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***Parliamentary Life and Democracy***  
***in 21st Century Britain***

**Dissertation Submitted in Partial Fulfilment of the  
Requirements for the Master Degree in British  
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# *Dedication*

*To the memory of  
My Brother*

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## **Abstract**

"Government for the people" is the fundamental principle of modern democracy, and Britain claims to be a democracy, and has in the past, if not the present, seen itself as a model for other countries to emulate. Thus, it is quite interesting to see how British politicians openly criticize other countries for not embracing western democracy, yet when it comes to turning the focus on their own government they are strangely silent. The reason for this silence is that parliamentary democracy is seen to be concealing the location of real power in Britain. Further, the extent to which the ordinary person is properly involved in the politics of a democracy such as Britain is a matter of considerable debate. Therefore, this work estimates the health of democracy in Britain, looks at how Britain is functioning as a democracy in the beginning of the new century, and argues that although Britain has a democracy, it is not strong enough to be able to defend itself against all criticism and opposition.

## **Résumé:**

Un des principaux principes de la démocratie est " un gouvernement pour et par le peuple ".

La Grande Bretagne s'est vantée et se vante toujours d'en être le modèle à suivre. C'est pourquoi nombre d'hommes politiques britanniques s'attaquent à des pays qu'ils qualifient de non démocratiques.

Mais, la critique de leur système politique les fait taire car ils reconnaissent en leur fort intérieur qu'elle est fondée.

Notre travail a pour objectif de porter un éclairage sur l'application de la démocratie en Grande Bretagne et de montrer que ce système n'est pas au dessus des critiques.

## ملخص:

أحد أهم مبادئ الديمقراطية هو مبدأ " حكومة لأجل الشعب " وقد افتخرت بريطانيا في الماضي، ولا تزال إلى الآن بكونها نموذجاً ديمقراطياً ينبغي أن يحتذى به. لهذا نجد رجال السياسة البريطانيين ينتقدون علناً دولاً أخرى ويتهمونها باللامبالاة الديمقراطية لكن إذا وجهت أصابع الاتهام إلى نظامهم السياسي فإنهم يلتزمون الصمت ، وذلك لعلمهم أن نظامهم أيضاً أصبح تحت دائرة الانتقاد.

لهذا فإن هذا العمل يشخص وضعية الديمقراطية في بريطانيا، وينظر إلى مدى فعاليتها عملياً، كما يخلص إلى أن نظام بريطانيا الديمقراطي ليس بمنأى عن الانتقاد.

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## Introduction

The reforms I have set out will transform our politics. They will re-draw the boundaries between what is done in the name of the people and what is done by the people themselves. They will create a new relationship between government and the people, based on trust, freedom, choice and responsibility [...] they are deeply political reforms because they are concerned with the essence of our democracy and how people can exercise power in our society (Blair, 5).

The myth of democracy is now all- pervading. And Britain is a country that prides itself upon being a democratic nation and the people of Britain see their country as being one of the leading lights of the free world. However, while it is perceived that the current British political system is highly democratic, when we look at the British system of government we can see that this belief is in truth questionable and that the notion of British democracy raises some questions when considering its relevancy to the modern world since the tradition of government in the United Kingdom was built on Parliamentary sovereignty rather than democracy. Both within Britain and outside, the political system came under sustained criticism. If ‘What’s wrong with Britain ?’ became the persistent question, then the nature of the political system found itself nominated as one of the answers. Far from being the model of a well-functioning polity, it was argued that the British political process was distinguished by critical disabilities.

Our starting point is the widespread sense of unease among both the public and political elites about the quality of government and public life in the UK and the deteriorating relationship between the people and their government. This unease is long-standing and cumulative. The public now tend to beleive that their country is becoming less democratic ; they want more power than they now have between elections ; and they have lost confidence and trust in elected politicians.

Therefore, this research tries to provide concise and thought-provoking ideas on the key issues surrounding the UK's constitutional development. It seeks to place British politics in wider context, as well as looking at its operation, taking account of the widespread changes that have taken place since the general election of 1997, and examining a range of current debates in British politics related to the notion of democracy.

This work makes an attempt to answer the following questions : Is Britain really a highly democratic country? Is there a parliamentary democracy in Britain ? Does not the still existence of the monarchy and the House of Lords in parliament contradict the idea of democracy ?

The course of this study includes three main chapters. The first chapter starts with a consideration of the debatable nature of the British constitution, focusing upon its problematic theme which have aroused public interest in the operational integrity of the constitution. Then the chapter shifts to explore the value of the monarchy being the oldest political institution in Britain falling into disfavor in the public opinion after Diana's death, and wondering if the Queen's sons can keep the monarchy's flag flying in the future.

The fear of the tyranny of the majority becomes the main thrust of the many objections ending up that the British system fosters an elective dictatorship. A critical analysis of the idea of parliamentary sovereignty, hence, is the subject of the second chapter which provides also a thorough review of the latest developments in constitutional reform together with the creation of the present Scottish Parliament and its effects on the central authority of Westminster Parliament.

An in-depth investigation about the core of parliament is highlighted in the last chapter which approaches the two chambers, Commons and Lords. The Commons, although being the only elected institution, does not mirror the British society, and the Lords for being unelected democratically but having enough power. The chapter also examines the continuing pressures and arguments for reform of both houses.

In this research, British political life is presented differently ; through short, but factual accounts. It is written with the emphasis on analysis rather than descriptions. It is as up-to-date as possible, and takes accounts to events up to the summer of 2009. Some information of key concepts and new political terms have been added. These are highlighted by numbers on their first occurrence and defined in a separate endnotes list at the end of each chapter. The chapters, mainly the third one, also contain a number of boxes and circular forms to illuminate the textual discussion. A full list of references may be found at the end of the research.

Sources utilized in the research for the dissertation include specialized books by prominent writers in the political field, anthologies of notable scholars, and also official reports ascertaining the enduring strengths and failings of the British political constitutional developments. Other useful sources include recent articles published in magazines, journals, and newspapers, all pertaining to the recent changes in British politics.

In conclusion, the overriding goal of this research is to reveal the limitation of British political democracy, a bitter fact confirmed by the continuing political debates over the nature of British democracy and also by the urgent and rapid rate of constitutional reform attempted under the Labour government. The research argues that the dignity of British democracy is now at stake, and that the idea of a British democratic nation is, therefore, hypocritical at best.

