elsewhere than from a Bill of Rights”.<sup>284</sup> This bears some similarity to Hailsham’s argument. In his Dimpleby Lecture, as discussed in chapter 2, he recognized that such a Bill would not hinder either party from implementing legislation that was incompatible with the

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<sup>277</sup> Norton. *The Constitution in Flux*. (1982) 244-245

<sup>278</sup> Norton. *The Constitution in Flux*. (1982)246

<sup>279</sup> Norton. *The Constitution in Flux*. (1982) 247

<sup>280</sup> Norton. *The Constitution in Flux*. (1982) 247-248

<sup>281</sup> Norton. *The Constitution in Flux*. (1982) 247

<sup>282</sup> Norton. *The Constitution in Flux*. (1982) 253-257

<sup>283</sup> Norton. *The Constitution in Flux*. (1982) 257

<sup>284</sup> Norton. *The Constitution in Flux*. (1982) 258

Bill of Rights, and therefore would have limited effect on its own. He was however adamant that it should be a part of a codified constitution.

Lord Scarman, who was briefly mentioned in chapter two, discussed the implementation of a Bill of Rights, basing his argument on the legal aspect of the British Constitution. Lord Scarman was an “advocate of a modern British Bill of Rights” based on the European Convention of Human Rights.<sup>285</sup> The reasons he gave for this was that a Bill of Rights would give citizens more accessibility to the British courts in cases involving human rights violations because such matters could be decided in the UK instead of in the European Courts of Human Rights in Strasbourg.<sup>286</sup> Furthermore, he argued that by implementing this into law Britain could “avoid the embarrassment of an international court finding that our domestic law does not meet our international obligations”.<sup>287</sup> At the very least, he argued that Britain should “re-examine the assumption that we do not need the convention in our law”.<sup>288</sup> He used statistics from Strasbourg as evidence that the present system was not equipped to protect individual rights. This statistic indicated that nearly one third of the cases the court in Strasbourg dealt with in the period 1953 to 1984 were from Britain, the total of cases that were established were 57.<sup>289</sup>

Moreover, Lord Scarman argued that incorporating the Convention on Human Rights had been difficult because “the basis of the argument against incorporation is that under the British Constitution the protection of our liberties [...] is political, not legal”.<sup>290</sup> This political protection was the doctrine of parliamentary sovereignty, which made it difficult to put in place safeguards that would hinder Parliament from repealing the Bill at a later point. Lord Scarman referred to Hailsham’s argument, arguing that “Hailsham’s description of parliamentary sovereignty as an elective dictatorship is true save for that exception”, namely that Parliament cannot prolong its own life.<sup>291</sup> Similarly to Hailsham, he does not believe that that this system is capable of protecting individuals rights. Although Lord Scarman argued that it was difficult to secure legal protections because of parliamentary sovereignty, it was not impossible. He argued that if a modern Bill of Rights based on the Convention was considered a statute, this might deter the politicians from repealing it. This because repealing

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<sup>285</sup> Lord Scarman. “Human Rights in an Unwritten Constitution” (1987) 132

<sup>286</sup> Lord Scarman. “Human Rights in an Unwritten Constitution” (1987) 133

<sup>287</sup> Lord Scarman. “Human Rights in an Unwritten Constitution” (1987) 134

<sup>288</sup> Lord Scarman. “Human Rights in an Unwritten Constitution” (1987) 134

<sup>289</sup> Lord Scarman. “Human Rights in an Unwritten Constitution” (1987) 133-134

<sup>290</sup> Lord Scarman. “Human Rights in an Unwritten Constitution” (1987) 131

<sup>291</sup> Lord Scarman. “Human Rights in an Unwritten Constitution” (1987) 131-132



it would seem like Britain did not honor their international obligations of securing freedoms.<sup>292</sup> Furthermore, if this Bill of Rights was considered statute law, this would also protect rights and freedoms that would otherwise be considered common law. He therefore argued that British law needs to recognize that there are certain freedoms that need to be protected, which the implementation of a Bill of Rights could be very valuable “even in our largely unwritten constitution” according to Lord Scarman.<sup>293</sup> This is rather different compared to Hailsham’s argument as discussed in the discussion of Norton’s argument above, who argued that a Bill of Rights should be part of a codified constitution.

In the traditional media, the implementation of a Bill of Rights was also discussed and in a letter to editor in 1981, Geoffrey Rippon, a Conservative MP argued for progress on implementing a Bill of Rights. He explained that representatives from different parties had advocated for such a development, among others Lord Wade from the Liberal Party. Rippon’s argument was that the implementation of a Bill of Rights would protect individual rights as well as hinder the elective dictatorship, which Hailsham had warned.<sup>294</sup> In an opinion piece titled “A question of Rights”, Ronald Butt addressed W. E. Baugh’s claim that since the Conservatives took over the reins of government there had been little talk of an elective dictatorship or the implementation of a Bill of Rights. Baugh’s conclusion was that the Conservatives used the elective dictatorship and the proposal for a Bill of Rights as a tool in a fight with the Labour Party, and that it had nothing to do with democracy. Ronald Butt’s explanation for why there was little focus on the elective dictatorship or implementation of a Bill of Rights was that it was unlikely that a new government would put in place policies that guard against what might come later, which potentially could ensure their dismissal and defeat. This argument illustrates how embedded the doctrine of Parliamentary sovereignty was, since it could be argued that what Butt is really saying is that no government would implement legislation that could limit them in the future. Furthermore, Butt argued that a call for a Bill of Rights was never a mainstream position within the Conservative party explaining that Hailsham was the main proponent of such a measure. Moreover, it was also argued that Thatcher was no advocate for institutional reform and therefore not interested in any of the reforms Hailsham advocated for. The political remedies Thatcher proposed, he argued, were more in touch with English history, which was important if Thatcher were to succeed.<sup>295</sup> This

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<sup>292</sup> Lord Scarman. “Human Rights in an Unwritten Constitution” (1987) 132

<sup>293</sup> Lord Scarman. “Human Rights in an Unwritten Constitution” (1987) 135

<sup>294</sup> *The Times* “Call for progress on Bill of Rights” 03.30.1981.

<sup>295</sup> Butt “A question of Rights”. *The Times* 08.17.1980.

illustrates the realities of the Thatcher government which Bogdanor also addressed in his book; constitutional reform was not particularly important to the Thatcher government.<sup>296</sup>

In short, there are various arguments about whether the incorporation of a Bill of Rights would protect against the elective dictatorship. Norton who addressed the debate, argued that a Bill of Rights would not be enough protection if Britain suffered from elective dictatorship which bears some similarity to Hailsham's argument that more comprehensive reforms were needed. Geoffrey Rippon argued that implementing a Bill of Rights would hinder the elective dictatorship and protect individual rights. A similar point was made Lord Scarman who argued that such a Bill would be a valuable addition to current uncodified constitution. Ronald Butt on the other hand presented an argument about why the Thatcher government had not focused a Bill of Rights or the elective dictatorship was simply that no new government would implement legislation that would limit the power of the government. This section has focused on the implementation of a Bill of Rights, but not discussed the process prior to legislation passing in Parliament. The next section will focus specifically on the role of select committees have in this process.

#### The role of the Select committees

The importance of the select committees as check upon the executive was a topic of discussion among the different authors discussed in this chapter. In 1978 a report by the Select Committee on Procedure, recommended a new fundamental structure for these committees. These proposals were approved by the Commons in 1979.<sup>297</sup> The consequences of this change have been debated by scholars. Norton argued that the new select committees were "more effective scrutineers of government than their predecessors".<sup>298</sup> Butler, Adonis and Travers took a rather different view. They discussed the role of the select committees in the enactment of the Local Government Finance Act of 1988. They argued however that this had occurred without the involvement of select committees "of either House of Parliament".<sup>299</sup> Parliamentary scrutiny occurred when the legislation was presented to Parliament thereby limiting inquiries into the details of the principles of the bill, a trend that had continued despite the reforms of the 1979.<sup>300</sup> Patrick McAuslan, a legal scholar, presented an argument that expresses similar concerns. He argued that strengthening the role of the

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<sup>296</sup> Bogdanor. *Politics and the Constitution: Essays on British Government.*, (1996) 12

<sup>297</sup> McAuslan "Parliamentary Control of the Administrative process" (1989): 413, Philip Norton. *The Constitution in Flux.* (1982), 112-113

<sup>298</sup> Norton. *The Constitution in Flux.*1982: 113

<sup>299</sup> Butler, Adonis and Travers *Failure in British Government* (1994), 227

<sup>300</sup> Butler, Adonis and Travers *Failure in British Government: The Politics of the poll tax.* (1994) 227

select committees prior to legislation being presented to Parliament was still necessary as there had been “a drift [...] towards an elective dictatorship and an authoritarian administration”.<sup>301</sup> Although McAuslan did not provide a definition of the elective dictatorship, it could be argued that what he meant by it, is that as parliamentary sovereignty has come to reside with the government, this government has increasingly become authoritarian and dominant.

This dictatorial power is further reinforced by party loyalty and politics, which according to McAuslan leads to skeleton legislation being presented to Parliament. Skeleton legislation is legislation that leaves out details and “the principles behind the details” to be included in “subordinate legislation, or ministerial circulars”.<sup>302</sup> The consequence of this is that Parliament is not able to scrutinize such legislation properly, thereby making the legislation presented to Parliament skeleton legislation. Furthermore, he argued that MPs were also concerned about the government’s reluctance to answer questions about their proposed legislation and amendments, while it also resisted any amendments proposed by others.<sup>303</sup> In order to make sure that select committees could be an effective way to limit the power of the government, McAuslan presented two solutions. The first solution entailed keeping the administrative process under constant review in a so-called Code of Good Administration and an Administrative Review Council (ARC), modelled after Australia and its Administrative Law Reforms.<sup>304</sup> He argued that there were two possible criticisms that his proposal for such a review Council could encounter. Firstly, creating such a council would not ensure Parliament control because experiences from other councils show that the government can dismiss recommendations made by such councils. Secondly, the ARC-council would only be concerned “with administrative systems developed on the basis of primary legislation”.<sup>305</sup> This kind of council is therefore only involved after primary legislation is passed through Parliament. McAuslan however, argued that it is more important with involvement prior to this.

The alternative was therefore to increase the influence of the select committees in the process prior to primary legislation being passed through Parliament. McAuslan argued that this could be achieved by the setting up of a new select committee or a joint select committee

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<sup>301</sup> McAuslan “Parliamentary Control of the Administrative process” (1989), 414

<sup>302</sup> McAuslan “Parliamentary Control of the Administrative process” (1989), 415

<sup>303</sup> McAuslan “Parliamentary Control of the Administrative process” (1989), 415

<sup>304</sup> McAuslan “Parliamentary Control of the Administrative process” (1989), 417

<sup>305</sup> McAuslan “Parliamentary Control of the Administrative process” (1989), 417

tasked with scrutinizing new legislative proposals from a constitutional perspective. This would involve checking that the bill did not include any “challenge in the courts” or clauses giving “unexpected powers” to a minister.<sup>306</sup> Consequently, the government would be held to account because it would have to explain and defend its proposals from a constitutional standpoint. Furthermore, it was argued that the government would be more cautious with putting in clauses that it suspected would be criticized by a select committee. Involving the select committees earlier in the administrative process would also be important if one is concerned with “Parliament’s seeming inability to stop the onward march of the elective dictatorship”.<sup>307</sup> McAuslan also addressed possible objections to his second proposal. He argued that the main objection was focused on partisanship within the select committee. This because the argument could be made that the select committee could dress up their “partisan objections to the substance of a bill in constitutional language by pretending it was objecting to procedural matters”.<sup>308</sup> Secondly, he argued that a possible criticism could be that adding a new stage in the administrative process would create delays in the legislative process. The third possible criticism that could surface was that another check on the administrative process was unnecessary since there were already checks and balances in place within “the government machine” such as Cabinet committees as well as within the Ministries, and outside the government machine such as the Law Commissions and the Council on Tribunals.<sup>309</sup> McAuslan’s argument that select committees is an effective way of scrutinizing the executive and hindering the possibility of an elective dictatorship was not presented specifically as a solution in Hailsham’s work. This is therefore another example of how scholars have taken use of Hailsham’s argument to advocate other solutions Hailsham either had not thought of, or simply not considered effective enough. It is however important to note that Hailsham wanted to strengthen the role of Parliament, in which select committees were important.

Ferdinand Mount a journalist, writer and the former leader of “Thatcher’s prime ministerial policy unit”,<sup>310</sup> argued that select committees were important because it provided MPs with important information and insight into the work of the different departments which otherwise would difficult to obtain. In addition to this, these committees ensued that MPs

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<sup>306</sup> McAuslan “Parliamentary Control of the Administrative process” (1989), 418

<sup>307</sup> McAuslan “Parliamentary Control of the Administrative process” (1989), 414

<sup>308</sup> McAuslan “Parliamentary Control of the Administrative process” (1989), 418

<sup>309</sup> McAuslan “Parliamentary Control of the Administrative process” (1989), 419

<sup>310</sup> Moss, “I’m just a butterfly”. 04.25.2008

could question the executive on the many fields of policy.<sup>311</sup> Furthermore, he explained that advocates for constitutional and electoral reform were concerned with the “corruption of parliamentary supremacy into something resembling elective dictatorship”.<sup>312</sup> This was concerning because of the lack of scrutiny of the executive, a responsibility of the select committees. Although these select committees were established, Mount warned that these were largely controlled by the “Whips”, who selected the members for the select committees.<sup>313</sup> Therefore, the question of their impartiality might hinder them from scrutinizing the executive. Mount’s argument about the corruption of parliamentary sovereignty can be likened to Hailsham’s argument about a shift in sovereignty presented in his Dimpleby Lecture and book. He too was concerned with the dominance of the executive. Although select committees could be removed at the beginning of a new Parliament, Mount argued that the select committees seemed to become increasingly permanent. He argued that some of the reason for this was the increase in European legislation that the select committees would be able to scrutinize.<sup>314</sup>

The perspectives on the role of the select committees varies with some such as Norton arguing that the new structure of the select committees had ensured more effective select committees. The other contributions however, argued that there were still room for improvement. Mount and McAuslan both linked their discussions of the role of the select committees to the elective dictatorship and the concerns of lack of scrutiny. McAuslan went a step further than Mount and argued that because the system was drifting towards the elective dictatorship there were need for further reform. By doing so, McAuslan advocated the introduction of changes Hailsham himself never discussed in much detail as remedies for the elective dictatorship. This is therefore another example of how Hailsham’s argument has been used to in a broader context than Hailsham himself discussed.

## Conclusion

The discussion of the elective dictatorship during the 1980s and early 1990s revolved around some of the arguments Lord Hailsham presented in his Dimpleby Lecture and his book *The Dilemma of Democracy*, such as parliamentary sovereignty and Bill of Rights. Scholars and journalists also linked their discussion of parliamentary sovereignty to The Thatcher government’s policies towards local government. They argued that Thatcher were more

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<sup>311</sup> Mount, *The British Constitution Now*, (London: Heinemann 1992), 183

<sup>312</sup> Mount, *The British Constitution Now* (1992), 217

<sup>313</sup> Mount, *The British Constitution Now*, 1992: 217

<sup>314</sup> Mount, *The British Constitution Now*, 1992: 262

preoccupied with parliamentary sovereignty than constitutional conventions. Bogdanor for instance argued that this disregard was why Thatcher government had to be understood through the concept of elective dictatorship. Electoral reform as a solution to the elective dictatorship was also discussed. Although Hailsham addressed certain problematic aspects of the electoral system, he did not advocate for electoral reform of the House of Commons like Zecca did in his article, nor did he link the elective dictatorship to the adversary politics thesis. Another important argument discussed was the role of select committees. Even though Hailsham discussed the House of Commons and how it operated in his Dimpleby Lecture and book, he did not focus much on the role of the select committees as a check on the executive. Based on this, it could be argued that although the essence of the term elective dictatorship remained the same, it was used in discussions of aspects of the British political system not covered by Lord Hailsham. This indicates that scholars were more willing to use Hailsham's argument to advocate their own solutions. How the use of the term elective dictatorship evolved during Tony Blair's premiership will be the focus of the next chapter.

## Chapter 4: Tony Blair's government (1997-2007), the new elective dictatorship?

In May 1997, Labour won the general election with 43% of the vote securing a 179-seat majority after 18 years of Conservative government. This success was repeated in 2001, when Labour secured 41% of the vote and a 167-seat majority in the Commons. Although Labour's win was less decisive in 2005 the party won "a third consecutive term" making Labour history.<sup>315</sup> Tony Blair and the Labour party wanted to set a new course for Labour and Britain a "New Labour" and a "New Britain".<sup>316</sup> This would entail a "third way" between "Old Labour" and the "New Right".<sup>317</sup> According to Anthony Giddens, a political advisor to Blair, argued that the third way was based on "market economy, an active role for government and a culturally diverse and socially equal society".<sup>318</sup> This third way was therefore a new path for center-left politics. New Labour's third way also entailed extensive constitutional reform, which was both different from the approach taken by the Thatcher government which defended the "constitutional status quo" and Old Labour who had showed little interest in constitutional reform until the 1980s. The policy review conducted by Labour from 1987-1992, was an important step towards Labour's embrace for constitutional reform and in 1997, the election manifesto promised among other reforms: devolution, a Human Rights Act based on the European Convention, freedom of information legislation, greater powers to local government.<sup>319</sup> Blair was able implement many of the policies promised in the election manifesto, such as the Human Rights Act of 1998, the House of Lords Act of 1999 and the 1998 Scotland Act and the 1998 Government of Wales Act.<sup>320</sup>

The debate about the elective dictatorship continued during Tony Blair's premiership and immediately afterwards by scholars and journalists. Most of the works consulted in this chapter are from the period Blair was Prime Minister although some are published following his exit from Downing nr.10. In between Thatcher and Blair, there was the seven years of John Major's premiership. His premiership will not be discussed in this thesis because Major struggled with a small and dwindling majority leading to defeats in the Commons, as well as problems such as scandals involving Conservative MPs, which really did not make him look

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<sup>315</sup> Driver and Martell. *New Labour*. (Cambridge: Polity Press, 2006), 2

<sup>316</sup> Driver and Martell. *New Labour*. (2006) 2

<sup>317</sup> Driver and Martell. *New Labour*. (2006) 16

<sup>318</sup> Driver, and Martell. *New Labour*. (2006) 48

<sup>319</sup> Driver and Martell. *New Labour*. (2006) 142

<sup>320</sup> Driver, and Martell. *New Labour*. (2006) 151, 159-160.

much like an elected dictator.<sup>321</sup> Much of the discussion of the elective dictatorship continued to revolve around similar themes addressed during Thatcher's premiership, such as parliamentary sovereignty, electoral reform and bill of rights. The discussion of these themes was mostly general and not linked directly to Tony Blair's premiership. Other themes discussed revolved around the role of the Prime minister, House of Lords and constitutional reform. The aim of this chapter is to show that despite the many reforms implemented by Blair's government, much of the discussion, with some exceptions in the discussion of House of Lords reform, has been general. Even though the reforms implemented by the government were not discussed much in relation to the elective dictatorship, Tony Blair's leadership style was linked to the elective dictatorship.

### Parliamentary sovereignty

A popular argument among academics and journalists in the debate about the elective dictatorship was – as we saw in chapter 3 – that the doctrine of parliamentary sovereignty was the reason why the British political system amounted to an elective dictatorship. The arguments put forth in this section operate with the understanding of the sovereignty of Parliament in which the “Crown in Parliament” enjoyed nearly unlimited powers.<sup>322</sup> Nevil Johnson (1929-2006), a political scientist who also advised Thatcher took this position in his last book *Reshaping the British Constitution: Essays in Political Interpretation* (2004).<sup>323</sup> He argued that parliamentary sovereignty, was criticized on multiple grounds and was for instance seen as being “at odds with consent and individual rights”.<sup>324</sup> Some of the criticism levied against the principle of parliamentary sovereignty was that it had “facilitated ‘elective dictatorship’ or the tyranny of the majority” and that it “serves only to enhance the power of the central government”.<sup>325</sup> This was similar to the arguments Hailsham presented in his Dimpleby Lecture and book in the late 1970s.

Tijmen Koopmans (1929-2015) a Dutch judge and academic took a similar starting point in his discussion.<sup>326</sup> He argued that there had been a debate about “the constitutional

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<sup>321</sup> Kavanagh, Richards, Smith. & Geddes (ed.). *British Politics*. (New York: Oxford University Press, 2006), 220 & 190 & Driver and Martell. *New Labour*, (2006) 385, 447

<sup>322</sup> Nevil Johnson. *Reshaping the British Constitution* (New York: Palgrave Macmillian UK, 2004) 28, Vernon Bogdanor. *The New British Constitution*. (North America: Hart Publishing, 2009) 15 & Koopmans. *Courts and Political Institutions* (Cambridge: Cambridge University Press, 2003), 183

<sup>323</sup> The Times “Nevil Johnson” 07.13.2006

<sup>324</sup> Nevil Johnson. *Reshaping the British Constitution*. (2004) 28

<sup>325</sup> Johnson, Nevil *Reshaping the British Constitution*. (2004) 28-29

<sup>326</sup> Universiteit Linden “Prof. Tim Koopmans” (2015)



position of leadership in general” related to the doctrine of parliamentary sovereignty.<sup>327</sup> Since there had been a shift of power in the relationship between Parliament and government, the government had come to control parliament.<sup>328</sup> He argued that if Parliament is sovereign and “if in British practice, Parliament means parliamentary majority” controlled by the cabinet with a strong Prime Minister, then the system “begins to look like an elective dictatorship”.<sup>329</sup> It therefore seems like the elective dictatorship, according to Koopmans, was only a problem if the government was led by a strong prime minister who used the majority in parliament to pass legislation through Parliament. Koopmans and Johnson’s perspectives seems to be rather similar as both argued that the dominant executive’s use of the majority in the Commons to pass legislation facilitated the elective dictatorship. Vernon Bogdanor, whose works from the late 1980s and mid-1990s were discussed in chapter 3, continued his discussion of the elective dictatorship during Blair’s premiership as well. His discussion of parliamentary sovereignty was however more general in his book from 2009, *The New British Constitution*, than in his previous works. He presented a similar argument to that of Koopmans and Johnson arguing that the increased dominance of the executive over the legislative branch combined with few limits on this power left the constitution unprotected and the British political system vulnerable to an elective dictatorship.<sup>330</sup>

Kavanagh, Richards, Smith and Geddes made a similar point to Koopman’s when addressing the debate about constitutional reform in the late 1900s. They argued that both the Conservatives in the late 1970s and the Labour party in the 1980s and 1990s were concerned that an elective dictatorship could “exploit the absolute sovereignty of Parliament and a ‘winner-takes all’ system”.<sup>331</sup> The concern was therefore that the executive would misuse its power. However concerning this was, the Conservatives abandoned such viewpoints once in government, a point also made by Driver and Martell, who argued that the conservatives were only concerned about the elective dictatorship in opposition.<sup>332</sup> One example of this can be found during the 2001 election campaign when Thatcher argued that if Labour won a landslide victory would lead to an elective dictatorship. Her issue was not the majority in itself but what she perceived would become a government “sustained by cronies, ciphers and

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<sup>327</sup> Koopmans. *Courts and Political Institutions* (2003), 183

<sup>328</sup> Koopmans. *Courts and Political Institutions*. (2003), 181

<sup>329</sup> Koopmans. *Courts and Political Institutions*. (2003), 183

<sup>330</sup> Bogdanor. *The New British Constitution*. (2009), 15

<sup>331</sup> Kavanagh, Richards, Smith. & Geddes. *British Politics* (2006), 176

<sup>332</sup> Kavanagh, Richards, Smith. & Geddes. *British Politics* (2006), 220 & 190 & Driver, and Martell. *New Labour*, (2006), 48

a personality cult”.<sup>333</sup> Thatcher’s understanding of the elective dictatorship therefore seems to be more about the leadership style of Tony Blair than a government with majority. This is a theme we will turn to below in another section.

Graham P. Thomas a lecturer in politics at the University of Reading, did not discuss the doctrine of parliamentary sovereignty directly, but he argued that the House of Commons was characterized by a dominant executive and a partisan legislature.<sup>334</sup> This was presented first in an article in *The Journal of Legislative Studies* in 2004, and then as a chapter in the book *Executive Leadership and Legislative Assemblies* in 2006.<sup>335</sup> Since the Prime Minister is dependent on the House of Commons for its existence while simultaneously having a dominant position over the majority in the Commons, that makes this relationship paradoxical according to Thomas.<sup>336</sup> This made it difficult for the legislative branch to control the executive in part due to the lack of capacity of the legislature to scrutinize the executive. Part of the reason was the unwillingness of the majority party to challenge “executive domination, to provide leadership for those concerned at the growth of an ‘elective dictatorship’”.<sup>337</sup> Thomas’ argument of executive dominance is consistent with Hailsham’s concern about the relationship between the executive and legislative branch presented in his Dimpleby Lecture, his book and his journal article.

In 2000, Dearlove and Saunders published a third edition, expanded and updated, of their book *Introduction to British Politics*, which was discussed in chapter 3. In this new edition, the authors included the same arguments about the elective dictatorship and parliamentary sovereignty as in their book from 1984 only with some minor changes that did not alter their argument. This is the case with their discussion of the constitutional criticism of the British constitution that surfaced on in the 1970s. Their discussion of the debate in the 1970s in the third edition was however more comprehensible compared to their book from 1984.<sup>338</sup> In their book from 2000, Dearlove and Saunders also discuss the elective dictatorship linking it to the reforms implemented by the Labour government. They argued parliamentary

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<sup>333</sup> The Guardian “Labour attacks Thatcher’s ‘dictatorship’ claims”.06.01.2001

<https://www.theguardian.com/politics/2001/jun/01/election2001.uk11>

<sup>334</sup> Thomas “United Kingdom: The Prime Minister and Parliament.” (2004), 4-5. & Graham P. Thomas “United Kingdom: The Prime Minister and Parliament” in *Executive Leadership and Legislative Assemblies*, ed. Nicholas D. J. Baldwin. (New York: Routledge, 2006), 5

<sup>335</sup> Since Thomas’ article from 2004 is identical to the chapter in the book from 2006, future references to Thomas’ work will be to the book from 2006

<sup>336</sup> Thomas. “United Kingdom: The Prime Minister and Parliament”, (2006) 8

<sup>337</sup> Thomas. “United Kingdom: The Prime Minister and Parliament”, (2006) 9

<sup>338</sup> Dearlove, & Saunders, *Introduction to British Politics*. 3<sup>rd</sup> ed. (Cambridge: Polity Press. 2000), 443-444 & Dearlove and Saunders *Introduction to British Politics*: (1984) 83-90

sovereignty had been limited “by the incorporation of the European Convention of Human Rights”, by devolution, the use of referenda and EU membership.<sup>339</sup> Consequently, this also meant that the elective dictatorship or “the unchecked executive” would “likely to find itself more checked” by these reforms.<sup>340</sup> The implication of EU-membership is that EU legislation becomes superior to British law, thereby limiting Parliament’s ability to pass legislation that is not in accordance with EU law. Furthermore, a reformed House of Lords, and freedom of information would also function as a check on the executive. They argued however, that no check would come from the Commons unless its composition was altered as a result of reform of the electoral system to proportional representation. This is very in line with Hailsham’s argument as presented in his Dimpleby Lecture and his book.

Peter Riddell, a political columnist of the *Times* and the *Financial Times* until 2010, currently serving as the Commissioner for Public Appointments in the British government, presented a rather different argument in his book from 2000.<sup>341</sup> The foundation of his argument is that the doctrine of parliamentary sovereignty can be interpreted differently. He argued that “but, in practice, the absolutism in which this doctrine is often presented”, causes confusion.<sup>342</sup> This because it could be interpreted in an extreme manner. Interpreting parliamentary sovereignty in an extreme manner meant that the sovereignty of Parliament was absolute so that other political institutions had a no “constitutionally legitimate role” because Parliament was the guarantor for their existence.<sup>343</sup> He argued that those who view parliamentary sovereignty as absolute, “tend to see other political organizations as threats”.<sup>344</sup> Therefore, there were no checks and balances or sharing of power between Parliament and other institutions. Riddell referred to British institutions such as the local authorities, the judiciary as well as international institutions such as NATO and the EU. In his discussion of sovereignty of Parliament as absolute, Hailsham and his discussion of the elective dictatorship is briefly mentioned. Riddell stated that “no wonder Lord Hailsham famously talked of an ‘elective dictatorship’ in his Dimpleby Lecture [...] when he called for a written constitution and a bill of rights”.<sup>345</sup> Based on this it could be argued that Riddell was of the opinion that Hailsham operated on an “extreme” understanding of parliamentary sovereignty. It was also

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<sup>339</sup> Dearlove & Saunders. *Introduction to British Politics*. (2000) 473

<sup>340</sup> Dearlove & Saunders, *Introduction to British Politics*. (2000) 473

<sup>341</sup> HM Government The Commissioner for Public Appointments “About the Commissioner” Accessed 05.13.2020, <https://publicappointmentscommissioner.independent.gov.uk/about-us/>

<sup>342</sup> Peter Riddell. *Parliament under Blair*. (London: Politico’s Publishing 2000) 1

<sup>343</sup> Peter Riddell. *Parliament under Blair*. (2000), 1

<sup>344</sup> Riddell. *Parliament under Blair*, (2000), 2

<sup>345</sup> Riddell. *Parliament under Blair*, (2000), 2

mentioned that Hailsham's positions on the written constitution had changed in the early 1990s when he was clearly in favor of the unwritten constitution. Riddell argued that such a view was nonsense because it disregarded the historical and constitutional composition of Parliament. By this he meant that even though Parliament is sovereign both in a constitutional and legal sense, it has chosen to share power with other institutions.<sup>346</sup> Although much of the discussions of the elective dictatorship in the late 1990s and 2000s have been mostly general some scholars linked the dominance of the executive over Parliament directly to Tony Blair's premiership, which will be discussed in the next section.

### The role of the Prime Minister and the elective dictatorship

Some of the academic literature and newspaper articles focused on the role of the Prime Minister. Graham P. Thomas argued that since Callahan, Prime Ministers have spent less time in the Commons, including Tony Blair whose "neglect of Parliament" was seen by some as arrogance and "evidence of an 'elective dictatorship'".<sup>347</sup> This was exemplified by Blair's decision to cut from two 15 minutes Prime Minister Questions to one 30 minute session. Critics interpreted this as a way for the Prime Minister to distance himself from the Commons. Furthermore, Thomas argued that reformers had different opinions about what the aim of modernizing the Commons should be. On the one hand, Tony Wright, the chairman of the Select Committee on Public Administration and an "independent-minded Labour MP",<sup>348</sup> wanted to strengthen the legislature's ability to scrutinize the executive. Tony Blair and other ministers, on the other hand saw modernization as a way of facilitating the executive's role so the passage of government legislation through Parliament would be more effective. Accusations of how the executive was dismissive of parliament also grew out of the perception that MPs were unquestionably loyal to Blair.<sup>349</sup>

Similar points were made in an article published in the journal *The Economist* which examined the criticism levied against the New Labour government. It was argued that only weeks into Tony Blair's premiership the Conservatives criticized Blair stating that "he is bent on exercising supreme, centralised, unaccountable power".<sup>350</sup> This article also used Blair's unilateral decision to change Prime Minister's Questions time from two 15 minutes sessions to one 30 minute session, as an example of this kind of supreme power. Other examples were

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<sup>346</sup> Riddell. *Parliament under Blair*, (2000) 1-2

<sup>347</sup> Thomas. "United Kingdom: The Prime Minister and Parliament", (2006) 12

<sup>348</sup> Thomas. "United Kingdom: The Prime Minister and Parliament", (2006) 5

<sup>349</sup> Thomas, Graham P. "United Kingdom: The Prime Minister and Parliament", (2006) 23-25

<sup>350</sup> *The Economist* "A question to Tony Blair" 05.22.1997

the Labour government's decision to make the Bank of England independent, a reform not foreshadowed in their election manifesto, as well as Blair's insistence on party discipline in the Commons. With his large majority of a 180 MPs, won with 44.2% of the vote, Blair had a mandate to implement legislation. It was pointed out however that in opposition "Mr Blair himself used to rail against the Tories' exploitation of their majority—in the phrase of a former Tory cabinet minister, Lord Hailsham, the 'elective dictatorship'".<sup>351</sup> Furthermore, Labour's focus on constitutional reform such as devolution to Wales and Scotland was according to *The Economist* "partly designed to ameliorate such dictatorship".<sup>352</sup> This and other steps towards parliamentary reform, with aim of modernizing the House of Commons, were seen as a way to allow MPs to work more efficiently, such as the Committee on Commons modernization. It was pointed out that this however was not a protection against the party whips who continue to exert influence over MPs. However, veterans within the Commons do not think this will happen because might be easier for Labour to give MPs more power to legislate more freely and on some occasions let them challenge the government than to let discontent rise among MPs.<sup>353</sup> This and Thomas' view corresponds to Hailsham's argument, presented in his Dimpleby Lecture and his book, about the role of the Prime Minister, focusing especially on the unilateral decisions and using the majority in the Commons to pass legislation despite winning less than 50% of the national vote. As discussed in chapter 2, Hailsham this was concern to Hailsham as the government could implement legislation the majority of the population did not want. Such results were possible due to the electoral system which will be discussed more in-depth in a section below.

An article by Michael Quinlan, "a former permanent secretary at the Ministry of Defence", focused on how Blair's leadership of his cabinet through a discussion of the findings in Hutton and Butler's inquiries into the Iraq saga.<sup>354</sup> According to Quinlan these rapports were critical of how Blair had "run the collective cabinet dimension of his leadership".<sup>355</sup> He argued that Blair's style of governance was very centralized which was in part was due to Blair's lack of "experience at any level of government".<sup>356</sup> It was argued that there was nothing wrong with a centralized style of governance, however, it was questioned whether this decision was made with sufficient understanding of the existing ways of

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<sup>351</sup> *The Economist* "A question to Tony Blair" 05.22.1997

<sup>352</sup> *The Economist* "A question to Tony Blair" 05.22.1997

<sup>353</sup> *The Economist* "A question to Tony Blair" 05.22.1997

<sup>354</sup> Quinlan "Blair has taken us towards an elective dictatorship". *The Guardian*. 10.22.2004

<sup>355</sup> Quinlan "Blair has taken us towards an elective dictatorship". *The Guardian*. 10.22.2004

<sup>356</sup> Quinlan "Blair has taken us towards an elective dictatorship". *The Guardian*. 10.22.2004

governing, such as the conventions which the British constitution largely depend on. This lack of understanding of constitutional conventions were also discussed in chapter 3, regarding Thatcher's disregard of constitutional conventions. The center of these kind of arguments seems to be that a PM with clear majority in the Commons has a mandate to carry out policies, but if she/he starts ignoring or breaking these conventions, she/he is in danger of becoming dictatorial. It is however not fully tangible to know whether the PM exercises power in a way that demonstrates respect for established traditions. In the case of Blair's premiership, he indicated that he would adjust his style following the Butler report. Quinlan was however skeptical of whether these steps would be taken. He argued that "if a collective cabinet system no longer functions well, and parliament is docile or impotent we may be nearer to 'elective dictatorship' than when Lord Hailsham coined the phrase".<sup>357</sup> Quinlan argued that it was important that these kinds of issues were discussed in the public such as the Hutton and Butler inquiries and concluded that Blair had to demonstrate how he was going to change.<sup>358</sup> Chapter 3 of this thesis also discussed the Thatcher government, however in relation to parliamentary sovereignty. The focus was more on her economic policies than on her leadership style. What it did not address in much detail, which this chapter addresses in the next subchapter is the House of Lords.