# **CHAPTER ONE:**

## **CONSTITUTION and MONARCHY**

### **Introduction**

The fact that the main rules of the British Constitution are not set out in a single, formal document does make it extremely difficult to describe this constitution. In the first part of this initial chapter, we examine the nature and characteristics of the British Constitution comparing it favorably to democracy, and noting in particular its distinctiveness about which there has been much debate in recent years. The second part of the chapter will shed light on republican arguments about the political role of the monarchy which can be said to have entered the mainstream of debate for the first time in a hundred years after the wake of Diana's death. The death revealed for many the undemocratic instincts of the royal family. There has been a feeling that the monarchy was in dire need of Blair's favourite buzz word 'modernisation'. This latter part will seek to answer the question of whether or not the British still need the monarchy via a highly debatable theme, democracy.

## 1. The British constitution

With a written constitution, everyone in society knows their political rights and obligations because they are clear-cut, written down and easily consulted [...]. Without that written guidance, people are uncertain as to what their rights might be and individuals actually have to go to court for a judge to rule on what rights they may or may not be allowed (Pilkington, 2-3).

Almost every country in the world has a written codified constitution which is a declaration of the country's supreme law. All other laws and all the institutions of such a state are subordinate to the written constitution, which is intended to be an enduring statement of fundamental principles. The absence of this kind of supreme instrument in the governmental system of the United Kingdom often perplexes the inquirer, who may wonder where the constitution is to be found, and whether there is one at all.

### 1.1 Key Facts about the British constitution

The British Constitution is old by any standards, in that the origins of the present system can be traced back at least to the period after the Norman Conquest. Then the British political system was marked, throughout its history, by the introduction of three main texts that have prevented the establishment of absolute real power in Britain and determined the relationships between the government and the people :

-*Magna Carta*<sup>1</sup> in 1215 which protected the rights of the community against the crown.

-*Habeas Corpus*<sup>2</sup> in 1679 which extended the powers of Parliament.

-*The Act of Settlement*<sup>3</sup> in 1701 which secured the Protestant succession to the throne, and strengthened the guarantees for ensuring parliamentary system of government.

Everything else, from the freedom of the press to the responsibilities of the Prime Minister and the Cabinet before Parliament, and from royal prerogatives to freedom of worship, is not written down anywhere but is the result of precedents and national consensus (Sholes, 96).

The political system has evolved slowly, and Constitutional developments have tended to come only gradually. It is necessary to emphasize, however, that though many of the institutions of the present system of government in Britain have medieval origins, the role that these institutions play is constantly changing as the substance of the Constitution evolves (Punnett, 164). The remarkable point about Britain is that it has no written constitution contained in any one document. Instead, the constitution consists of statute law (Acts of Parliament); common law or judge-made law; conventions (principles and practices of government which are not legally binding but have the force of law): some ancient documents such as Magna Carta; and the new addition of European Union law (Oakland, 69).

The absence of a written constitution, or at least the existence of a hidden constitution, means that the workings of the country evolve, not according to officially taken decisions, but rather according to traditions and the law of habit (Sholes, 96). Michael Foley explains Ayasch's idea when he asserts that the British constitution's notoreity as an unwritten, unassembled and imprecise collage of discrete parts is turned into a virtue of collective experience and consensual expression. Only a mature and effectively functioning political community could operate and maintain such an ethereal set of rules (1). This makes, according to them, the British constitution dependent upon precedents and history ; a constitution that

represents an active construction of fragmented past practices into a singular entity. This process of the constitution is, thus, unsuccessful, for a summation of experience cannot be said to be synonymous with constitutionalism. Further, the various legal features of the constitution, combined with the practical features of the party and Parliamentary systems, give to the government of the day, and particularly to the Prime Minister, a power and control over the Constitutional machinery that is not to be found in systems where Constitutional checks and balances are designed to prevent any one element in the government process from exercising too much power (Punnett, 163).

However, The constitutional elements are said to be flexible enough to respond quickly to new conditions. UK law and institutions can be created or changed by the Westminster Parliament through Acts of Parliament (Oakland, 69). While other constitutions specify their substantive principles and underlying ethos, the British constitution has always been renowned for its emphasis upon due process, pragmatism and responsiveness. "As a consequence, the viability of such a constitution has been grounded in its capacity both to express and to evoke a consensus of basic social values, an understanding of good political practice and a sense of trust between the rulers and the ruled " (Foley, 156).

## **1.2 Criticism of the constitutional system**

Three aspects are generally defined in any constitution :

- The way in which power is balanced between the institutions of the nation state.

- The limits of the powers exercised by such institutions, imposed to safeguard the rights and freedoms of individuals.
- The extent to which individual rights and freedoms within the nation state are protected (Mitchell, 8).

All the three aspects mentioned above are violated because of the absence of a codified constitution in Britain. A range of arguments have been deployed to criticize the British unwritten constitution. The first line of such criticism in the armoury against it is that the UK governments have become more radical in their policies and are able to implement them because of big majorities in the Commons. The greater political party discipline in the House of Commons that has evolved, and the reduction in checks on governmental power, has led to an excessively powerful government that is not legally constrained by the observance of fundamental rights. This means also that the legislature is dominated by the executive which creates an elective dictatorship<sup>4</sup>. A Constitution would impose limits on what Parliament could do without a legal majority. It should "embody the concept of limited government, and with this an internal separation of powers and the reconciliation of individual rights and democracy" (Barendt, 458).

The existence of a parliamentary majority means, also, that Britain is ruled by small groups at the heart of government. There have been campaigns for more open government and more effective protection of individual liberties in the forms of a written constitution (to define and limit the powers of Parliament and government)



(Oakland, 70). Critics argue that the cure for such a terrific mess is a more complete separation of powers, which might be instituted in the written constitution, reducing the power of the executive to control and direct the working of Parliament. The relations between countries and regions of the United Kingdom could be put on a firmer and clearer basis, possibly on a federal plan. The fluidity and uncertainty of some of the most important conventions might be corrected by putting them into writing (Turpin and Tomkins, 30). The constitution would rest upon the authority not of Parliament but of the people : a referendum could be held to approve it and be required for its amendment.

Moreover, Those who want a written constitution believe that it should be codified so that the public as a whole has access to it – as opposed to just constitutional experts who know where to look and how to interpret it. In their commentary on the British Constitution, Brake and Hale determine that this constitution, by being unwritten, lacks fundamental protection for its citizens."For example, it lacks a law such as the American Fifth Amendment, which protects a defendant being compelled to be ‘ a witness against himself’. That means that the British government could [...] simply decree that the courts can take a negative view of any defendant who chooses not to co-operate with the police "(198). Because citizens’ rights are jeopardized, as some argue, the big question that needs a clear answer is this : why does the British government have the unlimited power to do as it sees fit, to change or reduce people’s liberties, tempered only by the faint prospect of losing power?