### The House of Lords and the elective dictatorship

The upper chamber's role and function within the political system have been a topic scholars and journalists have addressed. Bogdanor argued in his book from 2009 that at the beginning of the 1900s, the House of Lords was considered an obstacle by governments on the left when faced with difficulties of passing legislation efficiently through Parliament. The objective was to ensure "that the cumbrous machinery of government did not frustrate the speedy translation of the peoples wishes into law".<sup>359</sup> In the late 1900s however, critics including those on the left were concerned that there were too few checks and balances within the political system. Therefore, since the British constitution is unprotected and the upper chamber was unelected, the "danger of succumbing to the condition [...] of elective dictatorship" would always be there.<sup>360</sup> Bogdanor argued in his book from 2009, that these critics were of the opinion that an elected upper chamber would provide a check on that dictatorship, including Hailsham, who advocated an elected House of Lords in his works from the late 1970s.<sup>361</sup> Although there had

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<sup>357</sup> Quinlan "Blair has taken us towards an elective dictatorship". *The Guardian*. 10.22.2004

<sup>358</sup> Quinlan "Blair has taken us towards an elective dictatorship". *The Guardian*. 10.22.2004

<sup>359</sup> Vernon Bogdanor. *The New British Constitution*. (North America: Hart Publishing, 2009), 146

<sup>360</sup> Bogdanor. *The New British Constitution*. (2009),146

<sup>361</sup> Bogdanor. *The New British Constitution*. (2009), 146

been other reforms altering the composition of the House of Lords, such as the Life Peerage Act of 1958 which saw the introduction of life peers, experts from various fields, as well as allowing women to be appointed, the House of Lords Act of 1999 fundamentally changed the upper chamber.<sup>362</sup> This because it removed all but 92 of the hereditary peers.<sup>363</sup> There are however different views on whether this reform is sufficient to ensure that the upper chamber functions as check on the government, as one of the central arguments in the debate about the elective dictatorship has been that there are too few limits on the executive.

Bogdanor, whose works from the late 1980s and 1990s were discussed in chapter 3 of this thesis, continued to discuss the elective dictatorship in relation to the House of Lords. He argued in his book from 2009 that because of the 1999 House of Lords Act, no party enjoyed overall majority in the upper chamber making it permanently hung. Therefore, no government could take the support of the House of Lords for granted. Consequently, passing legislation through Parliament could therefore become harder because the government had to work to secure support within the upper chamber. This enabled the House of Lords to function as a check on the power of a government with majority in the Commons, which some have defined as an elective dictatorship. Bogdanor for instance argued that “the Blair government had to work hard” to secure support even sometimes from their own party in order to get legislation passed.<sup>364</sup> Furthermore, most peers received their peerage by appointment, resulting in peers regarding themselves as more legitimate. This also meant that the Salisbury convention “has come under challenge”.<sup>365</sup> This convention hold that the House of Lords could not oppose legislation foreshadowed in the government’s election manifesto.<sup>366</sup> Since there is no party with majority in the House of Lords, some peers such as Lord Strathclyde, leader of the Conservatives in the Lords, have argued that “some of the implications of the conventions has to be reviewed”.<sup>367</sup> A similar point was made by the Liberal Democrats’ leader in the Lords, Lord McNally.<sup>368</sup> Based on these developments it is plausible to argue that the House of Lords were able to function as a check upon the executives power, thereby hindering the elective dictatorship.

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<sup>362</sup> Bogdanor. *The New British Constitution*. (2009), 155, 156

<sup>363</sup> Johnson, *Reshaping the British Constitution* (2004), 210 & Vernon Bogdanor. *The New British Constitution*. (2009), 157

<sup>364</sup> Bogdanor. *The New British Constitution*. (2009) 158

<sup>365</sup> Bogdanor. *The New British Constitution*. (2009), 159

<sup>366</sup> Bogdanor. *The New British Constitution*. (2009), 151-152

<sup>367</sup> Bogdanor. *The New British Constitution*. (2009), 159

<sup>368</sup> Bogdanor. *The New British Constitution*. (2009), 159

Johnson took a rather different view from that of Bogdanor arguing that more had to be done with regards to the composition of the upper chamber following the 1999 House of Lords Act. He was critical of the report published by the Royal Commission on Reform of the House of Lords in 2000, which concluded that the upper chamber functioned as a “check” on the elective dictatorship.<sup>369</sup> This in part because the Commission had been too careful in its assessment of the powers of the upper chamber, for instance, they were careful with saying that “the legislative function” of the House of Lords should be extended beyond being a revising chamber.<sup>370</sup> He argued that if the upper chamber was to function as an institutional check on the elective dictatorship adopting a more political role, the composition of the House of Lords had to be considered in a different context. By this, Johnson meant that the upper chamber had to become an elected chamber either partly or the entire chamber.<sup>371</sup> This somewhat echoes Hailsham’s earlier argument where he advocated the introduction of an elected upper chamber as a check on the elective dictatorship in his Dimpleby Lecture and his book. These two perspectives on the impact of the 1999 House of Lords Act highlight a difference in what kind of role the scholars envision the upper chamber to have. Bogdanor who seems rather content with the function the House of Lords performs today and Johnson who wants the role of the second chamber extended somewhat.

Simon Heffer, a historian and journalist, wrote an article in the Telegraph in 2006, where he discussed some remarks made by Charlie Falconer, the Lord Chancellor at the time. The Lord Chancellor stated that the role of the House of Lords should only be to give amendments to legislation, send it back to the Commons so they could consider them, and then let it pass. This development, Heffer argued would essentially mean that the House of Commons could impose any legislation it wanted without worrying about the upper chamber’s protests which would mean that the elective dictatorship was facilitated. Although the power of the Lords had been restricted through the 1911 Parliament Act, the upper chamber still had some veto left, further restricting this veto would be “a revenge on everyone who, for a variety of noble reasons, holds out against the concept of elective dictatorship”.<sup>372</sup> Furthermore, Heffer expressed concern about the Legislative and Regulatory Reform Bill

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<sup>369</sup> Johnson *Reshaping the British Constitution* (2004). 214

<sup>370</sup> The National Archive “Royal Commission on Reform of the House of Lords”. 2008 & Johnson, *Reshaping the British Constitution* (2004) 214

<sup>371</sup> Johnson, *Reshaping the British Constitution* 2004. 215-216

<sup>372</sup> Heffer “We’re teetering on the brink of an elective dictatorship”. *The Telegraph*. 05.04.2006.



which would strengthen ministers ability to enact, amend and repeal legislation without going through Parliament which is why he advocated for the need of a strong second chamber.<sup>373</sup>

While the commentators seemed to agree on the need for a second chamber to check the Commons and the executive, they were not in agreement on the effects of New Labour's reform of the Lords. Johnson argued that more had to be done in terms of House of Lords reform if the upper chamber were to function as a check on the executive. Bogdanor however, argued that the House of Lords Act of 1999 had increased the legitimacy of the Lords to such an extent that it could function as a check on the executive, thereby hindering the elective dictatorship. The importance of checks on the executive discussed in relation to the judiciary branch, will be the topic in the next section.

### The Bill of Rights and the Judiciary

Prior to the implementation of the Human Rights Act there were differing opinions of whether the Labour government would implement a Bill that could strengthen the role of the judiciary, and if so the consequences of the implementation of such a Bill. Bogdanor argued that because judges lost "confidence in Parliament's ability to control the executive" judicial review increased towards the last quarter of the twentieth century.<sup>374</sup> He presented this argument in a book he was editor of, *The British Constitution in the Twentieth Century* (2003). He also authored some of the chapters as well. Furthermore, he argued that due to the polarization of the political system during Thatcher's premiership and the decline of the civil service, the judiciary seemed to be the only political institution that remained non-partisan. During Thatcher's premiership, the Labour Party came to appreciate Hailsham's description of the political system as an elective dictatorship. Moreover, since Britain had become multinational and multicultural, there were need for a new statement on human rights. With more institutions such as the Judicial Committee of the Privy Council getting more constitutional functions, the hostility the Labour Party traditionally had towards the judiciary decreased. In 1998, they passed the Human Rights Act, which according to Bogdanor strengthened the judiciary.<sup>375</sup>

Robert Alexander argued in an article in the journal, the *New Statesman*, that constitutional reform was needed and especially focused on the implementation of a bill of rights. This was needed because power in Britain was centralized, government involvement

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<sup>373</sup> Heffer "We're teetering on the brink of an elective dictatorship". *The Telegraph*. 05.04.2006

<sup>374</sup> Bogdanor and The British Academy, *The British Constitution in the Twentieth Century*. (Oxford: Oxford University Press, 2003) 717

<sup>375</sup> Bogdanor and The British Academy, *The British Constitution in the Twentieth Century*. (2003), 717-718

“into all aspects” of society was extensive, and citizen participation was low.<sup>376</sup> Alexander stated that “as Lord Hailsham said some 20 years ago, we live in an ‘elective dictatorship’”.<sup>377</sup> Furthermore, he argued that voter influence was somewhat insignificant since an election only takes place every five years which is the only time the population participates in the British political system. This however is a standard for representative democracies. Alexander argued that with a majority in Parliament, sometimes with less than 50 per cent of the vote, the executive, not Parliament, is supreme. Constitutional reforms such as the use of referenda, electoral reform, House of Lords reform and increasing the role of local government was the remedy for such a trend and to ensure more citizen involvement in government. The most important reform, however, is a bill of rights that not only protect against the executive’s actions but also against legislation that was not in accordance with this bill of rights. This responsibility would be performed by the judiciary. Additionally, Alexander argued for a charter of basic human rights in order to make sure that an “alienated underclass” is not created.<sup>378</sup> This was especially important since the Labour Party, which had been an advocate for the disadvantaged and poor, now had moved towards the center.<sup>379</sup>

In 1997, an article in the Leaders section of *The Economist* expressed concern that the incorporation of the European Convention of Human Rights through the anticipated Human Rights Act would not be done properly. This because there would be no attempt at “infringing the sovereignty of Parliament in any way”.<sup>380</sup> The judiciary would only be able assess British laws to make sure they are in accordance with the Bill of Rights and would only be able to ask Parliament to reconsider laws that did not comply with the convention. In opposition Labour’s attitude was rather different when the party argued for incorporation of the Convention following Canada’s example who increased the power of its Supreme Court significantly. The authors argued that Labour ministers “will argue that giving British judges the same powers as those in Canada violates Britain’s constitutional tradition”, parliamentary sovereignty, being a fundamental principle of that tradition.<sup>381</sup> According to the authors this principle was outdated arguing that it is surprising that this principle is so important to a government that want to modernize the British constitution. Furthermore, they argued that the objective of constitutional reform “is to disperse power and introduce checks and balances into Britain’s

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<sup>376</sup> Alexander. “In Trust for the People” *New Statesman* (1997) 34.

<sup>377</sup> Alexander. “In Trust for the People” (1997), 34.

<sup>378</sup> Alexander. “In Trust for the People” (1997), 34.

<sup>379</sup> Alexander. “In Trust for the People” (1997), 34.

<sup>380</sup> The Economist “Fudging British Rights”. 10.23.1997

<sup>381</sup> The Economist “Fudging British Rights”. 10.23.1997

highly centralised ‘elective dictatorship’<sup>382</sup>. If this is the case, and conflict between the legislative and judicial branch is to be avoided, it is argued that the convention should not be incorporated.<sup>383</sup>

Most of the contributors discussed in this section agree that strengthening of the judiciary would be an important check on the executive and a protection against the elective dictatorship. In his Dimpleby Lecture and his book, Hailsham advocated the introduction of such a Bill. The two articles, one from the *New Statesman*, the other from *The Economist*, were however not in agreement of the consequences of the incorporation of a Bill of Rights with *The Economist* providing a rather grim perspective.

### The two-party system and electoral reform

This subchapter will examine the elective dictatorship in relation to the electoral system which has been briefly discussed in the previous section. Since the electoral system facilitates the two-party system these two systems are discussed in this section, with some arguing for electoral reform as a protection against the elective dictatorship while others are not certain reform will create the proportionality which often is one of the arguments for electoral reform. The adversary party politics theory was also discussed by Dearlove and Saunders in the third edition of the book *Introduction to British Politics* in 2000. They analyzed the arguments put forth by supporters of the adversary party politics theory, just like they did in their book from 1984. Their discussion of the arguments by supporter of the adversary party politics thesis as presented in their book from 1984 was discussed in chapter 3 of this thesis.

At its core the presentation of this theory is the same with only minor differences. They argued that politicians, journalists and political scientists lost faith in the two-party system expressing concern that the two-party system had become adversarial. In election campaign, the parties compete for votes based on party manifestoes that present polarized policies since they are drawn up by ideological extremists within the party. The party that wins the election therefore forms a single party government having a mandate to implement the legislation. Dearlove and Saunders argued that those ascribing to the adversary party politics thesis saw this government as an “unrepresentative ‘elective dictatorship’<sup>384</sup>. Furthermore, since manifestoes were written extremists implemented this would be a reversal of the previous government’s policies. Since the objective of a government is to win the next

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<sup>382</sup> The Economist “Fudging British Rights”. 10.23.1997

<sup>383</sup> The Economist “Fudging British Rights”. 10.23.1997

<sup>384</sup> Dearlove & Saunders, *Introduction to British Politics*. (2000), 78-79

election, it is argued that governments will manage the economy by creating a boom in the economy to secure electoral support. This will therefore disrupt the long-term economic strategy and the “political business cycle”.<sup>385</sup> Supporters of the adversary party politics theory also expressed concern about single-party governments which they argued was “hugely powerful elective dictatorships” because there was no check on their power. This because the majority in the Commons is controlled by the government and the opposition is therefore unable to effectively check the executive. Part of this argument is somewhat consistent with Hailsham’s argument about the elective dictatorship as presented in his Dimbleby Lecture and his book. This because he presented similar concerns as the supporters of the adversary party politics theory in his discussion of the doctrine of mandate and manifesto. Hailsham’s concern was that a government represented by less than 50 percent of the electorate, due to the electoral system, began to regard itself entitled and therefore wanted to implement legislation that the majority might not support.<sup>386</sup> Hailsham did however not advocate electoral reform for the House of Commons, which the supporters of the adversary party politics thesis did.

In their edition from 2000, Dearlove and Saunders presented the different reforms put forth by the supporters of adversary party politics theory. This was not included in their first edition of the book in 1984. Electoral reform for general elections with the aim of securing third parties’ fairer representation, consensus through coalitions and policy continuity were the first reform presented. Other reforms included a written constitution, limiting the executive’s power through a more independent House of Commons and “a revitalized Lords” functioning as checks and balances on executive power.<sup>387</sup> The third reform critics of the two-party system advocated the introduction of was to increase the power of The Bank of England to determine economic policy as well as making it independent from the government. Dearlove and Saunders also discussed the validity of this theory, just like they did in their book from 1984. The focus of this analysis was U-turns in economic policy resulting from adversary politics, the political business cycle and politics and voting. Dearlove and Saunders used a study by Gamble and Walkland about the economic policy reversals in their analysis. This study found that there was no evidence of government controlling the economy in order to secure a win, in fact “the inability of governments to manage the economy was more evident than their success”.<sup>388</sup> Furthermore, it was argued that there was no evidence of

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<sup>385</sup> Dearlove & Saunders, *Introduction to British Politics*. (2000), 79

<sup>386</sup> Hailsham of St. Marylebone, *The Dilemma of Democracy*. (1978), 129

<sup>387</sup> Dearlove & Saunders, *Introduction to British Politics*. (2000), 80

<sup>388</sup> Dearlove, & Saunders, *Introduction to British Politics*. (2000), 81

government controlling the economy in order to secure a win, in fact “the inability of governments to manage the economy was more evident than their success”.<sup>389</sup> Dearlove and Saunders also argued that the economy might not have so much to do with how the electorate votes using the Conservatives as an example. The Conservatives won the election in 1983 while 3 million were unemployed while in 1997, the economy was going well but this did not get the conservatives reelected.<sup>390</sup> Based on this it could be argued that while the adversary party politics theory expressed some valid concerns about single-party governments whose power is not limited, other aspects of this theory is not valid. A similar point of view was also presented by Bogdanor in his book from 2003 who reached the same conclusion as Dearlove and Saunders arguing that evidence from the 1970s showed that the theory could not be sustained.<sup>391</sup>

In a speech to the Liberal Democrats in 1998 transcribed in the *New Statesman*, Des Wilson a former party member discussed the Liberal Democrats’ relationship to the Labour Party. He stated that it would not be beneficial for the Liberal Democrats to “cosy up to Labour” because it would “render you impotent”.<sup>392</sup> Furthermore he argued that doing so, by for instance not contesting Labour in winnable seats in an election which would keep the Conservatives out of power, would deprive the electorate from a choice between different parties, arguing that “We’ll be living in a one-party state, ruled by what your leader this week called ‘the dominant governing movement’. Thus your party, for so many years the only consistent voice for democracy, will help to entrench elective dictatorship”.<sup>393</sup> This lack of choice for the electorate would also create difficulties with holding the government to account, according to Wilson, because there would be no viable alternative. Wilson argued that although New Labour was different advocating change of the system in terms of constitutional reform and electoral reform, it could also be corrupted by power as easily as any other party. He therefore argued that the Liberal Democrats had a choice to make between being independent and champions of democracy or follow the leadership of the Liberal Democrats and cosy up to Labour.<sup>394</sup> Wilson’s argument is rather different compared to the

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<sup>389</sup> Dearlove & Saunders, *Introduction to British Politics*. (2000), 81

<sup>390</sup> Dearlove & Saunders, *Introduction to British Politics*. (2000), 81

<sup>391</sup> Bogdanor and The British Academy, *The British Constitution in the Twentieth Century*. (2003) 701

<sup>392</sup> Wilson. “The Only People Who Stand to Gain from the Lib Dem’s Cosying up to Labour Are the Ones Getting Comfortable round the Cabinet Table.” *New Statesman* (1998), 37

<sup>393</sup> Wilson. “The Only People Who Stand to Gain from the Lib Dem’s Cosying up to Labour Are the Ones Getting Comfortable round the Cabinet Table.” (1998): 37.