Not surprisingly, recent polls conducted by different foundations show that the British people favour a written constitution that limits the powers of the government by a bill of rights, and a government that is more open and subject to direct

democracy. A *MORI* poll in 1997 revealed that 50 per cent of respondents thought that the British governmental system was out of date and 79 per cent said that a written constitution was needed. Another *MORI* poll in 2000 reported that only 45 per cent of respondents were satisfied with the British constitution (Oakland, 71). Critics claim that the UK political system no longer works satisfactorily.

### **1.3 Do the British really need a codified constitution?**

Resignation of the Speaker of Britain's House of Commons, Michael Martin<sup>5</sup> – the first by a Speaker since Sir John Trevor in 1695- revealed that the gap between MPs and the public has grown hugely. This recent issue came after 12 days of disclosures about MP's expenses in *The Daily Telegraph*. MPs have been found to have exploited the expenses system, and it was clear to the British people that MPs were more interested in the “perks” of the job than in the interests of the country. Consequently, MPs repeatedly called for Mr. Martin to go, accusing him of damaging the public's faith in Parliament. The Tory leader David Cameron said: “...what we need is not just a new Speaker, we need a new Parliament, we need people to have the chance in a general election to pass judgment on their politicians” (Porter, MP's expenses).

Because of this scandal, it has become almost a truism that British politics is in crisis. Supporters of a written constitution argue that it is essential for the disgracefully malgoverned country. Producing such a document could tackle such disillusionment, at the same time as setting new, clear limits on the power of the executive. In his article entitled “A written constitution is the answer”, Norman Mathew notes:

“When the Americans do something crazy or wicked, or both, their veneration for the document that begins "We The People" and all it represents obliges them to probe those responsible to perdition with congressional enquiries. ”

Jonathan Freedland, a columnist for the Guardian Newspaper, best expresses the overall significance of a written constitution:

“Should there be a written constitution? Naturally, If you own a house, you have a copy of the deeds; if you buy a car, you get an owner's manual explaining how it works. And we are the owners” (The Speaker exits with revolution in the air: I say, bring it on).

Gordon Brown, the British Prime Minister, says he will try to restore public trust in British politics by setting out ideas for greater public involvement in local decision-making (Brown's Delicate Constitution, 7). But he made the ritual bow before ‘respect for parliamentary sovereignty.’ According to Jonathan Freedland, Gordon Brown doesn't yet understand that it is this very idea that lies at the heart of the problem (The Speaker exits with revolution in the air: I say, bring it on). In other words, any change or step towards a written constitution must rest on a different premise; that the people are sovereign, and any thread that must run through any new constitution for Britain has to be the shift from parliamentary to popular sovereignty. This is why Gordon Brown's statement was disappointing.

Undoubtedly, Britain does have a written constitution- It is spread across a variety of different documents, decrees, statutes and reference works. What Britain does not have is a short single- volume constitution that has been neatly collated and formally codified for easy reference, infallible accuracy and binding force. And the opinion of many commentators is that, without a formal, codified structure, such ‘unwritten’ constitutions are untrustworthy, because they are confused, unclear and

uncertain. In addition, the lack of an effective separation of powers, and the fact that parliamentary sovereignty allows Parliament to overrule fundamental rights, makes it rather to some extent a 'facade' constitution.

## **2. The Monarchy**

It has been commonplace for years to say that the conventional supports of Britain's monarchy have disappeared. The empire has gone and the Commonwealth means next to nothing to the majority of the British. The old concept of the British nation state is buckling under pressure from devolution, the European Union and globalisation. And, to top it all, when Tony Blair removed the automatic right of hereditary peers to sit in the House of Lords he left us with the lonely anomaly of a hereditary head of state (Cohen, 28+).

New Labour's commitment to constitutional reform has not, as yet, embraced the monarchy. In fact, Prime Minister Tony Blair has seemed keen to foster a good working relationship with members of the Royal Family. However, the untimely death of Diana, Princess of Wales, highlighted a great deal of popular unrest concerning the role of the monarchy. While a wave of grief swept across the country, members of the Royal Family were criticized for seeming too distant and out of touch with popular feeling. As a result, many critics argue that the monarchy needs to change if it is to maintain public support. Others, however, recommend an abolition of this feudal institution.

### **2.1 Position of the monarch**

The constitutional title of the UK Parliament is the 'Queen-in-Parliament'. This means that state and government business is carried out in the name of the monarch by the politicians and officials of the system. The Crown is only sovereign by the will of Parliament and acceptance by the people. The Crown is expected to be politically neutral; is supposed to reign but not rule; and cannot make laws, impose taxes, spend

public money or act unilaterally. It's all very well saying that the monarch can't expect a prime minister or law lord or bishop to obey his/her commands. What he/she can--or rather could--expect is that church and state would legitimate his/her monarchy through acts of deference. In the words of the wife of one very senior courtier, "[the crown] is like a woman sleepwalking" (Buckley Jr, 62+).

In Britain, there is hereditary succession to the throne, but only for Protestants. The eldest son of a monarch currently has priority over older daughters (Oakland, 71). Two main points, here, should be clarified. First, the exclusion of Roman Catholics and those who marry them, and the preference of males over females. Neither rule seems righteous in a 21st multi-faith society. Secondly, the heir's position stems from one thing and one thing only: he emerged from the queen's womb many years ago. He has no "responsibility." He has no legitimate "authority." In a democracy, however, power should stem from voting lines, not blood-lines. In a country like Britain, members of the royal family acquire their status as heads of state, not from elections, but from tradition and privilege. This idea that some members of society are more important than others runs contrary to the democratic notion that all men are equal, yet it is inherent in the British system of government.

## **2.2 A traditional role for the monarch**

The role of the monarch is underlined by David Sholes in his book 'Dossiers de civilisation britannique' (2004) in the following points :

- at the Prime Minister's request, she summons Parliament, opens and closes Parliamentary sessions :
- she delivers the Crown Speech, written by the Prime Minister, which delineates the government's policy for the coming year ;
- she gives Royal Assent to the bills passed by Parliament. She can theoretically veto them but

never does, as it would be a sign of her taking political sides (25).

One crucial point is that, in the 21st century, the modern role of head of state in Britain still stems from the historical power of the monarch. To summon and dissolve parliament; to appoint the prime Minister; and to grant the royal assent to Acts of Parliament are all stemmed from the traditional role of the monarch. Further, a monarch who “refuses to give the royal assent to a bill would be likely to face the threat of abolition from parliament” (Williams, 165). In an article published in The Guardian Newspaper, Michael Jacobs, an influential New Labour supporter advocates the idea of monarchy’s modernisation claiming that the British constitution can be properly democratised if the modern role of head of state is separated from the out-dated power of the monarch (Watt, Monarchy ‘must lose powers in order to survive’). Under his plans, the annual Queen's speech, in which the monarch sets out "my government's" forthcoming legislative plans, would be replaced by the government's plan that would be announced in the Commons. And in the most significant shift in power, the royal prerogative would be exercised by ministers in parliament. Mr Jacobs calls are not for the abolition of the monarchy. It is only for modernizing this traditional institution. However, monarchy by definition, is not "democratic". And so the idea of imposing modern principles of modernisation on what is essentially a feudal institution is a little absurd.