<sup>394</sup> Wilson. “The Only People Who Stand to Gain from the Lib Dem’s Cosying up to Labour Are the Ones Getting Comfortable round the Cabinet Table.” (1998): 37.

other arguments presented in this section. This because rather than advocating the introduction of electoral reform, he argued that the Liberal Democrats should a distinct third alternative in elections operated on an electoral system that favors the two main parties. It is, however, worth noting that there has been a decline in support for the two main parties, there have been an increase in the number of MPs from third parties.<sup>395</sup>

R.J. Johnston, a professor in geography at the University of Bristol, discussed the case for electoral reform in Britain in a journal article from 1998.<sup>396</sup> His discussion was on a measure of fairness, “fairness to political parties”.<sup>397</sup> Fairness in his view, meant that a party’s support in the electorate should be proportional to its representation in a legislative assembly. He argued that in much of the debate and the literature about electoral reform it is assumed that a change from first-past-the-post to proportional representation (PR) would ensure a fairer outcome for both individuals and parties. This because under PR-systems the percentage of the vote will be proportional to representation in an assembly. Another assumption in the debate about electoral reform was that changing to a PR-system will lead to proportional power which means that the influence a party has in an assembly is proportional to its support in the electorate. Johnston operated with two different forms of fairness to political parties, “fairness of voice” and “fairness of power”.<sup>398</sup> Fairness of voice means that a party’s representation in Parliament is equivalent to its strength in the electorate. Fairness of power however has to do with making sure that a party’s ability to influence legislation is equal to the same strength that a party has among the electorate, which is termed proportional power.<sup>399</sup> Johnston argued that changing the electoral system to an PR- system almost never would give proportional power.<sup>400</sup> As a measurement for this kind of fairness “the concept of a *minimal winning coalition*” was used.<sup>401</sup> A minimal winning coalition is “a set of parties whose combined seats in the assembly are both necessary to and sufficient for a majority of the votes cast there”, meaning in the assembly.<sup>402</sup> Since each party making up a minimal winning coalition is necessary for the coalition to work, their power is also equal. In such a scenario the distribution of power is not only dependent upon the representation a party has in an assembly, but it is also dependent on the “number of minimal winning coalitions of which

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<sup>395</sup> Vernon Bogdanor. *The New British Constitution*. North America: Hart Publishing, 2009, 36

<sup>396</sup> Johnston “Proportional Representation and a ‘fair Electoral System’ for the United Kingdom” (1998): 128.

<sup>397</sup> Johnston “Proportional Representation”. (1998):129

<sup>398</sup> Johnston “Proportional Representation”. (1998):129

<sup>399</sup> Johnston “Proportional Representation”. (1998):130

<sup>400</sup> Johnston “Proportional Representation”. (1998):131

<sup>401</sup> Johnston “Proportional Representation”. (1998):131

<sup>402</sup> Johnston “Proportional Representation” (1998):131

it is a member. If the two are not equivalent, then a party may be more or less powerful than its share of the vote implies”, assuming that an PR-system will generate proportional power.<sup>403</sup>

Johnston illustrated this by mathematical calculation of the relative power parties would have in a minimal winning coalition scenario under an RP-system. Both a hypothetical assembly as well as the British Parliament was used as examples. Multiple different scenarios with multiple parties all represented proportionally in the assembly according to their share of the vote were presented. In these different scenarios where the support the smaller parties had in the electorate varied, with the larger parties support relatively stable Johnston found that there is no general trend in the relative power different parties will get under PR-system.<sup>404</sup> Johnston argued that if electoral reform is discussed in isolation the better alternative might be to stick with FPTP since it is more predictable. If, however it is considered as a part of constitutional reform, this might not be the case. He argued that proponents of electoral reform put forth the argument that PR “would resolve one of the major problems that they identify with the British constitution and form of government – its unrepresentative ‘elected dictatorship’”.<sup>405</sup> Johnston however argued that it would only provide fairness for parties in terms of fairness of voice because the relative power of each party, especially the smaller parties would vary. However, at the same time, he argued that a change of electoral system from a first-past-the-post system to a proportional representation system might give more parties the opportunity to participate in government.<sup>406</sup> The argument presented in Johnston’s article, that proportionality will solve the elective dictatorship problem put forth by proponents for electoral reform is inconsistent with Hailsham’s argument as presented in his Dimpleby Lecture and book. This because while Hailsham acknowledge that the electoral system can generate results that are disproportionate, he does not consider a remedy for the elective dictatorship to be electoral reform. As we have seen in chapter 3, where electoral reform was also advocated as a remedy for the elective dictatorship, this indicates that the elective dictatorship has evolved from Hailsham’s earlier argument from the late 1970s.

In this section, the two-party system and the electoral system is discussed because the two are linked. While supporters of the adversary party politics theory advocated many reforms including electoral reform, ensuring third parties’ fairer representation, Johnston was

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<sup>403</sup> Johnston “Proportional Representation.” (1998):131

<sup>404</sup> Johnston “Proportional Representation.” (1998):132-137, 139-140.

<sup>405</sup> Johnston “Proportional Representation” (1998):143

<sup>406</sup> Johnston “Proportional Representation” (1998):145

more cautious in his conclusions. Although he was not convinced that fairness of power would be realized with proportional representation, he argued that if seen as a way of limiting the elective dictatorship, it might do something to it, because third parties would at least be represented. It is important to note that while Hailsham did advocate an elected upper chamber, he did not advocate reform of election to the House of Commons. While each sub-chapter so far has discussed some of the different components within the British political system, the next section will discuss how some contributors has discussed the elective dictatorship in relation to constitutional reform in general.

### Constitutional reform and the elective dictatorship

Anthony King, a political science expert who wrote extensively on the trends that had shaped Parliament, discussed the elective dictatorship in the context of the debate about constitutional reform that had emerged “between the mid 1960 and the late 1980s”.<sup>407</sup> He discussed the two different approaches towards constitutional reform, the “holistic” approach and the “particular” approach.<sup>408</sup> The holistic approach to constitutional reform entailed a complete overhaul of the British constitution. Changing the constitution would entail replacing what they considered to a constitution that centralized power or a “power-hoarding constitution”, as King described it, with a power-sharing constitution.<sup>409</sup> These reformers were concerned with the powers of the central government and its ability to implement speedy legislation, limit the power of the judiciary and ignore established conventions. “Critics of the existing system sometimes claimed” that such a system “amounted to ‘an elective dictatorship’”.<sup>410</sup> Although, King argued that this term was exaggerated, it was not an absurd claim because governments in the 1970s and 1980s, both Conservative and Labour, had been tempted “and sometimes succumbed to the temptation” to grant greater powers to the government, while simultaneously limiting the power of other institutions.<sup>411</sup> Granting wider “discretionary powers” to ministers and limiting the power the courts have to “challenge minister’s and officials’ decisions” are examples of such legislation.<sup>412</sup>

In his discussion of the elective dictatorship, King referred to Hailsham and the distinctions between the theory of limited government and the elective dictatorship quoting

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<sup>407</sup> BBC “Political expert Professor Anthony King dies aged 82” 01.12.2017 Anthony King, *The British Constitution* (New York: Oxford University Press, 2007), 80

<sup>408</sup> King, *The British Constitution* (2007), 80

<sup>409</sup> King, *The British Constitution* (2007), 81

<sup>410</sup> King, *The British Constitution* (2007), 81

<sup>411</sup> King, *The British Constitution* (2007), 81

<sup>412</sup> King, *The British Constitution* (2007). 81



directly from *The Dilemma of Democracy*. Hailsham argued that the elective dictatorship occurred when the government asserted its will with only a bare majority in House of Commons without regarding what the will of the people might be. The alternative to the elective dictatorship was limited government in which the authority of the government's was limited so that it "may not make laws which affront the instructed conscience of the commonality".<sup>413</sup> This distinction made by Hailsham is important because "the instructed conscience of the commonality" may be a reference to Parliament that represent the public and their will. The holistic solution Hailsham advocated the introduction of, a written constitution which include a bill of rights, could therefore put constitutional limits on the authority of the government and increase the role and power of both chambers of Parliament. Other reforms included in this approach was devolution and an elected upper chamber.<sup>414</sup> King argued that other reformers drew similar conclusions as Hailsham, among them Lord Scarman who addressed the importance of separation of power. A system with no separation of power and an executive that dominates the legislative branch, and these dominate the judiciary, the system could be described as an elective dictatorship. Lord Scarman too argued for a written constitution.<sup>415</sup> Furthermore, King argued that the Institute for Public Policy Research, a left-leaning institute published a proposal for a British constitution on premises similar to that of Lord Scarman and Lord Hailsham. It also included a proposal for electoral reform.<sup>416</sup> King also made references to Tony Blair and the reforms foreshadowed in the election manifesto, but not in the discussion of the elective dictatorship.

Constitutional reform had support from various groups: lawyers, journalists, academics and politicians who were mostly center-left. Even so, King argued that holistic reform of the constitution was an unrealistic achievement for a variety of reasons. One important reason was that the elective dictatorship did not materialized because politics became less adversarial, the Labour party moved towards the center under the leadership of Neil Kinnock and John Smith. The Conservatives removed Thatcher, who often had appeared dictatorial, from the leadership with backbenchers largely responsible for her downfall.<sup>417</sup> It was argued that while governments were still formed by the "largest minority party, [...] it

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<sup>413</sup> King, *The British Constitution* (2007), 82 Hailsham of St. Marylebone, *The Dilemma of Democracy*. 1978, 9-10, 11

<sup>414</sup> King, *The British Constitution* (2007), 81

<sup>415</sup> King, *The British Constitution* (2007), 83

<sup>416</sup> King, *The British Constitution* (2007), 84

<sup>417</sup> King, *The British Constitution* (2007), 86-87

was no longer bound to be the same minority party”.<sup>418</sup> In other words, there were more alteration of power. Governments had also become more effective such as the 18 years of Conservative government whose policies had remained stable had begun to yield results. This also raised questions about what was really needed might not be new institutions but new policies that could create stability. Moreover, it was argued that since no elective dictatorship emerged and there was no breakdown of the system, Hailsham’s predictions were wrong. In Hailsham’s book *On the Constitution* from 1992, he did not recount his former statements on the constitution. He just presented a new perspective in which he praised Britain’s unwritten constitution according to King.<sup>419</sup> The other reasons were that critics of the current system were not able to persuade many people, including those with influence of the need for a new constitution. Furthermore, King argued that since the British constitution is a result of evolution, he did not specify what this entailed, there were few who had the experience with “devising constitutions” which meant that politicians did not have a large reference frame for the changes holistic reformers wanted to implement.<sup>420</sup> Additionally, King argued that the reformers failed at building a “coalition for wholesale constitutional reform”.<sup>421</sup> This meant that reformers did not combine the different suggestions for reform such as devolution, electoral reform and human rights act as a package and pressured for such a change.<sup>422</sup>

Donley Studlar wrote about the elective dictatorship when discussing New Labour’s commitment to constitutional reform in a journal article from the *Harvard International Review*. He explained how the Labour Party had traditionally shown little interest in constitutional reform once in government. Furthermore, he argued that the Labour Party, similarly to the Conservatives, “embraced the almost untrammelled formal power that the ‘elective dictatorship’ of British parliamentary government provided for single-party majority in the House of Commons”.<sup>423</sup> What separates Studlar’s discussion of the elective dictatorship compared to other scholars in this section is that he presented the elective dictatorship as a current “condition” of the political system, whereas other contributors have discussed the elective dictatorship in a historical perspective of the debate about that occurred in the 1970s. The implementation of the different reforms the Labour party advocated for were discussed such as devolution and the elected mayor to London. It was argued that these were

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<sup>418</sup> King, *The British Constitution* (2007), 86

<sup>419</sup> King, *The British Constitution* (2007), 88

<sup>420</sup> King, *The British Constitution* (2007), 88

<sup>421</sup> King, *The British Constitution* (2007), 89

<sup>422</sup> King, *The British Constitution* (2007), 89

<sup>423</sup> Studlar. “Unwritten Rules: Britain's Constitutional Revolution.” (1999), 49

implemented with support from the population. House of Lords reform and the Human Rights Act was also discussed briefly. Furthermore, Studlar presented different perspectives on Labour's constitutional program, some describing it as social liberalism, a position the American analyst on Britain Samuel H. Beer took, arguing that "social and constitutional reform under Blair is a substitute for a more traditional Labour program".<sup>424</sup> Philip Norton, took a rather different position arguing that while the reforms were "radical in concept" the effects would be moderate.<sup>425</sup> Johnson made a similar point arguing that because of Blair's large majority in 1997 "constitutional reform has strengthened the practices of 'mandated majority government or as some prefer to call it, 'elective dictatorship'".<sup>426</sup> This because the government worked through the established institutions of the customary constitution to secure "maximum discretion" in their political pursuits.<sup>427</sup> Johnson's argument is rather different compared to Hailsham who argued in his book that it was in fact working through the existing institutions that constitutional reform limiting the executive was possible.

The scholars discussed in this section have taken different approaches to the discussion of constitutional reform in relation to the elective dictatorship. King used a historical approach where constitutional reform was presented as a remedy for the elective dictatorship. Studlar and Johnson discussed constitutional reform in relation to New Labour and believed the elective dictatorship was a condition of the system. Although some scholars have used the elective dictatorship as description of the elective dictatorship, Hailsham's argument was not as King also pointed out, a proven fact. The next section will discuss Bogdanor's argument that the term elective dictatorship is outdated.

No elective dictatorship after all?

In his book from 2009, Bogdanor presented his own perspectives on the debate about the elective dictatorship. He argued that the description of the British government as an elective dictatorship was "no longer appropriate" due to the reforms within the Political system.<sup>428</sup> According to Bogdanor separation of power between the executive, legislative and the judiciary had been strengthened by legislation such as the Human Rights Act of 1998 and the House of Lords Act of 1999. The consequence of the 1999 House of Lords Act was for instance that the House of Lords became more assertive. Although his focus was on current

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<sup>424</sup> Studlar. "Unwritten Rules: Britain's Constitutional Revolution." (1999), 52.

<sup>425</sup> Studlar. "Unwritten Rules: Britain's Constitutional Revolution." (1999) 52.

<sup>426</sup> Johnson, *Reshaping the British Constitution* (2004) 309

<sup>427</sup> Johnson, *Reshaping the British Constitution* (2004) 309

<sup>428</sup> Bogdanor. *The New British Constitution*. (2009), 288

reforms, he argued that when Hailsham made his remarks about the elective dictatorship, this description of the political system was becoming outdated. This because in the 1970s, judges became more assertive and MPs were more willing to vote against party lines.<sup>429</sup> Furthermore, Bogdanor argued that the dispersal of power sideways to the judiciary and the peers, and downwards to the devolved assemblies increased the ability of the different institutions to control the power of the executive. This was important according to Bogdanor who argued that the increase in constitutional control ensured that “twenty-first century Britain is much less of an elective dictatorship than it was in the 1970s when Lord Hailsham first produced his famous characterization”.<sup>430</sup> This was therefore a reinforcement of his argument that the term elective dictatorship was an inadequate description of British government.

### Conclusion

Arguments about the elective dictatorship have largely revolved around the same themes during Blair’s premierships as was discussed in chapter 3, such as parliamentary sovereignty, the Bill of Rights, the House of Lords and electoral reform. Furthermore, Blair’s leadership style has also been discussed with focus on his unilateral decision making and apparent disregard of established conventions as examples of why some scholars defined his leadership style to be dictatorial. Electoral reform for the House of Commons as a remedy for the elective dictatorship was also discussed, which was not part of Hailsham prescription for the elective dictatorship. This indicates that scholars are more willing to take use of Hailsham’s argument to present their own solutions. Whether this trend continues into Theresa May and Boris Johnson’s Premierships in the aftermath of the Brexit will be the discussion of the next chapter.

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<sup>429</sup> Bogdanor. *The New British Constitution*. (2009), 288

<sup>430</sup> Bogdanor. *The New British Constitution*. (2009), 297

## Chapter 5: Theresa May (2016-2019) and Boris Johnson (2019-) – the turbulence of Brexit

Since the referendum on EU membership on June 23, 2016, the Premierships of Theresa May and Boris Johnson, have been characterized so far by Brexit, although 2020 have been the exception due to the Covid-19 pandemic.<sup>431</sup> The process of withdrawing Britain from the EU, became May's task as she took the reins of government succeeding David Cameron as Prime Minister, who stepped down due the outcome of the referendum.<sup>432</sup> In May 2019, Theresa May stepped down as Prime Minister because she was unable to get support for a Brexit deal. In July the same year Boris Johnson took over as Prime Minister. Although encountering his own set of challenges, following a snap election on December 12 which resulted in a majority of 81, he was able to secure support for his withdrawal agreement on December 20<sup>th</sup>.<sup>433</sup> Throughout this process, and because of the focus on the government's handling of Brexit, the elective dictatorship has been an important part of this discussion, with some arguing that the danger of the elective dictatorship endures, while others argue that institutions such as the House of Lords has functioned as check upon the executive in this particular context.<sup>434</sup> The elective dictatorship has been discussed in both academic literature as well as in newspapers and the media. Brexit has thus formed a new element in the long-standing debate on the elective dictatorship, alongside the now familiar themes of, for example, parliamentary sovereignty and the electoral system. The aim of this chapter is to demonstrate that the debate about the elective dictatorship has increasingly become more concerned with the politics of the day, compared to other premierships discussed in this thesis. Furthermore, as Brexit not only involves Britain, but also the EU, this chapter argues that the discussion of the elective dictatorship has become increasingly international too. The following subchapters will discuss parliamentary sovereignty, executive dominance and Parliament, the doctrine of mandate and manifesto and electoral reform.

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<sup>431</sup> BBC. "EU Referendum: Results" (June 2016).

<sup>432</sup> BBC "EU Referendum: Brexit: David Cameron to quit after EU votes to leave EU" (06.24.2016)

<sup>433</sup> Audickas, Cracknell & Loft "BRIEFING PAPER Number CBP7529, UK Election Statistics: 1918-2019: A Century of Elections". House of Commons Library (02.27.2020) 10, & BBC "Bexit: MPs back Boris Johnson's plan to Leave the EU on January 31". (12.20.2019).

<sup>434</sup> Eaton. "Boris Johnson's law-breaking will make him dangerous appealing to many voters". *New Statesman*. (09.24.2019) & Smith. "Fighting to 'Take Back Control': The House of Lords and Brexit". In *Brexit and Democracy: The Role of Parliaments in the UK and the European Union*. European Administrative Governance. Ed. Christiansen, and Fromage. (Basingstoke, Hampshire: Palgrave Macmillan, 2019) 90

## Parliamentary sovereignty and the elective dictatorship

One of the recurring arguments in the debate about the elective dictatorship is parliamentary sovereignty. Since 2016, scholars have discussed this with relation to Brexit and the EU too. Susanne K. Schmidt, a professor at the University of Bremen, discussed the difference between the British and the EU-system of government. Schmidt argued that the British parliamentary system differs from the EU-institutions in terms of its electoral system, the two-party system, the principle of parliamentary sovereignty and common law, referring to the book *Patterns of democracy. Government forms and performance in thirty-six countries* by Arend Lijphart, a Dutch political scientist.<sup>435</sup> According to Schmidt parliamentary sovereignty creates a mismatch between the British system and the system of governance in EU-institutions. She argued that parliamentary sovereignty works “in tandem with the unfettered prerogative of the executive, also termed ‘elective dictatorship’”, linking the term to Lijphart’s work.<sup>436</sup> Her main argument was that this mismatch led to the polarization of opinions on membership in the EU. Understanding this mismatch was therefore central in understanding the Brexit process.<sup>437</sup> The consequence of parliamentary sovereignty is that Parliament is free to legislate without British courts challenging its decisions.<sup>438</sup> In comparison, the EU system is based on “integration through law”.<sup>439</sup> Policy making in the EU takes place through the judiciary, namely the European Court of Justice (ECJ). This means that the rules of the different treaties are considered quasi-constitutional, consequently giving the ECJ “unique power in the EU’s political process”.<sup>440</sup> One of the consequences of such constitutionalizing of the treaty is “over-constitutionalization” a term coined by a former constitutional judge from Germany, Dieter Grimm. He warned that this would reduce the “scope of majoritarian decision making” which the British system is based on.<sup>441</sup> This mismatch in decision making between Britain’s parliamentary sovereignty and EU’s over-constitutionalization meant that joining the EU put limitations on parliamentary sovereignty, because of the supremacy of EU legislation. This however also applies to other EU-members and could be as difficult for them as for Britain. German “Basic Law”, only amendable by two-thirds majority in both of the two houses of parliament, could for instance come in

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<sup>435</sup> Schmidt. “No Match Made in Heaven. Parliamentary Sovereignty, EU Over-constitutionalization and Brexit.” *Journal of European Public Policy: Special Issue: The Brexit Policy Fiasco*. Ed. Richardson and Rittberger (2020): 779, 793

<sup>436</sup> Schmidt. “No Match Made in Heaven”. (2020): 782.

<sup>437</sup> Schmidt. “No Match Made in Heaven”. (2020): 779, 780.

<sup>438</sup> Schmidt. “No Match Made in Heaven”. (2020), 782.

<sup>439</sup> Schmidt. “No Match Made in Heaven”. (2020), 780.

<sup>440</sup> Schmidt. “No Match Made in Heaven”. (2020), 781.

<sup>441</sup> Schmidt. “No Match Made in Heaven”. (2020), 782.

conflict with EU-legislation.<sup>442</sup> Furthermore, Britain's decision to join the EU bound future parliaments, which is why membership in the EU does not go well with the doctrine of sovereignty of Parliament according to Schmidt.<sup>443</sup>

While Schmidt compared two systems of government, George Eaton, a senior online editor of the *New Statesman*, argued in an article that Britain was vulnerable to authoritarianism. Even though there had been improvements to the system since Hailsham warned of the elective dictatorship such as the Human Rights Act of 1998 and devolution, the risk of the elective dictatorship endured due to what he called the unwritten constitution, a less commonly used phrase for an un-codified constitution, centralized system and the electoral system. Furthermore, he argued that the "Brexit vote merely heightened the risk".<sup>444</sup> He made the argument that while Eurosceptics had praised the unwritten constitution, with its sovereign Parliament, neutral civil service and independent judiciary, the use of referenda had created "an alternative centre of power" namely the people. Therefore, institutions are responsible to the people, not the constitution.<sup>445</sup> Consequently, Eaton argued that the Commons is no longer respected and questioned how sovereign it really was stating that the judiciary had to intervene to secure Parliament a vote on the Act triggering Article 50. In a process where a segment of the population is guaranteed to be disappointed, most likely those who voted remain, a "demagogic Prime Minister" with a large majority, will have much power, he argued.<sup>446</sup>

Edward Lucas, a journalist and a Senior Fellow at the Centre for European Policy Analysis, was however, more optimistic than Eaton, arguing that sovereignty had returned to Parliament following the government losing its majority in September 2019.<sup>447</sup> His article was written in the midst of a turbulent fall, with Conservative MPs defecting and the Supreme Court declaring Johnson's attempt at proroguing Parliament unlawful.<sup>448</sup> This occurred at a time in British politics where polarization increased and critiques of the breakdown of the system surfaced. Lucas contrasted this with the previous complaints of the political system which characterized it as an elective dictatorship with the Prime Minister acting more like a

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<sup>442</sup> Deutschland.de "Let us explain Germany's most important book". (04.17.2019).

<sup>443</sup> Schmidt. "No Match Made in Heaven". (2020), 782.

<sup>444</sup> Eaton, "British democracy is dangerously vulnerable to tyranny". *New Statesman*. (08.08.2018).

<sup>445</sup> Eaton, "British democracy is dangerously vulnerable to tyranny". (08.08.2018).

<sup>446</sup> Eaton, "British democracy is dangerously vulnerable to tyranny". (08.08.2018)

<sup>447</sup> CEPA "Edward Lucas Senior Fellow" Accessed on 06.02.2020. & Lucas, "Brexit quandary has energised our politics". *The Times*, (10.28.2019)

<sup>448</sup> BBC "Brexit: Boris Johnson faces showdown in Parliament" (09.03.2019) & BBC "Supreme Court: Suspending Parliament was unlawful, judges rule" (09.24.2019)

president with a stable majority. As that majority vanished, he argued that MPs “are where they should be – at the heart of decision-making”.<sup>449</sup> Furthermore, he argued that the political system is supposed to work with a sovereign Parliament that make the final decision and praised the MPs for their work. Towards the end of his article Lucas asks the reader the following hypothetical question “But do we really want a system where decisions are made quietly and implemented obediently? There is a name for that, and it is not democracy”.<sup>450</sup> Based on this it is plausible to argue that Lucas is of the opinion that Britain is not an elective dictatorship.

Both Schmidt and Lucas presented rather different arguments. Schmidt argued that joining the EU challenged the parliamentary sovereignty which she argued worked together with the prerogative of the executive, also called the elective dictatorship. It could therefore be argued that she is of the opinion that the Brexit process highlighted the difference between the central EU-system of government and the British system where the elective dictatorship operates. Lucas however argued that through the Brexit process, especially the fall of 2019, had shown that Britain was in fact not an elective dictatorship. Therefore, it is not easy to say that if Brexit “proves” or “disproves the theory of an elective dictatorship. Eaton also briefly discussed the dominance of the executive over Parliament in relation to parliamentary sovereignty. This dominance will be discussed more in depth in the section below.

#### Arguments about executive dominance and Parliament

Arguments about the elective dictatorship relating to the relationship between government and parliament has been discussed separate of parliamentary sovereignty, although these two themes are somewhat related. This section will discuss and examine the contrasting views on what is at the heart of the elective dictatorship which also leads to different conclusions on Parliament’s ability to scrutinize the executive. This discussion has its starting point on two different perspectives on the relationship between the executive and legislative branch.

According to Nick Howard, a former lecturer in Constitutional Law at the University of South Wales, the two are contrasting views.<sup>451</sup> Bagehot, as a representative for the “old” perspective, Howard argues, considered the “overlap between Parliament and government as an ‘efficient secret’”, using Bagehot’s phrase, and Hailsham who considered this near fusion as an elective dictatorship, referring to Lord Hailsham’s Dimpleby Lecture.<sup>452</sup> Walter Bagehot (1826–1877)

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<sup>449</sup> Lucas, “Brexit quandary has energised our politics”. (10.28.2019)

<sup>450</sup> Lucas, “Brexit quandary has energised our politics”. (10.28.2019)

<sup>451</sup> Howard. *Beginning Constitutional Law*. (London, England: Routledge, 2016)

<sup>452</sup> Howard. *Beginning Constitutional Law*. (2016) 43.



was a political commentator, economist and author of the book, *The English Constitution* where he discussed the British constitution.<sup>453</sup> A similar point of view was presented by Cheryl Saunders, a professor at Melbourne Law School. She however went further arguing that the perspective old critics had been replaced by Hailsham's perspective.<sup>454</sup>

Dennis Dixon, a tutor at the Institute of Law in Jersey, had however another perspective.<sup>455</sup> He did not consider the dominance of the executive as central to the elective dictatorship. He argued that because of the existence of different perspectives on executive dominance, the argument that the British political system was an elective dictatorship was nothing more than a "value laden opinion".<sup>456</sup> According to Dixon the "the real 'elective dictatorship' problem is [...] the difficulty of effective oversight by legislators *and* ministers over administrators and officials when the business of government grows".<sup>457</sup> The reason he gave for this was that power had been devolved to "professional advisers' exercising administrative independence", thereby making it difficult for Parliament to scrutinize legislation.<sup>458</sup> He also pointed out that this had been a part of Hailsham's original argument as outlined in *The Dilemma of Democracy*.<sup>459</sup> Dixon's solution was the Human Rights Act, because it could require more "democratic consideration of issues" in Parliament instead these being discussed by officials.<sup>460</sup> According to Dixon, scholars are of the opinion that the Human Rights Act empowered "Parliament to [...] play a more active role in the protection and realization of human rights".<sup>461</sup> An example of this was how the Joint Committee on Human Rights experienced that the government listened and made efforts to consider recommendations for amending proposed legislation. Furthermore, Bridget Prentice, former MP of the Labour Party, argued that the Human Rights Act had put "human rights on the agenda" of the Commons.<sup>462</sup> What seems to be central to Dixon's discussion is that these two arguments about elective dictatorship exclude one another. Hailsham, however, discussed

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<sup>453</sup> Hamburger. "Bagehot, Walter (1826–1877), political commentator, economist, and journalist." *Oxford Dictionary of National Biography*. (09.23.2004)

<sup>454</sup> Saunders. "Theoretical underpinnings of separation of powers". In *Comparative Constitutional Theory*, ed. Jacobsohn and Cheltenham, (UK: Edward Elgar Publishing, 2018) 82 & University of Melbourne: Melbourne Law School "Laureate Professor Emeritus Cheryl Saunders AO" Accessed 06.01.2020

<sup>455</sup> Dixon. *Democracy and the Human Rights Act: Republican Analysis of Citizen Power*. (Routledge, 2017): iii

<sup>456</sup> Dixon *Democracy and the Human Rights Act* (2017) 111

<sup>457</sup> Dixon *Democracy and the Human Rights Act* (2017) 118

<sup>458</sup> Dixon *Democracy and the Human Rights Act* (2017) 113

<sup>459</sup> Dixon *Democracy and the Human Rights Act* (2017) 113 & Hailsham, *The Dilemma of Democracy* (1978) 126

<sup>460</sup> Dixon *Democracy and the Human Rights Act* (2017) 118

<sup>461</sup> Dixon *Democracy and the Human Rights Act* (2017) 134

<sup>462</sup> Dixon *Democracy and the Human Rights Act* (2017) 134 & UK Parliament "MPs and Lords: Bridget Prentice" accessed on 06.01.2020

both as important factors for the elective dictatorship. It could therefore be argued that Dixon presents a new argument in the elective dictatorship that excludes many of the complexities in Hailsham's earlier argument from the late 1970s. Furthermore, this also makes his argument narrower compared to Hailsham's argument presented in chapter 2 and other scholars' discussion of the elective dictatorship presented in this thesis.

Michael Doherty, the Principal Lecturer in Law at Lancashire Law School, had a rather different view of Parliament's ability to scrutinize the dominant executive.<sup>463</sup> He operated with a similar understanding of the elective dictatorship as Hailsham, arguing that the executive is dominant due to concentration of power, making it an elective dictatorship. In his discussion Doherty also referred to the Dimpleby Lecture.<sup>464</sup> A contributing factor to concentration of power was party loyalty since the government controlled the majority in Commons. Despite this, he argued that there were democratic and political controls on the executive's power, such as the party in opposition, constitutional principles, such as rule of law, administrative control and judicial review.<sup>465</sup> Doherty also focused on the existing scrutiny functions within the House of Commons that could limit the "risk of 'elective dictatorship'".<sup>466</sup> Due to executive dominance, Parliament can only scrutinize the executive by criticizing, questioning executive action or through publicity.<sup>467</sup> More specifically through three separate functions. Firstly, through questions to ministers, where the Prime Minister answer questions from the Commons once a week for 30 minutes, and Ministers answer questions every few weeks. Secondly, through debates which can have an indirect effect on government legislation. Thirdly, Parliament can scrutinize the government through select committees which according to Doherty, is the most effective measure to holding the government to account. This because in select committees, MPs are less partisan and backbench MPs can exert some influence. Legislative scrutiny can exert important influence over the executive because it can reduce the chance of underdeveloped ideas becoming proposals. The government is also aware that it might have to defend their actions for the public to hear. Furthermore, critical reports resulting from scrutiny can influence the government's action going forward and through scrutiny the government will be more aware of the issues concerning MPs.<sup>468</sup> Doherty's argument is linked to Hailsham's understanding of

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<sup>463</sup> Doherty. *Public Law*. (Routledge, 2018)

<sup>464</sup> Doherty. *Public Law*. (2018) 43

<sup>465</sup> Doherty. *Public Law*. (2018) 43

<sup>466</sup> Doherty. *Public Law*. (2018), 59

<sup>467</sup> Doherty. *Public Law*. (2018), 59

<sup>468</sup> Doherty. *Public Law*. (2018), 60-62

the elective dictatorship however Doherty does not discuss any reforms of the system. While Doherty's discussion of the elective dictatorship is focused on the evolving changes within the British political system, some arguments about the executive dominance over Parliament and the elective dictatorship, have been discussed in the context of the Brexit process.