### **2.3 Can the monarchy be ended?**

There is a significant proportion of British citizens becoming increasingly vocal in their opposition to the monarchy. For them, it seems fruitless to demand the immediate advent of a republic in Britain. But, according to them, the widespread programme of reform undertaken by the governments of the new century cannot be

satisfactorily completed unless it also addresses the position of who should be head of state, together with the means by which they are appointed. This demand for a gradual reform in the monarchy comes as a result to the many rational objections to the continuation of the out-dated constitutional monarchy. Here are some of the objections:

Many critics see the Monarchy as the centre of the class system in Britain, and claim that the continued existence of the Monarchy helps to promote deference, snobbery, and an acceptance of outdated traditions and values : "The monarch, as head of the class system, represents the feudal system of medieval England and not the classless society that modernizers would like to see, " Andy Williams states (96).This criticism comes not only from the left of British politics. Liberals, too, believe, in equality of opportunity and upward mobility in society. They believe in a meritocratic system in which people are appointed and promoted according to talent rather than birthright. The monarch is not identified with these ideals.

Others, further, claim that the monarchy is a definite liability within the political system. They criticize the hereditary system from the practical point of view of being no real guarantee of merit (and many Monarchs in the past were undoubtedly rather dubious specimens), while from a general standpoint they condemn the hereditary principle as being undesirable in a democratic system. "Not only are monarchs unrepresentative as head of the class system, "says Andy Williams, "[but] they are also unelected [...](167)."

The cost of the Monarchy is often criticized, though it is extremely difficult to arrive at a clear conclusion as to the actual cost to the state. The money to finance members of the Royal Family is provided from the Civil List and in the 1990s amounts to almost 800.000£ per year (Sholes, 94). Some suggest this is far too

expensive, especially the amount of money that is given to peripheral members of the family who, according to the argument, perform no useful function. It is argued that a president would cost much cheaper and adhere more closely to the principles of democratic government.

Ultimately, the monarchy, which is expected to be a symbol of national unity, appears to be a very fallible symbol as well. If this ‘symbol’ loses its symbolic quality and is no longer a remote example of moral rectitude and dignity, then it will be easy to decide that it no longer fulfils its symbolic role, thus making it unnecessary to keep—and give money to—a mere, almost nonexistent, symbol (Sholes, 96). Additionally, preservation of the monarchy should not hinge on the specific character or personal attributes of the Monarch. Saying that the British should keep the monarchy because the Queen is a lovely lady is patently absurd.

#### **2.4 Is Prince Charles suitable to become King?**

There has been a change in the relationship between the Royal Family and the press, and, more generally, the public, and this might be at the root of the difficulties encountered by the Royal Family in the past decade. It was possible for the press—and therefore the general public—to have access to ‘intimate’ details of the life of the Royal Family. In doing so, the Royal Family was deprived of its almost mythical quality. There are also marital difficulties experienced by three of the Queen’s children—another sign that they are, after all, normal human beings (Sholes, 94). This, of course, has happened before, but because of the new state of affairs, they are more vulnerable to attacks by the press for whom their private lives are fair game. This is ultimately very dangerous for the monarchy. The following excerpt illustrates this new attitude towards the royal family:

[The queen’s] children, could not follow her self-sacrificing example in a disrespectful modern



democracy, even if they had wanted to, which they didn't. When they failed to live up to standards she set for the monarchy, the gap between the official version of a royal family that served the nation and the reality of a royal family that pleased itself became too great: respect swirled away and, inevitably, the monarchy became ridiculous (Cohen, 28+).

The result is of course the extreme rudeness with which the press now treats the Royal Family, especially Prince Charles, the Prince of Wales, the Queen's eldest son and heir to the throne. The trouble escalated ever more. In 2003, Prince Charles delivered an astonishing attack on the British people, accusing them of 'torturing' him over his affair with Camilla Parker Bowles<sup>6</sup>. In an extraordinary outburst, revealed less than six weeks before they are due to wed, he claimed that the very people who would be his subjects when he would become King have been heartless towards the couple. The insight into his private thoughts came as BBC journalist Gavin Hewitt discloses for the first time details of an intimate conversation with the heir to the throne. Initially, the Prince refused to talk about his relationship with Mrs Parker Bowles. When pressed, he snapped angrily:

'All my life, people have been telling me what to do. I'm tired of it. My private life has become an industry. People are making money out of it.' And he pleaded: 'I just want some peace'(Walters, 1).

These comments to the BBC journalist were revealed two years later and fueled concern at the public's growing disenchantment with the monarchy and the Prince's suitability to become King. In an article, published in the National Review Magazine, entitled 'Confusion Confounded,' William F. Buckley Jr expresses people's feeling of disgust to this lowly, adulterous affair ending in marriage, noting that "81 percent of Brits are 'strongly opposed' to the scheduled marriage; 89 percent object to Camilla's assuming the title Her Royal Highness, 'which was removed from Diana'; 94 percent

say they would not accept her as queen" (62+). Marriage between Prince Charles and Camilla Parker Bowles was never likely to achieve popularity. The fact that both of them have been married before somewhat sullied the romance of the occasion. As did the fact that a significant proportion of the population regarded the relationship as a betrayal of the memory of the late Princess Diana. Similar attitudes were published in numerous articles, like the words of Michael Thornton "[m]y head will not bow to Camilla Parker Bowles. Nor, I suspect, will many other British heads. And to the Queen, I regretfully say, 'I am sorry, Ma'am. I have been your loyal subject all these years, but I feel the House of Windsor has now outlived its time. After April 8, please join me as a republican'"(William F. Buckley Jr, 62+). Words like these offered a flash point to begin a serious debate on the future of the royal family, especially as the popular Queen Elizabeth entered her twilight years.

In 2005, Prince Charles married his long-term mistress Camilla Parker Bowles. Some lessons, however, were to be learned by him, if the royal family was to retain any semblance of legitimacy in a fast-moving world. The most basic one was: if you play with fire, you can get burnt. Even if their marriage did, in the end, win a few favourable headlines, the fact remained that the Royal Family was still stumbling down the path to obsolescence (Walters, 1).