### Parliamentary scrutiny and the executive in relation to Brexit

The first step in the Brexit process was to trigger Article 50, formally beginning the Withdrawal from the EU. Parliament's involvement in this process was however debated and eventually reached the Supreme Court. The Supreme Court's verdict in the Miller case from January 2017, required the government to seek approval from Parliament before triggering Article 50, thereby giving Parliament increased power over the executive. Following this verdict there were contrasting views on how Parliament used this opportunity.<sup>469</sup> Julie Smith, the "director of the European Centre in the Department of Politics and International Studies" at Cambridge University,<sup>470</sup> argued that following the Miller verdict peers were more willing to scrutinize the government's handling of Brexit as well as amending legislation. She argued that, following the general election of 2017, when May lost her majority in the Commons, the willingness to scrutinize became more evident in the House of Lords.<sup>471</sup> This because while May was able to secure majority for the "EU (Notification of Withdrawal) Bill" in Commons through an agreement with the DUP, she did not have majority in the upper chamber.<sup>472</sup> Despite the presence of the Salisbury convention, the House of Lords defeated the government 15 times in the course of five months once the Bill had reached the upper chamber.<sup>473</sup> To illustrate the importance of the House of Lords role, Smith quoted a passage from Vernon Bogdanor's book, *The new British Constitution*. There Bogdanor argued that critics now saw the unelected upper chamber as "one means of checking that dictatorship" referring to the elective dictatorship.<sup>474</sup> In the House of Lords attempts were made to reduce the dangers of the elective dictatorship, with Douglas Hogg, Lord Hailsham's son, made a reference to the term the elective dictatorship of the government's actions, in a House of

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<sup>469</sup> BBC "Brexit: Supreme Court says Parliament must give Article 50 go-ahead" (24.01.2017) & Smith. "Fighting to 'Take Back Control': The House of Lords and Brexit". In *Brexit and Democracy: The Role of Parliaments in the UK and the European Union*. European Administrative Governance. Ed. Christiansen, and Fromage. (Basingstoke, Hampshire: Palgrave Macmillan, 2019), 90 & Elliott, Williams & Young "The executive's Brexit: the UK Constitution after Miller." *The Constitution Unit* (08.21.2018).

<sup>470</sup> University of Cambridge "Department of Politics and International Studies (POLIS): Dr. Julie Smith" Accessed 06.02.2020

<sup>471</sup> Smith. "Fighting to 'Take Back Control': The House of Lords and Brexit". (2019) 88, 90

<sup>472</sup> Smith. "Fighting to 'Take Back Control': The House of Lords and Brexit". (2019) 92

<sup>473</sup> Smith. "Fighting to 'Take Back Control': The House of Lords and Brexit". (2019) 95

<sup>474</sup> Smith. "Fighting to 'Take Back Control': The House of Lords and Brexit". (2019) 101 & Bogdanor. *The New British Constitution*. (2009),146

Lords debate.<sup>475</sup> These were however ridiculed by the Brexiteers in the House of Lords and right-wing media who argued that because the upper chamber was unelected, amending the bill would be to go against the will of the people. Smith however, argued that it was in fact because the upper chamber was unelected that peers were able speak their minds and vote according to their conscience.<sup>476</sup>

Mark Elliott, Jack Williams and Alison Young however argued in an article published by the organization the Constitution Unit, that despite the Miller verdict, the government was in control of the process. They argued that although Hailsham warned of the elective dictatorship a long time ago, it was imperative to be vigilant about the possibility of such a development now also.<sup>477</sup> This because even though the authority of Parliament had been upheld by the Miller verdict, Parliament instead gave the Prime Minister “the broadest of bare powers to trigger Article 50 at the time of her choosing”.<sup>478</sup> Although the efforts by the House of Lords were recognized, they argued that Parliament had not given any parameters or conditions for negotiations. More specifically, they were concerned with the executive’s ability to remedy “deficiencies in domestic law arising from withdrawal and to implement the withdrawal agreement prior to exit day”.<sup>479</sup> These powers were concerning because they include “wide Henry VIII clauses”, a description of clauses attached to legislation that grants extensive powers to ministers so that they can amend parts of a bill by using secondary legislation.<sup>480</sup> It is plausible to argue that the argument put forth by Elliott, Williams and Young is that following the Miller verdict, Parliament contributed to a development towards the elective dictatorship. This because, while the Miller verdict granted Parliament much power, it instead gave this power to the government, despite the fact that May did not have a majority in Parliament. Furthermore, they were also concerned about the consequences leading the EU had for centralization of power. Although there were some limitations on the executive’s power in the EU Act, they argued that sovereignty would not be restored to Parliament, which was one of the promises of the Leave campaign, but with the government instead.<sup>481</sup> We will return to the dominance of the executive below.

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<sup>475</sup> Twitter “Ian Bond: ‘Douglas Hogg, Viscount Hailsham’ Quoting his father”. (30.04.2018)

<sup>476</sup> Smith. “Fighting to ‘Take Back Control’: The House of Lords and Brexit”. (2019) 101-102

<sup>477</sup> Elliott, Williams & Young “The executive’s Brexit: the UK Constitution after Miller.” (08.21.2018)

<sup>478</sup> Elliott, Williams & Young “The executive’s Brexit: the UK Constitution after Miller.” (08. 21.2018)

<sup>479</sup> Elliott, Williams & Young “The executive’s Brexit: the UK Constitution after Miller.” (08. 21.2018)

<sup>480</sup> Elliott, Williams & Young “The executive’s Brexit: the UK Constitution after Miller.” (08. 21.2018) & Parliament.uk “Henry VIII clauses”. Accessed on 05.30.2020.

<sup>481</sup> Elliott, Williams & Young “The executive’s Brexit: the UK Constitution after Miller.” (21.08.2018)

Ellen Barry and Stephen Castle argued in an article in the *New York Times* following Theresa May's first defeat of her Brexit Deal in House of Commons, that May's defeat, with a margin of 230 votes, seemed to indicate a "tectonic shift in how Britain is governed".<sup>482</sup> This was a shift from the executive controlling Parliament, to Parliament controlling the government. Because the executive appeared to no longer be in a dominant position over Parliament, they argued the term 'elective dictatorship' which is used to describe a relationship where the executive dominates, "may have to be retired".<sup>483</sup> Furthermore, they argued that political changes made it more difficult for the executive to secure majority in the Commons indicating that minority government is becoming the norm.<sup>484</sup> Even more important, May's defeat also indicated a trend where MPs vote in alignment with their constituencies and personal convictions than with party lines. Conservative commentator Tim Stanley's view was also presented. He argued that the British political system functions in such a way that the policies promised in the election manifesto will be passed through parliament, thereby limiting Parliament's role to scrutinizing the government in the case of majority government.<sup>485</sup> This bears some similarity to Hailsham's description of the doctrine of mandate and manifesto, discussed in chapter two of this thesis.

Boris Johnson's actions as Prime Minister have also been addressed in the current debates about the elective dictatorship, such as his attempt at proroguing of Parliament, which was declared unlawful by the Supreme Court. George Eaton argued in an article published in *New Statesman* late September 2019, that Johnson's attempt to delay the opening of Parliament and other actions by the executive, were evidence of how far Johnson was willing to go to ensure his agenda. This was concerning to Eaton, because Johnson had no mandate of his own or any majority, but still "sought to disregard MPs", which is why Eaton referred to it as an "unelective dictatorship".<sup>486</sup> Johnson's attempt at disregarding MPs had not worked, he had been defeated six times in the Commons, Eaton, however, was concerned that many wished Johnson's attempt had worked, referring to a Hansard Society poll from April 2019. It found that 54% of voters answered that "Britain needs a strong leader willing to break the rules".<sup>487</sup> This was according to Eaton a response to the political gridlock which was a

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<sup>482</sup> Barry & Castle "Amid Parliament's Brexit Rebellion, a Tectonic Shift in How Britain Is Governed." *New York Times*. (15.01.2019)

<sup>483</sup> Barry & Castle "Amid Parliament's Brexit Rebellion". (15.01.2019)

<sup>484</sup> Barry & Castle "Amid Parliament's Brexit Rebellion". (15.01.2019)

<sup>485</sup> Barry & Castle "Amid Parliament's Brexit Rebellion". (15.01.2019)

<sup>486</sup> Eaton, "Boris Johnson's law-breaking will make him dangerous appealing to many voters". (09.24.2019)

<sup>487</sup> Eaton, "Boris Johnson's law-breaking will make him dangerous appealing to many voters". (09.24.2019)

contributing factor to making Britain vulnerable to authoritarianism. Other factors were the “centralized political model”, the electoral system and the unwritten constitution.<sup>488</sup> Therefore it is plausible to argue that Eaton is not only concerned about an elective dictatorship that exists because the Prime Minister has majority in the House of Commons, but also one that exists when the Prime Minister is willing to bypass Parliament even without majority such as Johnson.

Will Hutton, a writer for the Observer in *The Guardian* argued in an opinion piece that Boris Johnson’s proroguing of Parliament, had exposed a weaknesses with the British constitution, its vulnerability to becoming an elective dictatorship “as Lord Hailsham famously characterised it”.<sup>489</sup> This because of the established tradition of the Crown-in-Parliament. He argued that while this might have been an effective solution when the constitution was established in 1689, today it can create a highly centralized executive whose actions are dictatorial because of “monarchical authority”.<sup>490</sup> Furthermore, Hutton argued that if the authority of the executive is “legitimized by the ‘will of the people’” through referendum this authority becomes toxic.<sup>491</sup> The only protection against the elective dictatorship was therefore acceptance of the established traditions of the uncodified constitution, such as making sure that the use of referendum is subordinate to Parliament’s control. Hutton therefore took issue with the referendum on Brexit and the aftermath. This because there were no super-majority to change Britain’s relationship with the EU. Hutton argued that Johnson’s attempt at proroguing Parliament to avoid parliamentary scrutiny, was an example of the monarchical authority, stating that “the divine right of kings, now transmuted into the divine right of Boris”.<sup>492</sup> Furthermore, he argued that the only way to stop no-deal Brexit, was an interim government that controls Parliament is the way to go, echoing a proposal presented by the Labour leader Jeremy Corbyn. The next step would be an election and then a new referendum with Remain being an option.<sup>493</sup> His argument that the existing system should be used to stop Brexit bears some similarity to Hailsham who argued that the existing institutions had to be used in order to establish a codified constitution, in his book.

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<sup>488</sup> Eaton, “Boris Johnson’s law-breaking will make him dangerous appealing to many voters”. (09.24.2019)

<sup>489</sup> Hutton, “The sheer scale of the crisis facing Britain’s decrepit constitution has been laid bare.” *The Guardian*. (01.09.2019)

<sup>490</sup> Hutton, “The sheer scale of the crisis facing Britain’s decrepit constitution has been laid bare.” (09.01.2019)

<sup>491</sup> Hutton, “The sheer scale of the crisis facing Britain’s decrepit constitution has been laid bare.” (09.01.2019)

<sup>492</sup> Hutton, “The sheer scale of the crisis facing Britain’s decrepit constitution has been laid bare.” (09.01.2019)

<sup>493</sup> Hutton, “The sheer scale of the crisis facing Britain’s decrepit constitution has been laid bare.” (09.01.2019)

Sebastian Payne, a Whitehall correspondent for the *Financial Times* discussed what Kier Starmer would have to offer if elected leader of the Labour Party following Johnson's election victory. He argued that with Boris Johnson's election victory in December 2019, Starmer would "change the Brexit dynamics [...] on scrutiny".<sup>494</sup> This because Johnson's large majority is "an 'elective dictatorship'" meaning that the opposition will have a hard time hindering Johnson's agenda. He argued that Starmer could still be effective in a scrutinizing role because he is skilled in finding the important details which might be uncomfortable for Johnson. This kind of detailed scrutiny had according to Payne "been sorely missed in Westminster over the past four years", sort of echoing Dixon, who also argued that there had been a lack of parliamentary scrutiny.<sup>495</sup> If one sees the majority in the Commons for one political party as a central element in the notion of the elective dictatorship, which it could be argued that Payne does, then it could be argued that the elective dictatorship is something that "comes and goes", or at least that with an outright majority Boris Johnson suddenly had the *opportunity* of making his premiership more "dictatorial". It could therefore be argued that the elective dictatorship can never be permanent or static but is a *potential* that lies within the British political system. In this section, different perspectives on Parliament's ability to scrutinize the government have been discussed. Both in situations where the government has had majority and been without majority in the Commons, majority in the Commons, it has been argued that Parliament still has given the executive immense influence in this process. This signals that the executive has been able to continue to exert dominance over Parliament. The next subchapter will discuss arguments relating to the doctrine of mandate and manifesto, which was not a topic of much discussion during Thatcher and Blair's premierships, but became so later.

#### Doctrine of mandate and manifesto

Although the phrase doctrine of mandate and manifesto is not used explicitly in the articles discussed in this sub-chapter, the authors present arguments that fits into this doctrine. According to Tom Quinn, a Senior Lecturer at Essex University, it has since 1945 been an underlying assumption that the party with majority in the Commons has a mandate to implement its manifesto.<sup>496</sup> As presented in chapter 2 of this thesis, Hailsham also discussed this doctrine in his book *The Dilemma of Democracy*. In the election campaign leading up to

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<sup>494</sup> Payne. "What Kier Starmer would mean for Brexit". *Financial Times*. (02.21.2020)

<sup>495</sup> Payne. "What Kier Starmer would mean for Brexit" (02.21.2020) & Dixon *Democracy and the Human Rights Act* (2017), 118

<sup>496</sup> Quinn "Mandates, Manifestos & Coalitions: UK Party Politics after 2010. *UK Constitutional Law Association Blog* (07.18.2014)

the election on December 12, 2019 concerns regarding the Conservative election manifesto and the implication this would have for the political system such as the judiciary and House of Commons, were discussed. Sean O’Grady, an Associate Editor of the *Independent*, expressed concern about the Conservative election manifesto, especially page 48.<sup>497</sup> He argued that if elected the Conservative government would “scrap the remaining practical rights and prerogatives in the House of Commons”.<sup>498</sup> Moreover, he also argued that there would be interference with the judiciary as well as restricting the rights of the Supreme Court with regards to what kind of issues they can rule on. Furthermore, he argued that “we are headed for what [...] Lord Hailsham famously called an ‘elective dictatorship’” because the Johnson government will have the power to implement the legislation they want, with the Commons functioning as a rubber stamp. Hailsham made a similar argument in *The Dilemma of Democracy*.<sup>499</sup> David Gelber, a non-fiction editor at *Literary Review* was more optimistic.<sup>500</sup> Although he too was concerned about the Conservative election manifesto, and the apparent return of the elective dictatorship, due to the changes foreshadowed in the election manifesto, he argued that British politics had become more European.<sup>501</sup> According to Gelber, the use of referenda, a coalition government between Conservatives and the Liberal Democrats, and hung parliaments had increasingly become the norm. It could however be argued that no norm, seems to have become the new norm since general elections have fluctuated back and forth between producing majority governments and not. So, no majority in 2010, majority 2015, no majority 2017 and majority 2019.<sup>502</sup> Furthermore, Gelber argued that there had been changes within the population with people protesting Johnson’s prorogation of Parliament. Political compromises and the public engaging in politics had therefore become the norm. He therefore argued that it is likely that the public will protest Johnson’s changes. As briefly mentioned in this paragraph, the electoral system used in the general elections that have fluctuated between producing majority governments and not, will be discussed in the next subchapter.

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<sup>497</sup> Independent “Sean O’Grady”. Accessed 06.10.2020. & Conservatives.com “Get Brexit Done. Unleash Britain’s potential” Accessed 19.12.2019, p.48.

<sup>498</sup> O’Grady. “The Tory manifesto is a sign of things to come – an elected dictator who will scrap our democracy”. *Independent* (25.11.2019).

<sup>499</sup> O’Grady. “The Tory manifesto is a sign of things to come”. (25.11.2019).

<sup>500</sup> Independent “David Gelber” Accessed 06.01.2020

<sup>501</sup> Gelber “Britons won’t submit to Boris Johnson’s quasi-dictatorship – we’re too used to political compromise.” *The Independent*. (20.12.2019)

<sup>502</sup> Audickas, Cracknell & Loft “BRIEFING PAPER Number CBP7529, UK Election Statistics: 1918-2019”. (02.27.2020), 10.



## Electoral system

In his book José M. Magone, a professor at the Berlin School of Economics and Law in Regional and Global Governance, discussed one of the traits of a majoritarian system, the electoral system.<sup>503</sup> He argued that one trait of the majoritarian system or “majority rule” was an electoral system that foster a “bipolarized two-party system” referring to Lijphart’s classifications of political systems.<sup>504</sup> Of the “simple plurality electoral system” or FPTP, Magone argued that it tends to generate disproportionate results.<sup>505</sup> A party can get majority in House of Commons, without the majority of the vote. This majority often strengthens the Prime Minister’s position. Given that the Prime Minister has majority in the Commons, this government can be characterized as an elective dictatorship according to Magone. Examples of such Prime Ministers were Thatcher and Blair.<sup>506</sup> In the context of the other arguments presented in this chapter about the erratic results in the recent general elections; hung parliaments, coalition governments and minority his argument that the FPTP-system generate majority governments seems a little dated. Whereas Magone focused on what, in his view, caused the elective dictatorship, Nick Howard focused on what could be done to hinder the “return of an ‘elective dictatorship’” caused by the FPTP-system.<sup>507</sup> Howard’s solution was an independent judiciary. This because the FPTP-system has the potential for creating an elective dictatorship within the Commons, “citizens’ rights [...] are vulnerable to repeal”.<sup>508</sup> An independent judiciary was not only important because Article 6 of the Human Rights Act required this, but also because it would ensure that the government was “subject to rule of law”.<sup>509</sup> Howard argued that with the implementation of the Constitutional Reform Act of 2005, the judiciary had become independent from the executive and legislative branches since a Supreme Court and a Judicial Appointments Committee were created. Howard’s focus therefore not on electoral reform but to put checks on majority governments.

## Conclusion

During the last couple of years, when British politics was dominated by Brexit, some important changes took place in the debate on the elective dictatorship, and they were to a large extent caused by, precisely, Brexit. Arguments about Parliament’s ability to scrutinize the executive whose actions is defined as an elective dictatorship have been discussed in

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<sup>503</sup>Magone. *Contemporary European Politics: A Comparative Introduction*. (London: Routledge, 2019) 132

<sup>504</sup> Magone. *Contemporary European Politics: A Comparative Introduction*. (2019), 132.