No system is ideal, of course, and in this age of democracy many people believe the monarchy is old fashioned and out-of-date. To be frank, Britain's constitutional monarchy is useful on a purely pragmatic basis. If it did not draw a degree of affection from the public, it would be entirely redundant. Recently, a series of tawdry scandals has undermined public affection for the House of Windsor. The real trouble with the monarchy is that it acts as an obstacle against serious constitutional reform,

and this is why reform in this country takes decades, not years or months, to achieve. Even now, in 2009, calls for serious discussion about wholesale constitutional reform are met with anxious cries to avoid offending the Queen, or to ensure "Her Majesty's position is not undermined".

## **Conclusion**

The institution and the person are not immune from criticism. Britain does not have a single document or set of documents which can be held up as ‘The Constitution’, and the traditional doctrine of parliamentary sovereignty precludes the notion of a class of ‘higher constitutional law’. It is further ironical that several countries based their written constitutions on Britain's unwritten version. Britain could finally get a written constitution spelling out citizens' rights and codifying its country's political system.

As for the monarchy, finding a conclusion is not easy as there is a glaring paradox. The institution is in many ways the anti-thesis of democracy yet there is still massive support for it. However, it is important to mention that the mythology and magic surrounding the Crown and the Royal Family have always been used both to entrench the culture of deference and to veil a whole range of undemocratic powers protected by the concept ‘royal prerogatives’. It is a potent combination.

**Endnotes:**

<sup>1</sup>The barons at that time drafted a document that went well beyond forcing King John to stop being vindictive, proposing a catalogue of things the King would not be allowed to do by putting so much weight on the authority of common law. So if Magna Carta is not the birth certificate of democracy, it is at least the death certificate of despotism. It spells out, for the first time, the fundamental principle that the law is not simply the will or the whim of the king, but rather an independent power unto itself.

<sup>2</sup> Of English origin, the writ of habeas corpus has historically been an important instrument for the safeguarding of individual freedom against arbitrary state action. The British jurist Albert Venn Dicey wrote that the Habeas Corpus Acts "declare no principle and define no rights, but they are for practical purposes worth a hundred constitutional articles guaranteeing individual liberty."

<sup>3</sup> It was originally filed in 1700, and passed in 1701, to settle the succession to the English throne on the Electress Sophia of Hanover—a granddaughter of James I—and her Protestant heirs.

<sup>4</sup> The phrase elective dictatorship (also called executive dominance in political science) was coined by the former Lord Chancellor of the United Kingdom, Lord Hailsham, in a Richard Dimbleby Lecture at the BBC in 1976. It describes the state in which Parliament is dominated by the government of the day. It also refers to the fact that the legislative programme of Parliament is determined by the government, and government bills virtually always pass the House of Commons because of the nature of the governing party's majority.

<sup>5</sup> He said that he would step down on 21 June, 2009 after instigating reform of the system.

<sup>6</sup> Camilla Parker is the second wife of Prince Charles, Prince of Wales, and is the current holder of the title Duchess of Cornwall.

## **CHAPTER TWO**

### **Parliamentary Government**

It should [...] be carefully noted that the term 'sovereignty', as long as it is accurately employed [...] means simply the power of law-making unrestricted by any legal limit. If the term 'sovereignty' be thus used, the sovereign power under the English constitution is clearly 'Parliament.' That body is [...] ultimately obeyed by the citizens of the state (Dicey, 70).

#### **Introduction**

As the primary forum for political debate and because of its role as a legislature, the Westminster Parliament occupies a central place in both the legal and the political constitutions. It is regarded as a fundamental constitutional rule that there are no legal limits upon Westminster's legislative powers, and that the courts may not question or review the validity of legislation. Different questions are raised by the creation of the Scottish Parliament with its own law-making powers, which as a matter of political practice affects the authority of Westminster to legislate for Scotland. A further question is whether the democratic process in the UK works so perfectly as to justify the absence of any limit upon the authority of Parliament to legislate.

## 1 What is Parliament for ?

Parliament is involved in the legislative process, and its functions are :

- examining proposals for new laws ;
- providing, by voting for taxation, the means of carrying on the work of government ;
- scrutinising (examine sth to discover information) government policy and administration ;
- debating the major issues of the day.

In discussing the functions of Parliament it is as well to begin by saying what Parliament does not do- it does not govern. It itself, though, has no executive functions ; and although a majority of its members are supporters of the government, it is also the means by which government is held to account, through scrutiny and criticism from opposition and backbench members (Wright and Clements, 195). Parliamentary government does not mean government by Parliament but government through Parliament.

In constitutional theory, Parliament has legal sovereignty in all matters and can create, abolish or amend laws and institutions for all or any part(s) of Britain. In practice, this means the implementation of the government's policies (Oakland, 74). Altogether, its existence and activities are supposed to confer legitimacy on the government between general elections, to reassure people that governments, once elected, stay within the boundaries of their mandate and do not govern in an arbitrary way. (Wright and Clements, 195). John Stuart Mill<sup>1</sup> explained this role in the following statement :

Instead of the function of governing, for which it is radically unfit, the proper office of a representative assembly is to watch and control the government :

to throw the light of publicity on its acts ; to compel a full exposition and justification of all of them which anyone considers questionable ; to censure them if found condemnable, and, if the men who compose the government abuse their trust, or fulfil it in a manner which conflicts with the deliberate sense of the nation, to expel them from office, and either expressly or virtually appoint their successors (239).

Besides, formal and informal checks and balances, such as party discipline, the Official Opposition, public reaction and pressure groups, normally ensure that Parliament legislates according to its legal responsibility. While critics argue that Parliament's programmes may not reflect the will of the people, a *MORI* poll in 2000 showed that satisfaction with the way Parliament works had (perhaps surprisingly) increased, to 43 per cent with dissatisfaction at 29 per cent (Oakland, 74).

But, can Parliament do all its functions properly ? One recent commentator has condemned it for becoming 'incompetent and irrelevant across many of its central functions'<sup>2</sup>. It is often said that Parliament now occupies a smaller position in the politics of the country than it once did ; that significant political debates take place in the media, not in Parliament ; that Parliament's attempts to scrutinize the work of a sophisticated and professional government are amateurish ; that its legislative role amounts to rubber-stamping the government's proposals (Wright and Clements 195-196). Thus, renewing Parliament is key to wider modernisation of [the] country's system of government.

## **2 Parliamentary Sovereignty in Crisis**

Parliamentary Sovereignty has traditionally been viewed as a key element of the British Constitution. Constitutional experts such as A.V. Dicey<sup>3</sup> have proclaimed that Parliament has legal sovereignty (absolute and unlimited authority), in that it is



the supreme law-making body in Great Britain (Watts, 31). Only Parliament can make, amend and unmake law, and no other institution can override its decisions.