<sup>505</sup> Magone. *Contemporary European Politics: A Comparative Introduction*. (2019), 138.

<sup>506</sup> Magone. *Contemporary European Politics: A Comparative Introduction*. (2019), 132, 138.

<sup>507</sup> Howard. *Beginning Constitutional Law*. (2016), 117.

<sup>508</sup> Howard. *Beginning Constitutional Law*. (2016), 180.

<sup>509</sup> Howard. *Beginning Constitutional Law*. (2016), 117 & 133.

relation the Miller verdict of 2017, May's defeats in Parliament and Johnson's election victory in December 2019. There is however one central change in how the elective dictatorship is discussed because in addition to using the traditional meaning of the elective dictatorship, namely a political system where the sovereignty lies with the executive, it is also used to describe a government without majority in Parliament. This was something Hailsham never mentioned. An example of this is George Eaton's article from September 2019, describing Johnson's government as an "unelective dictatorship" pointing to his attempt to bypass Parliament by attempting to prorogue Parliament without a strong majority. This phrase is an example of how established Hailsham's original Hailsham's original phrase has become in debates about the British political system and how it has gained a life of its own independently of what Hailsham may have meant. Furthermore, the debate about the elective dictatorship has also become a bit more international with European and American writers such as Susanne Schmidt and José M. Magone and Dennis Dixon writing on the subject. This is evidence of how important and international this discussion has become.

## Chapter 6 Conclusion

Since Hailsham first popularized the phrase “the elective dictatorship” in 1976, the elective dictatorship has been discussed in academic circles as well as in the traditional media. Both scholars, academics and journalists have referred to Hailsham in their discussions of the elective dictatorship, but also used the term without reference to its originator. It is not a given that a phrase popularized in 1976 should continue to be used within academic literature and the traditional media 40 years after its invention. How scholars and journalists have approached Lord Hailsham’s argument have however varied. Bogdanor and King were for instance both very thorough, including quotes from the Dimpleby Lecture as well as Hailsham’s book in their argumentation, as discussed in chapter 3 and 4 in this thesis respectively. Furthermore, Bogdanor also presented his own perspective on the elective dictatorship, arguing in his book from 2019, that the description of the political system as an elective dictatorship was outdated, even in the 1970s when Hailsham first presented his argument. Other scholars and journalists have made a reference to Hailsham’s use of the phrase only and given the term their own meaning such as George Eaton who used the term elective dictatorship to describe Johnson’s minority government prior to the snap election in 2019. These are just a few examples of how the phrase has had a life beyond Hailsham’s initial argument.

In order to understand how Hailsham’s argument on the elective dictatorship changed, in chapter 2 of this thesis four different works from 1976-1983 were discussed. Lord Hailsham first presented his argument about the elective dictatorship in a Dimpleby Lecture titled “Elective dictatorship” and followed with a book *The Dilemma of Democracy: Diagnosis and Prescription* in 1978. In these two works, he advocated the introduction of radical changes in order to hinder the elective dictatorship. These changes included a written constitution, a Bill of Rights and a reformed House of Lords elected on proportional representation. He argued that there were many reasons why the political system “Crown-in-Parliament” was vulnerable to becoming an elective dictatorship. His main argument was however that due to a shift in where sovereignty reside within Parliament, from residing with both chambers to increasingly residing with the government in the Commons, the government was free to implement the changes they wanted. This combined with an electoral system that in his opinion generated results where the governing party can get majority in Parliament without necessarily a majority of the electorate, can lead to the government implementing legislation that might not have the support of the majority of the electorate. This was

problematic for Hailsham too, who argued that such a government acted as an elective dictatorship.

While serving as Lord Chancellor in Thatcher's government, however, Hailsham moderated his argument about the elective dictatorship. In a journal article "The Lord Chancellor and Judicial Independence" from 1980, he argued for the importance of an independence of the judiciary in order to protect against the elective dictatorship. His sole focus was on the judiciary and he abandoned his earlier proposed reforms that had been an integral part of his discussion. This shift was further evidenced in a Hamlyn Lecture, titled *Hamlyn Revised: The British Legal System today*. Here Hailsham focused on the British legal system and the changes that had occurred in Britain since the 1940s until the time he held this lecture in 1983. He addressed the elective dictatorship presenting many of the same developments which he considered problematic in the Dimpleby Lecture and his book, such as an increase in legislation and spending by governments and the doctrine of mandate and manifesto. Despite addressing these problematic aspects, he did not advocate reform of the system but rather praised the unwritten constitution as superior compared to other written constitutions. Scholars who have discussed the elective dictatorship therefore encounter at least two different versions of Hailsham.

Chapter 3 focused on how the elective dictatorship was discussed throughout Margaret Thatcher's Premiership from 1979-1990. Different contributions, academic literature multiple books and journal articles as well as newspaper articles addressing the elective dictatorship was examined and discussed thematically. The majority of these contributions addressed similar arguments and themes as Hailsham, referring to his Dimpleby Lecture and his book. These themes were parliamentary sovereignty, Bill of Rights and the electoral reform. Even though this was the case, many of the contributions used aspects for Hailsham's argument advocating reforms which Hailsham did not support. Electoral reform of elections to the House of Commons is a good example of this because while Hailsham only toyed with the idea of electoral reform for the Commons, John A. Zecca took use of Hailsham's concerns about the FPTP-system and argued that a change in electoral system to Single Transferable Vote would hinder the elective dictatorship. This because this kind of electoral system would generate more proportional results by making sure that no votes are wasted, as well as decreasing polarization between the parties.<sup>510</sup> Furthermore, some scholars also addressed the

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<sup>510</sup> Zecca, "Avoiding 'elective Dictatorship' in the United Kingdom" (1993), 459

elective dictatorship in the context of other themes that Hailsham did not discuss in much detail such as the role of select committees. Therefore, already in the 1980s and early 1990s, there was a tendency for academics to expand upon Lord Hailsham's argument and in some cases advocate reforms he did not consider necessary to protect against the elective dictatorship. Thatcher's policies and leadership style was also discussed. Bogdanor for instance, argued that the manner Thatcher approached her goal of restoring authority of the state meant that she undermined democratic foundations making the authority of the state tolerable.<sup>511</sup> According to Bogdanor, this is why her premiership should be understood through the concept of elective dictatorship.

During Tony Blair's premiership electoral reform continued to be a topic of discussion in the debate on the elective dictatorship and this was the focus of chapter 4. Some scholars argued that proportional representation would ensure a more proportional parliament, while others such as Johnston, were more cautious. Johnston argued that adopting an electoral system based on proportional representation would not ensure that parties would have equal influence within Parliament, but that it would ensure that more parties were represented.<sup>512</sup> The trend of using Hailsham's argument to advocate reform of the electoral system was therefore still present during Blair's Premiership. Although most of the contributions discussed in chapter 4 were more general arguments about the political system such as parliamentary sovereignty, the House of Lords and electoral reform, the elective dictatorship was also discussed more specifically with regards to Tony Blair's leadership. Blair's leadership was scrutinized extensively with some arguing that his leadership style was centralized, that he neglected Parliament, and that he acted with supreme power. His unilateral decision making, and apparent neglect of Parliament were examples of the elective dictatorship, in the view of some commentators, suggesting that the idea of an elective dictatorship in Britain was not outdated after all.

It is in the final main chapter of this thesis, chapter 5 about the elective dictatorship debate during Theresa May and Boris Johnson's premiership, that the changes in the debate on the elective dictatorship really becomes clear. Many of the traditional arguments regarding the elective dictatorship was discussed in relation to the Brexit process. Parliament's ability to hold an executive to account, whose actions according to scholars were that of an elective

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<sup>511</sup> Bogdanor. *Politics and the Constitution*, (1996), 21 & Bogdanor "The Constitution", (1989), 133

<sup>512</sup> R.J. Johnston "Proportional Representation and a 'fair Electoral System' for the United Kingdom." (1998), 145

dictatorship, was a good example of this. This link was discussed in relation to the Miller verdict from 2017 and Johnson's election victory from 2019. Furthermore, because of the implication Brexit has for the international society, especially the EU, international scholars have also discussed the elective dictatorship such as Susanne Schmidt, and José Magone. Another important change is that it became more clearer that the term elective dictatorship seems to now live a life of its own as scholars and journalists give their own meaning to the term. George Eaton for instance described the Johnson government prior to the snap election of 2019 as an "unelected dictatorship", because Johnson did not have majority but still attempted to bypass Parliament. This is a very different meaning the traditional one of the elective dictatorship as a political system where the dominant branch is the executive enjoying majority support in the Commons. Another example of a change in the meaning of the elective dictatorship was put forth by Dennis Dixon. He challenged the traditional way the elective dictatorship has been understood by arguing that the real problem of the elective dictatorship is not that the executive dominates Parliament. He argued that the real problem with the elective dictatorship was the difficulty involved in scrutinizing the executive due to the immense workload Parliament and ministers experience. Therefore, power had been devolved to "professional advisors" making it difficult for legislators and ministers to take part in the scrutinizing process of the government.<sup>513</sup> Although Hailsham, as discussed in chapter 5, did express concern about the problem Dixon focused on, it was part of multiple factors that made the elective dictatorship possible. Giving new meanings to the term elective dictatorship which deviate somewhat from Hailsham's intended meaning is therefore evidence of how far the debate on the elective dictatorship has evolved.

The result of the December 12, 2019 election saw Johnson elected with a majority in the House of Commons enabling him to implement the changes foreshadowed in the election manifesto. Some of these changes have been criticized for taking away powers and rights from the House of Commons, thereby furthering the danger of the elective dictatorship.<sup>514</sup> It is however difficult to predict when and how these changes will be implemented as the Covid-19 pandemic has put such concerns on hold. Furthermore, it is also difficult to predict how the debate on the elective dictatorship will evolve, however, as this thesis suggests scholars and

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<sup>513</sup> Dixon *Democracy and the Human Rights Act* (2017) 118

<sup>514</sup> O'Grady. "The Tory manifesto is a sign of things to come – an elected dictator who will scrap our democracy". (25.11.2019)

journalists have become more comfortable with providing their own perspective on the elective dictatorship thesis.

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## Appendix

Lord Hailsham “Elective Dictatorship” Dimbleby lecture 1976 Transcription

Richard Dimbleby was one of the most famous and brilliant broadcasters of his day. And above all, a man of great patriotism, integrity, and warmth of character. I am indeed proud to have been chosen this year to deliver this lecture in honour of his memory.

I have called it “Elective dictatorship”. You may think that a strange title. And you may think it all the stranger when I tell you that I mean by it our own system of government. Which we have evolved through the centuries and which we are apt to think of as the best and most democratic in the world. Now please do not misunderstand me, I am as proud of our country and its institutions as anyone. For 700 years we have been governed by one sovereign body, Queen, Lords and Commons in Parliament assembled. It’s served us well. For century after century, it has seen us safely through one change after another, from medieval monarchy to modern democracy. Under it, in our own time, we have survived and been victorious in two immense world wars. Largely because of the very qualities I am about to criticize. Even more strikingly, it is surly due to its unique combination of flexibility and authority that for more than three hundred years we have managed to live together as a nation, in periods of constant change without the searing experience of violent revolution or civil war.

Above all, I would wish to emphasise that our constitution has one advantage of priceless value: its immemorial antiquity, which with its power of continuous growth gives it a prestige and mystique not shared by any other nation in the world. All the same, I think the time has come to take stock, and to recognize how far this nation, supposedly dedicated to freedom under law, has moved towards a totalitarianism which can only be altered by a systematic and radical overhaul of our constitution.

We are sometimes unaware that our constitution is unique. There is nothing quite like it. Even among nations to whom we have given independence. They believe, of course, that they have inherited the so-called Westminster model, nothing of the kind. The Westminster model is something we’ve never exported, and, if we tried to do so, I doubt whether any nation would have been prepared to except it. The point is not that all other nations have what is called in a literal sense a “written constitution”. After all, much of our own constitution is in

writing, and much more could be reduced to writing if we wanted without making any imperishable change.

No, the point is that the powers of our own Parliament are absolute and unlimited, and in this, we are almost alone. All other free nations impose limitations on their representative assemblies. We impose none on ours. Parliament can take away a man's liberty or his life without a trial, and in past centuries, it has actually done so. It can prolong its own life, and in our own time, has done so twice, quite properly during two world wars. No doubt in recent times, Parliament hasn't abused these particular powers. Nonetheless, the point I am making to you this evening is, that as a result of the changes in its operation and structure, the absence of any legal limitation on the powers of Parliament, has become quite unacceptable. And the questions which I desire to leave for your consideration are first, whether the time has not come to either end or modify this legal theory, and, secondly, whether and how it is possible to do so.

Of course, this doctrine of the absolute sovereignty of Parliament has been fully recognized for very many years. Judges may pass judgment on the act of ministers, as they have recently done in the Tameside dispute and in the arguments about the Laker Skytrain or the payment of sewerage rates. To this extent the rule of law applies and prevails here as in other free countries. But once the courts are confronted with an Act of Parliament all they can do is to ascertain its meaning, if they can, and then apply it as justly and mercifully as the language of the law permits. And so, of the two pillars of our constitution, the rule of law and the sovereignty of Parliament, it is the sovereignty of Parliament which is paramount in every case. The limitations on it are only political and moral. They are found in the consciences of members, in the necessity for periodical elections, and in the so-called checks and balances inherent in the composition, structure and practice of Parliament itself.

Only a revolution, bloody or peacefully contrived, can put an end to the situation, which I have just described. We live under an elective dictatorship. Absolute in theory, if hitherto thought tolerable in practice. How far it's still tolerable, is the question I wish to raise for discussion tonight. A good deal water has flowed under Westminster Bridge since the sovereignty of Parliament was first established and almost every drop has flowed in one direction: an enhancement of the actual use of its powers. To begin with there has been a continuous enlargement of the scale and range of government itself. Then there has been a change in the relative influence of the different elements in government, so as to place the effective powers in the hands one of them. In other words, the checks and balances, which in

practice used to prevent abuse have now disappeared. So both sets of changes have operated in the same direction, to increase the extent to which elective dictatorship is a fact, and not just a lawyer's theory.

Until comparatively recently, Parliament consisted of two effective chambers. Now for most practical purposes, it consists of one. Until recently, the powers of government within Parliament were largely controlled, either by the opposition or its own back-benchers. It is now largely in the hands of the government machine, so that the government controls Parliament, and not Parliament the government. Until recently, debate and argument dominated the parliamentary scene. Now it is the Whips and the party caucus. More and more debate, where it is not actually curtailed, is becoming a ritual dance. Sometimes interspersed with catcalls. Let me develop one or two of these points. Consider the scale and range of modern government. The powers of government may have been tolerable when exercised in the limited manner, say of 1911 or even the years between the wars. But the same powers may well have become intolerable to the ordinary man or woman in 1976 by reason of the vast mass and detail of legislation, the range of its application and the weight of taxation, which goes with it.

Consider two simple tests. The mass of annual legislation and the size of the annual budget. Before the first world war, the liberal government was content to pass a single slim volume of legislation in a year, and that remember, was one of the great reforming administrations of the century. In 1911 there weren't more than about 450 pages, that was a heavy year. For 1975, there will probably be three volumes each of about a thousand pages, and each carrying with it an immense flow of subordinate legislation, amounting to about ten volumes of a thousand pages each. So that when, at least, they have got around to printing it all which they haven't yet, there will be over 13 000 pages of legislation for a single year. It must be remembered, moreover that these changes are cumulative even allowing for repeals and amendments, those 13 000 pages of 1975 represent a huge addition the corpus of British law and that had already reached an all-time high by 1974. So year by year, there are substantially more and more complicated laws to obey.

Another example, when Gladstone was prime minister, he was able to spend about five months of the year at his country home in North Wales, planting the garden and felling the oak trees, and presenting the chips to respectful delegations of Liberal working men. Today if a prime minister takes time off to spend a weekend on the water on his yacht, there is an immediate outcry that he is only working part-time, as if the quality of his statesmanship were a direct result of the quantity of his output, and the prime minister were no better than a sort of political Stakhanovite.

Then look at the budget, I suppose that at the turn of the century it could be expected never to exceed a £100 million in any one year. By the end of the Second World War, we were already spending 25 times as much as before the First. But now we are spending something like £50,000 million in the annual budget every year, and of course one in every four is borrowed and not being paid back. With local government expenditure, two-thirds of our income is spent by public authorities. Some of these changes were no doubt inevitable and many others arguable desirable. But changes on this scale even taking full account of the fall in the value of money, really represents alterations in the character of our institutions, and not simply differences of degree.

At the same time, the checks and balances have largely disappeared. Power has centralized itself, more and more in the Commons, more and more on the government side of the House, more and more on the front benches, while the time allotted for debate of individual measures has become progressively less and less. And between the two Houses, the Commons for many years, have been quite probably the dominant partner. They are elected so they are entitled to control of finance and give the political colour to the government of the day. But the process has now developed to the point at which the sovereignty of Parliament has virtually become the sovereignty of the House of Commons.