In Britain, the homeland of parliamentary sovereignty and the birthplace of constitutional government, there have been significant incursions into parliamentary rule. In reality, the doctrine has been undermined by various considerations in recent years, most notably by adherence to the European Convention and membership of the European Union<sup>4</sup>. Both imply that any British government must modify its law to take account of European wishes. In other words, supranational law courts are now regularly reviewing British legislation for compatibility with international obligations. European law ultimately prevails over British law. The Parliament now tends to scrutinize legislation for conformity with the convention, and this is a source of constraint (Ginsburg, 3-4). Thus, it cannot really be said that the Parliament is truly sovereign in Dicey's sense of being unchecked by other bodies.

Yet, as a matter of fact, even before these European limitations, parliamentary sovereignty was a questionable notion. It implies that Parliament is supreme and all-powerful, But it is widely agreed that power has passed from Parliament to the Executive both because of the growing scale and complexity of government, and because of the extent of party discipline. Any government armed with a large majority has a good chance of pushing its programme through. Sceptics argue that if the doctrine implies that Parliament has real power, the truth is that it usually acts as a rubber-stamp for governmental action.

Internally, The UK Parliament tends to be dominated by a single-party, majority seat government, which can usually ensure that its legislative proposals are passed by Parliament. In his 1976 Dimpleby Lecture, Lord Hailsham<sup>5</sup> therefore used the term

‘elective dictatorship’ to suggest that a majority government, in control of a sovereign Parliament, with a flexible constitution, could effectively change the constitution at will (Grant, 170). This thesis gained renewed strength after the general elections of 1997 and 2001 when Labour won massive majorities of seats in the House of Commons (on a minority of the votes cast in the country) and seemed, to many critics, virtually unstoppable. It is, therefore, often argued that Parliamentary sovereignty is usually, in reality, executive sovereignty.

Certainly, there are other political constraints on Parliament’s legal sovereignty. These include “activities of pressure groups, the powerful media and the electorate which has ultimate political sovereignty in that it can vote a government out of office” (Watts, 31). Also, the need to gain and maintain public support is a crucial limitation on any group of ministers, especially in the run-up to an election.

The most important point to remember is that the principle of parliamentary sovereignty was not designed for a modern, democratic society which has large political parties which contest general elections on a nationwide basis. It is a 300-year-old idea. Today, in the wake of a global wave of democratization, parliamentary sovereignty is a waning idea (Ginsburg, 3). Parliamentary control, it is argued, is not an absolute but a relative concept. This view is aptly summarised by Bernard Crick :

‘control means influence, not direct power ; advice, not command ; criticism, not obstruction ; scrutiny, not initiation ; and publicity, not secrecy’ (80).

If the modern state is perceived to be losing sovereignty- either to some power above it (such as the EU) or below it (such as federal bodies or the people themselves), there may be a perception that sovereignty itself is disappearing- rather than simply shifting or dispersing. Finally, the concept of the sovereign state-

particularly when related to internal force- seems fundamentally to contradict the idea of democracy as people power.

### **3 Devolution and Parliamentary Sovereignty**

#### **3.1 Devolution<sup>6</sup> process**

One of the most dramatic changes to the structure of British government brought about by the Blair administration was the creation of two new sub-governments in Scotland and Wales.

In 1995, an influential report, *Scotland's Parliament. Scotland's Right*, calling for a Scottish Parliament, was drawn up by the Scottish Constitutional Convention, a non-governmental organization representing many bodies of opinion within Scotland, including the Labour and Liberal Democrat parties. Having outlined a scheme of how the new Parliament might operate, the framers of the report wished to ensure that it would not be at risk of legislative interference from Westminster. The convention is adamant that the powers of Scotland's Parliament, once established, should not be altered without the consent of the Scottish Parliament representing the people of Scotland (Bradley, 48,49). Under the Scotland Act of 1998,<sup>7</sup> Scotland regained its own Parliament and its own administration in the form of a cabinet and first minister. '[T]he Scotland Act [gave] wide law-making powers to the new Parliament and [had] a greater constitutional significance' (Bradley, 48).

Concerning Wales, although there has long been a sense of national Welsh culture, centered especially on the Welsh language, there was far less support for nationalism in Wales than in Scotland because of the perceived economic and

political benefits of the union (Peele, 56). Wales gained an Assembly with an administration also headed by a cabinet and first secretary, although the title first minister has been used increasingly in Wales, but not a Parliament with the power to pass primary legislation (Grant, 47). Its Welsh assembly is therefore much weaker than the Scottish parliament.

### **3.2 How does devolution affect the sovereignty of the Westminster Parliament ?**

Section 28 of the 1998 Act, which provides that the Scottish Parliament may make laws for Scotland, includes a modestly phrased sub-section : ‘(7) this section’, which provides for the Scottish Parliament to make laws, ‘does not affect the power of the Parliament of the UK to make laws for Scotland.’<sup>8</sup> This means that, in law, the Westminster Parliament could legislate on a devolved matter without the prior approval of the Scottish Parliament. According to the Act, devolution provides a tier of decentralized government. It allows these countries (with their Executives and First Ministers) to decide more of their own affairs. The Scottish executive is responsible for the following policy areas : health ; education and training ; local government, housing and social work ; economic development ; employment, transport ; law and home affairs ; police ; environment ; energy ; agriculture, forestry and fishing ; culture, sport and the arts ; and the administration of certain EU laws in Scotland (e.g. civil nuclear emergency planning). Westminster remains responsible for foreign affairs including relations with the EU, defence and national security, macroeconomic and fiscal matters, immigration, railways, shipping, airlines, pensions, employment

law, broadcasting and telecommunications and much else (Wright and Clements, 301).

Now, the debate between Labour and the Liberal Democrats on the one hand, and the Conservatives on the other, was focused on whether devolution would strengthen the United Kingdom by enabling it to accommodate divergent political debates in different parts of the country, or lead to its eventual disintegration (Wright and Clements, 301). The attack is that it is a threat to the unity of the UK. The demands for separation will be increased if devolution proves difficult to work. The Scottish Executive could find itself locked into conflict with Westminster, especially if a different party has control in London and Edinburgh. Also, as a result of the complexity of devolution, Scottish MPs at Westminster can vote on purely English matters, whereas English MPs can no longer vote on matters affecting Scotland—fueling a sense of English injustice that has stirred English nationalism (Watts, 44). On the other hand, the Labour government says that devolution will strengthen the UK and that legal sovereignty still rests with the UK Parliament at Westminster (Oakland, 68). In this sense, Britain has a unitary political system and remains a union of the United Kingdom (England, Scotland, Wales and Northern Ireland).