I am not of course in the least suggesting that the House of Lords is useless, or that its influence in modifying the details of legislation is without value, or that the effect of its debates in moulding opinion is negligible. But I do say that it isn't an effective balancing factor and can't in practice control the advancing powers of the executive. Its influence on government is far weaker than that of the senates in other countries, like America, and is arguably less persuasive than a powerful leading article in the *Times* or even a good edition of the *Panorama*. But how far are the Commons really masters in their own house. Not so long

ago, influence was fairly evenly balanced between government and opposition, and between front- and back-benchers. Today the centre of gravity has moved decisively towards the government side of the House, and on that side, to the members of government itself. The opposition is gradually being reduced to impotence and the government majority where power resides, is itself becoming a tool in the hands of the cabinet. Back-benchers, where they show promise are soon absorbed into the administration and so lose their power of independent action. When Trollope wrote the Palliser novels a 100 years ago, parties were fluid and government time less extensive. As late as late as 1906, a back-bench speech like F. E. Smith's maiden, could make a considerable impact. But in present conditions, the whole absolute powers of Parliament, except in a few matters, like divorce or abortion, are wielded by the cabinet alone, and sometimes by a relatively small group within the cabinet.

To begin with, the actual members of the government, with their parliamentary private secretaries, are one of the largest and most disciplined single groups in the House. Their number I suppose, not much short of a 130 out of the 300-odd members of the government party and not one, so long as he retain his position, can exercise an independent judgement. But far more important than numbers is the disproportionate influence of ministers in debate as a result of their possession of the civil service brief. The increasing complexity of public affairs makes meticulous research and specialization almost indispensable for speaking in parliament. The decreasing leisure and the increasing economic pressures upon private members, few of whom live upon their parliamentary salaries, makes it more and more difficult to bring a minister to book. Even when he is wrong, he can usually make it look sufficiently as if he were right, to get his own supporters into the lobby when the bell rings. I have been often enough myself on the giving and on the receiving end, and I must say frankly that more often than not, right or wrong, it is the minister who wins the argument.

So the sovereignty of Parliament has increasingly become, in practice, the sovereignty of the Commons, and the sovereignty of the Commons has increasingly become the sovereignty of the government, which in addition to its influence in Parliament, controls the party whips, the party machine and the civil service. This means that what has always been an elective dictatorship in theory, but one in which the component parts operated in practice, to control one another, has become a machine in which one of those parts has come to exercise a predominant influence over the rest. This has been extenuated by two further factors which I must now examine: the power of dissolution, and the doctrine of mandate and election manifesto. Of course, the power of dissolution is not any longer in the hands of the Crown, it



is in the hands of the prime minister. Have you noticed how seldom since the war, a government in office has been unseated? Even though the opinion polls have indicated during the greater part of those 30 years, that the government has been less popular than the party of opposition. If we leave out 1945, it has been nine general elections since the war. Six resulted in a victory for government, and of the six, four were won with substantial or increased majorities. Of the three general elections, which resulted in a change, all three were won by the narrowest margin of seats, and either on minority of votes or the smallest possible majority over their nearest opponents.

Do you really believe that that is a coincidence? At the centre of the web sits the prime minister. There he sits, with his hand on the lever of dissolution, which he is free to operate at any moment of his choice. In selecting that moment, he is able, with the chancellor of exchequer, to manipulate the economy, so as to make it possible, in a good year, for things to appear, for a time, better than they really are. He operates the lever with his eyes fixed on the opinion polls, knowing that he is able to control, in practice, the loyalty of the party machine, the moment that his troops go into action. Criticism from below, however vocal before, is silenced until after polling day. Is it to be wondered that he wins more often than he loses? And that when he loses, his defeat is often the kind of surprise it was when Mr. Wilson lost in June 1970 or Mr. Heath in February 1974? Thus, the elective dictatorship has proved more and more powerful. And more and more liable to perpetuate itself through the adroit manipulation of the economy and the firm use of dissolution operated with a careful eye to by-elections and public opinion polls. To these formidable factors, I must now add the new – and to my mind the wholly unconstitutional – doctrines of mandate and manifesto. It is of course right and proper that when parties go to the country, they should explain in broad language what they consider the situation requires in terms of general policy, and what measures they would propose to carry out if entrusted with the majority in Parliament. But in practice, while before the election, the manifesto is written, rather in the style of an advertisement of patent medicine, after the election, it is treated as a pronouncement from Sinai with every jot and tittle of that unread, and often unreadable, document revered does Holy Writ.

The actual situation, which a new government is confronted with is often vastly different from what it was imagined to be in opposition, and the measures proposed in the manifesto often include the impossible, the irrelevant and the inappropriate. But it is here that the doctrine of mandate takes over. However small majority, however ill-advised the

promises, however controversial the program, the party activists, flushed with victory, insistently demand the redemption of all the pledges in the shortest possible time, and they are vociferously egged on by the various pressure groups whose collective support has been won by the making of the pledges. Since an election can now a days be won on a small minority of votes – and that is a point I must return to later – it follows that the majority in the House of Commons, is then free to impose on the country a series of relatively unpopular measures, not related to current needs, using the whole powers of the elective dictatorship to carry them through. And in doing so, it is not effectively controlled by any second chamber, it is not effectively opposed or criticized by an opposition or by back-benchers. Owing to the operation of the guillotine and other regulations designed to curtail debate, much of the program often isn't discussed at all.

It is idle to pretend that such a system is rational, necessary, just, or even to use that overworked and not very illuminating word; democratic. That the program often becomes unworkable long before the end of Parliament and the resumed impracticability then results in the so-called U-turn, is not really a mitigation of the system, let alone a justification for it. It is simply a mark of the weakness of the system itself, and leads to general loss of confidence in the integrity of politicians. Thus, it is a paradox of our system of government that at one and the same time, it has become increasingly oppressive, decreasingly effective, and ever more manifestly absurd in its results. It must not be supposed that these growing defects has passed wholly unnoticed or even uncomplained of. On the contrary, there have been many criticisms and suggestions for improvement. Scottish and Welsh nationalists want devolution, others, particularly in England demand a Bill of Rights, electoral reform or reform of the House of Lords. The proposed remedies are different, though not necessarily inconsistent and I shall try to show that there is something in each, but not enough in any one taken by itself. The answer may be to incorporate elements from all.

If it weren't for the fact that they aim at the destruction of the United Kingdom – and that so far as I am concerned, means my country – I might have had most sympathy with the nationalists. They alone wish to get rid of the whole incubus of absolute central authority, and manage their own affairs themselves on a more modest scale. So far, if they only wish to achieve their purpose within the ambit of a new federal constitution, I can't see anything unreasonable about their aim. After all, nations as diverse and as free as the Swiss, the Americans, the Canadians, the Australians and the Germans, have all managed to achieve stability, efficiency and prosperity, on these very lines. So far as we are concerned, it is at

least arguable, that it was our own failure to come to terms with federalism in any form, which led to the severance of our connection with Ireland. And therefore to the partition of the British Isles with all the misery that that's entailed.

But I quarrel with the nationalists on quite a number of heads. In the first place, if devolution is seen as a step towards complete separation, I wholly reject it. Separation, I regard as the destruction of my country, treason to the whole, treason to the separate parts and worse still, treason to the Christian West of which we are all part, and which now stands on the defensive against hostile forces determined to destroy everything we stand for and all we have contributed to human welfare. In the second place, if devolution be right in Northern Ireland – where I suppose it must be restored sooner or later – and in Scotland and Wales, I can't see how it can be wrong for the Midlands, the South-West, or the North and South of England. If devolution comes at all, sooner or later, surely, we must devise a structure under which the terms of membership of our nation must at least be roughly comparable. Whether we live in Manchester or Belfast, London or Cardiff, Norridge, Newcastle, or Edinburg, or rural Wales, this is a much bigger undertaking than either the government or the nationalists, seem to have realized. And although it isn't impossible to achieve, I think a good deal more preliminary work has got to be done.

In the third place, the real weakness of our constitution, if I am right, lies in the fact that it is an elective dictatorship. And if we were to break up the United Kingdom into three or four little elective dictatorships, can there be any reason to believe that the peoples of Scotland, England, Wales and Northern Ireland, would be any more content with their new masters than with their old? Would not we be better served if we went on together, but on federal lines, without trampling in the dust, the whole proud tradition of 250 years? If we broke up the United Kingdom, there can't be any doubt that the several parts of these islands would be played off one against the other by our various commercial and political rivals. And our common defences would be dismantled and the contribution we make to the common cause rendered negligible. I, for one, don't wish to substitute a series of small and ineffective independent units in place of our existing historic association, which with all its defects, is, nonetheless glorious in its acknowledged achievement. By contrast, with Wales and Scotland, there is little sign of sufficient regional patriotism in England to give rise to demands of devolution there. In England therefore, the revolt against elective dictatorship has taken the form of demands for a bill of rights, electoral reform, or less often, the reform of the second chamber. The case for each of these is that it has become urgently necessary, in the interests

of liberty and the rule of law, either to curb the legal powers of Parliament, or to recreate a system of checks and balances within it.

The advocates of a bill of rights are for limiting the Parliament, and this of course is the most logical approach. Every other civilized nation has imposed some limits upon its legislature, and has laws which makes changes in the constitution difficult or impossible. In such cases, the judges, or some special constitutional court can strike down legislation, which exceeds the bounds. But how can the limitations be made effective? Under our present constitution, Parliament could always take away what it had given, by amending or repealing the bill. To this, the supporters of a bill of rights always tell us that governments would be restrained by public opinion from doing anything of the sort. I wonder whether this isn't being a little naive? Of course, a bill of rights might in some cases prevent interference with individual rights by some oversight in an ill-drafted Act of Parliament. But would a party government of either colour hesitate for a moment, with its main program bills, to insert, when it wished to do so, the necessary exempting words: "Notwithstanding anything in the bill of rights or any other rule or statute to the contrary"? That is what they would say. I could almost compose the ministerial speech – of course, of the most soothing and conciliatory kind – which would accompany such a section. Surly if it's to be worth the paper it's written on, a Bill of Rights must be part of a written constitution, in which the powers of the legislature are limited and subject to review by the courts. Otherwise, it will prove a pure exercise in public relations.

Even if I was wrong about this, surely a bill of rights could only solve a relatively small part of the problem. Infringement of individual rights is of course an important weakness of the elective dictatorship, but it is not the most important, nor is it the one which occurs most frequently. We should, should we not, be even more concerned with its remoteness, its over-centralization, its capacity for giving control to relative small minorities, and its dependence upon the enthusiasm of political caucuses and other outside bodies and pressure groups, whose zeal, ideological bigotry and desire for irreversible change all too often outrun their discretion. If, as I think, the powers of Parliament need restricting at all, the restriction should by no means be limited to the protection of individual rights. So it is, that a large number of the English critics of elective dictatorship turn instead to electoral reform for a remedy. This would create, so they claim, within the lower House at least, a balance of parties, which would eliminate extremism, or at least control it.

But is this true? Has proportional representation, or its variant, had this effect in Northern Ireland? If anything, it seems to me to have increased polarization, and deprived moderates, at least in the Unionist Party, even of such influence as they had before. Has it had this effect in European countries? I think not. On the whole, it seems to have favoured the growth of communist, and sometimes of neo-fascist, groups. So far, as one can judge, in the scramble for second preference votes, or in the post-election horse trading, it tends to make moderates give concessions to extremists of their own persuasion, rather than to moderates of the opposite viewpoint. Whatever the vices of our own system, it at least tends to put the moderates in our large national parties in charge, to some extent, of their own extremists; and that, to my mind, is a great merit. In Scandinavia, on the other hand, these systems of voting have actually tended to keep a single party in power for periods of up to 30 and even 40 years. And that at least is a form of elective dictatorship, which happily we have not yet had here.

But the real weakness of electoral reform, is that like the other proposals, it does not touch the problem at its root. What is ultimately unfair about our present constitution is that it gives absolute power, when all reason and experience tend to show that unlimited powers are intolerable. If this be right, no amount of tinkering with the method of electing the dictators will by itself deal with the evil of elective dictatorship. The best that can be hoped for is some mitigation of the effects.

I turn now to the House of Lords, I am quite sure myself, that a legislature with two houses is desirable, though, as with all the other suggestions, it would quite wrong to think that the existence of two houses would itself be enough. It used to be said, when I was young, that a second chamber is either objectionable or unnecessary. Unnecessary if it endorsed the decisions of the first. Objectionable if did not. I think this is wrong. By whatever means a single chamber is elected, it is clear that it cannot be wholly representative for all purposes. There will be areas, regions, interests not fully represented, whatever system of voting is adopted. And this was recognized by, amongst others, the founding fathers of the United States. There the Senate on the whole represents the states, while the House of Representatives represents numerical populations. In federal systems, this must clearly be desirable. But what is of this to me is that, useful and distinguished as the present House of Lords is, nothing further can be done to modify its present composition in that direction. In the long run it will be a question of abolition or replacement, until then it is better to leave it alone. But when the time comes, I shall be for replacement.

I have now come to the last stage of this journey. I have reached the conclusion, that our constitution is wearing out. Its central defects are gradually coming to outweigh its merits, and its central defects consists in the absolute powers we confer on our sovereign body and the concentration of those powers in an executive government formed out of one party which doesn't always fairly represent the popular will. I have come to think that while there is much to be said for each of them, none of the reforms which I have examined is adequate, by itself, to redress the balance. And I suppose I now owe it to you, to give some indication of what might suffice, and how it might be achieved.

I envisage nothing less than a written constitution for the United Kingdom. And by that I mean one which limits the powers of Parliament, and provides a means of enforcing these limitations, both by political and by legal means. That is the essence of the matter, and every other detail suggestion that I make must be considered as tentative and, in comparison, unimportant. I would myself visualize a Parliament divided into two chambers, each elected. The one, the Commons, would, as now determine the political colour of the executive government, and retain control of finance. Preferably in my view, though I realize this is contentious, it would be elected as now by single-members constituencies. The other, you may call it a Senate, though I prefer the old name, would like the Senate of the United States be elected to represent whole regions, and unlike their Senate, would be chosen by some system of proportional representation.

The powers of parliament, so formed would be limited both by law and by system of checks and balances. Regions would have devolved assemblies, and the respective spheres of influence, both of these and of Parliament would be defined by law and policed by the ordinary courts. There would be a bill of rights, equally entrenched, containing as a minimum the rights defined by the European Convention to which I must remind you we are already a parties and which can already be enforced against us by an international body. Thus, Scotland, Wales and Northern Ireland would all obtain self-government in certain fields within the framework of a federal constitution and the regions of England would also be separate and equal parts. The interests of regions, minorities and individuals would be safeguarded by law, by the provision of a proportionately elected second chamber, and by the separate regional assemblies. What we should have achieved is a recognizable version of the Westminster model, but modified so as to remove its disadvantages as has already been done in Canada and Australia.

The creation of such a constitution would clearly be a matter of years rather than months and you might well ask how it could be done. Quite obviously so long as we are content to muddle along in the good old British way, it can't be done at all. But my own hunch is that circumstances, in the not too distant future will force our hand, and then we shan't be able to go on muddling along in the good old British way. If and when such a moment arrives, and if possible before then, then here is my suggestion as to the stages by which we could hope to arrive at our destination. In order to achieve it lawfully we must make use of our existing institution, the Queen-in-Parliament. Seeing that Parliament is omnipotent, it can, in theory, give us a constitution as easily as it can nationalize the coal minds or enter the Common Market. The question is not so much how we can get it, as how we can prevent it from being taken away.

My own thought is that we should begin with an act summoning a constitutional convention, on the lines of those we hold before granting independence to a new member of the Commonwealth. This convention would have powers only to discuss and advise. Next, the government of the day would embody the outcome of the deliberations in a bill to be discussed in Parliament in the ordinary way. Thirdly, if that bill were passed, it would be submitted to a referendum of the whole United Kingdom, and although this is again contentious, if the separatists wished to opt out, then the referendum would give them the chance to say so. I know that that involves a risk of disaster, but it is one, I believe, which we should have to take. Once the new constitution was adopted and in force, it would be alterable only by a special procedure involving an act of the newly constituted Parliament, perhaps passed by a qualifying majority, followed by another referendum.

You will see that I have said nothing so far, or virtually nothing, about the Crown. This is because, it seems to me that our monarchy is the only part of our constitution which is still working more or less as it was designed to do, to the great national benefit, and to satisfaction of all, except perhaps a few cranks. Obviously, its continuance would be incompatible with a communist state, possibly also with a fully socialized one. But I don't contemplate either of these, either as a permanent, or even as a temporary, feature of the British political landscape. Within the limitations of a mixed, free and evolving community, I can see no rival to our hereditary presidency, for that is what it is, except the so called Presidential system. In reality of course, an elective monarchy, favoured by the United States and now by the fifth republic in France. With great respect to the people of those two beloved countries, I can see nothing, which would lead me to want to import this feature of their

constitutions into our own. It brings, as we have seen in America, the headship of state into the cockpit of party politics and scandal. It deprives the nation, which adopts it of the glamour, prestige and continuity, which is one of the few remaining assets of our own society. A nation can't survive by controversy alone, it needs cement, and that cement can in the long run only be afforded by tradition, and tradition needs symbols. And our symbol is the Crown, guarding and forming part of our sovereign body, the Queen in a Parliament of two houses, by which we have been ruled so gloriously and for so long. I would myself have wished to continue along these traditional lines unaltered, even in the respects in which according to this lecture I have suggested change. I would not have made these suggestions, if, at the end of a long life, I had not seen unmistakable marks of disruption and dissolution. My object is continuity and evolution, not change for its own sake. But my conviction remains that the best way to achieving continuity is by a thorough reconstruction of the fabric of our historic mansion. It is no longer wind or weatherproof. Nor are its foundations still secure.