New Labour's devolution reforms have been a major constitutional success. Nevertheless a question mark over Westminster sovereignty, which the devolution legislation preserves, remains. Although the Scotland Act lays down that devolution does not affect Westminster's power to make laws for Scotland. But as Bogdanor says :

The basic premiss of devolution, after all, is that there is a separate political will in Scotland. The first Minister in Scotland will be seen as an executant of that political will... . It will be the First Minister to claim that he or she has more the right to do so than Westminster MPs [...]. In practice,

therefore, the First Minister in Scotland is likely to be seen as the real leader of the Scottish opinion ; he or she is likely to be seen as the Prime Minister of Scotland' (288).

Having reviewed the instance of the Scottish Parliament, we can see that it has affected the sovereignty of the UK Parliament. It is difficult to imagine an issue more likely to unite Scottish opinion than a conflict between the Scottish Parliament and a remote London- based government. Even if London were to get its way in the end, this would probably be at the cost of considerable political disaffection and loss of support. In practice, therefore, Westminster will find it extremely difficult to exercise its much vaunted supremacy.

#### **4 Major points against the undemocratic Parliament**

The Westminster Parliament has received much criticism in recent years. Alleged weaknesses of the Parliament including the belief that :

- It was thought that the expression of the democratic ideal was closely related to the sovereignty of the nation itself. Thus Albert Dicey wrote :

‘ [...] as things now stand, the will of the electorate, and certainly of the electorate in combination with the Lords and the Crown is sure ultimately to prevail on all subjects to be determined by the British government [...] The Electors in the long run can enforce their will (Dicey, 70).’

However, there are many sovereign states in the world without sovereign Parliaments, and there is no necessary connection between national sovereignty and the authority of the national legislature. Nor does legislative sovereignty in itself imply any particular degree of democracy in the structure of Parliament.

- Parliament is regarded as a fundamental constitutional rule that there are no legal limits upon Westminster's legislative powers, and that the courts may not question or review the validity of legislation (Bradley, 25). This means that Parliament can enact unjust or undemocratic laws. Imagine a statute prohibiting Christians from marrying non-Christians, or dissolving marriages between blacks and whites. The doctrine of Parliamentary sovereignty thus is an absurdity that is bereft of any rational justification.
- The British system, usually, enables one political party to obtain a majority in the House of Commons. Although there is no limit to the number of political parties, in effect, Britain has traditionally a two-party system of government, since most people vote either Conservative or Labour (McAnulla, 13). The chief disadvantage of a two-party system is that minority parties like the Liberals cannot be properly represented in Parliament. Thus, the Democratic Leader Nick Clegg 'declared his intentions to be daring in his mission to "break the two party system" in British politics' (Clegg aims, 8). But why is a multi-party system needed? John C. Berg simply answers the question stating that 'The two-party system tends to suppress debates about possible alternatives [...] rather than bringing the public into the political arena' (525). Further, according to political author Steve Richards changing the system will be much fairer. At least it may open up politics and end the pretence that everyone must all think and say the same damn thing (6+). Now whether Britain is on the brink of a transition to 'genuine' multiparty politics or not, the answer remains uncertain.
- Parliamentary government appears to imply that government is checked by the power of Parliament, which examines, criticises, and checks its activities via

such methods as Question Time as the use of select committees(Watts, 37). This suggests that Parliament has real power. However, this is not an accurate description in the twenty first century. Power has now passed to the executive branch It is very difficult for Parliament to control the executive, because government is so vast and complex.

- The individual members of Parliament have less power than they used to. For example if a constituency wanted to bring back the death penalty to their constituency, the particular MP may not put forward this idea in the Commons, as their party may not agree with this. Further, when an important bill is presented to Parliament, MPs must vote in line with party orders. If an MP disobeys his party line, he knows that at the next general election his party will not put him forward as a candidate. He could stand as an independent, but in most cases his chances of winning on his own against the official party candidate would be small. His parliamentary career could be ruined. Also, if the government had only a small majority in Parliament, rebellious MPs, who vote according to their conscience, might cause their own party to lose office. Thus, too much obedience of the party line gives too much power to the cabinet and to the prime minister while putting an MP to run the risk of being kicked out of the party.

## **5 UK parliamentary control of Government ?**

Constitutional theory suggests that Parliament should control the executive government. But Parliament is not able to make and break Governments in the way it did in the mid-nineteenth century. Unless there is small-majority government, rebellion by government MPs or public protest, a government with an overall majority



in the Commons (such as Labour since 1997) can carry its policies through Parliament, irrespective of Parliament's attempts to restrain it (Oakland, 89). Both Conservative and Labour governments, consequently, have become more intent on pushing their policies through Parliament. This has been described as an elective dictatorship. Government's control over Parliament is well expressed in Stuart McAnulla's words :

Due to the majority party system, government will usually be in a position to force through whatever Parliament policies it wishes, with the electorate only able to have an indirect say every four or five years in an election [...] Government is viewed as the sole authority which no other interest can legitimately challenge (21).

Today, the degree of Government control over Parliament produces varying reactions. Parliamentarians deplore the situation and describe it as 'Cabinet dictatorship' or 'executive despotism', and argue that today the power, efficiency, and prestige of Parliament is unacceptably low (Punnett, 181). This has produced a situation in which Parliament is merely a rubber stamp for Government decisions, with Parliamentary activity in many instances being ineffective and pointless.

Opposition parties can only oppose in the Commons and hope to persuade the electorate to dismiss the government at the next election. Formal devices such as votes of censure and no confidence are normally inadequate when confronting a government with a large majority (Oakland, 89). As a result there is less colour in Parliament and less public interest in politics. "Politics is [therefore] at a low ebb. In the last two general elections, in 2001 and 2005, the turnout was respectively 59 per cent and 61 per cent, easily the lowest since 1918. At every other election in this period, over 70 per cent voted and sometimes 80" (Pearce, 54+). This is presented as being the negation of democracy, with the executive being given virtually dictatorial

power in between general elections. Even rebellious government MPs will usually support the party on certain occasions, out of a self-interested desire to preserve their jobs and a need to prevent the collapse of the government (Punnett, 182). Thus demands are made for a reduction in the extent of Government control over Parliament.

## **6 Government of the People ?**

To what extent do the British people participate in the political processes ? In general the vast majority of people in Britain play little or no direct part in the activities of the political parties. Most people's involvement extends no further than voting at elections, while some people do not participate even to that extent. While the membership of the British political parties is high in comparison with parties in other countries, active party members form only a very small proportion of the total membership (Punnett, 428). Further, at this level, but more particularly at a Parliamentary and Ministerial level, some social groups are over-represented in proportion to their numbers in the community as a whole.

There exists in Britain an undoubted social elite, based in particular on the exclusive educational background of a limited section of the community, and this social elite holds a degree of political influence that is out of all proportion to its numerical strength. The existence of a small group who at any time have a dominant share of political and economic power, is to be found in any political system, be it democratic or totalitarian, but in Britain this group is characterized by its *social* exclusiveness, and by its ability to perpetuate itself through the educational and social system. Marxists claim that this group constitutes a distinct Ruling Class, which has pronounced boundaries, which enjoys almost exclusive power, and which is dedicated

to the maintenance of the existing social and capitalist system (Punnett, 428). Christopher J. Hewitt states that the problem then becomes one of deciding what can be concluded about the power-structure and the relationships between the political elite and other social groups (62).

In the case of the Conservative Party in Parliament, and especially in Conservative Governments when they are in power, a dominant position is occupied by the upper- and upper-middle-class element, whose educational background is that of public school, Oxbridge, and the law or big business. In the long periods the 20th century when the Conservative Party has been in power, this exclusive social element has thus enjoyed a preponderant share of ministerial power. Even when the Labour Party has been in office, this exclusive social element has not been excluded entirely from Ministerial power, in that Liberal and Labour Governments have also included a number of Ministers with that type of social background (Punnett ,227-228). Also, this social elite is conspicuous among the top levels of the civil service, so that whichever political party is in power, the social elite retains considerable influence throughout the executive machine.

Tensions, in recent years, also surrounded Civil Service's neutrality which is known for its discretion, its slow-moving competence, and its elitism. Access to this centre of power is dominated by limited sections of society. Many politicians argue that civil servants are the hidden face of the Establishment and that they control the practicalities of governmental work (Ayasch, 128). They are often perceived as having more power than the government itself. The Civil Service is no longer neutral in matters of national interests. John Greenwood argues that :

Its behind- the- scenes-but considerable-power is not to be neglected [...] [T]he influence of Whitehall officials is a key element in decision-making and policy enforcement (64).

One need not be surprised thus to discover that the civil service reflects the basic inequalities of the social structure and prevailing temper of the British nation , for the Civil Service is in the loosest sense democratic. But why is the government dominated by these groups ? some plausible reasons given to explain why government should be dominated by upper class or business interests remain ; business as a source of party funds and the ability of business and certain professional groups to obstruct the government by not co-operating with its policies and refusing the government the expert , scientific and technical advice on which it relies (J.Hewitt , 62) . now an extremely important point is that the elevation of a highly trained elite into power is not always the means of ensuring right-action .even the most educated men and women grow stale , they may develop delusions , often miss important factors in their decisions and may even start to muddle with the decision-making machinery .it is not terribly useful to ask " who should govern ?" .it is much more important to ask "who should leaders govern ?", and to establish means of checking authority and thus preventing its abuse.

## **Conclusion**

Parliamentary sovereignty is a constitutional principle which was acquired before the advent of democracy. And Britain has never developed the idea of popular sovereignty in constitutional terms. The guiding principle which underpins the British political system is that no other national body can question the legitimacy of Parliament decisions. There is nothing to stop Parliament passing any bill it wishes, irrespective of public opinion. The people never came into the picture. Britain seems to be among the exceptions to the democratic path in which the ultimate authority is vested in the people.

Devolution in Britain has been presented in terms of the needs to preserve the union. Westminster Parliament has devolved legislative powers to a subordinate assembly that has the potential over time to acquire a political authority that could rival that of Westminster in matters of Scottish law and government. The present Scottish Parliament has marks of a subordinate legislature, but political opinion and national sentiment in Scotland will rate it more highly than this.

## Endnotes:

<sup>1</sup> John Stuart Mill (1806-1873) was the most influential English-speaking philosopher and political theorist of the nineteenth century.

<sup>2</sup> In the second extract from the new book by Andrew Marr, the Independent's chief political commentator, he accuses 'incompetent' MPs of failing to protect their role and influence. For more information : Marr, Andrew. 'Exploding the myth of Parliament's power'. The Independent. **Monday, 4 September 1995**. <http://www.independent.co.uk/opinion/exploding-the-myth-of-parliaments-power-1599401.html>.

<sup>3</sup> Albert Venn Dicey (February 4, 1835 – April 7, 1922) was a British jurist and constitutional theorist who wrote *An Introduction to the Study of the Law of the Constitution* (1885). The principles it expounds are considered part of the uncodified British constitution.

<sup>4</sup> Britain's adherence to the European Convention on Human Rights was in the 1950s to offer refuge to the victims of Soviet persecution, and it has been a member of the EU since 1973.

<sup>5</sup> Lord Hailsham was a British judge and Conservative politician. He coined the phrase "elective dictatorship" to describe the faults he perceived in the constitution.

<sup>6</sup> The term devolution refers to devolving political decision- making power from the center to sub-national units. This involves no loss of sovereignty at the centre, for powers which are devolved, could, in theory at least, be taken back again by Act of Parliament at some point in the future.

<sup>7</sup> The Scotland Act 1998 (1998 c. 46) is an Act of the Parliament of the United Kingdom. It is the Act which established the devolved Scottish Parliament.

<sup>8</sup> Full version of the Act is available on the following website:  
[http://www.opsi.gov.uk/acts/acts1998/ukpga\\_19980046\\_en\\_1](http://www.opsi.gov.uk/acts/acts1998/ukpga_19980046_en_1)

## CHAPTER THREE

### Two Faint Houses

A strong democracy needs effective [and] incredible institutions. The House of Lords [...] plays a key role in scrutinising legislation and holding the Government of the day to account. The creative tension between the Government, based primarily in the House of Commons, and the House of Lords, is essential for the making of good laws. (Great Britain, Ministry of Justice, 1)

#### Introduction

Modernization of both chambers of the British Parliament, Lords and Commons, proved very difficult to achieve in Parliament despite the commitment of the Labour and the Liberal Democrats. The Commons, the cradle of the British democracy, is still not a mirror of the nation, and the government drawn from it, may well come to lack legitimacy in the eyes of those under-represented. The House of Lords is not an elected chamber and thus illegitimate. This last chapter includes an in-depth analysis of both chambers of government and a discussion of whether further democratic renewal is urgently needed to meet modern demands for reform.

## **1 House of Commons**

At various times in its history, the House of Commons has more frequently undertaken dramatic reform but not democratic reform in its structures, practices and procedures. The reforms have not always kept pace with demands for change. Calls still continue to be made for changes to the elected chamber of Britain's legislature. The first part of this chapter traces the abuse in the power of the House of Commons over the last years and considers the substantial functions it retains, together with the slow ongoing process of democratic reform.

### **1.1 Role of the Commons**

As a collective body, the main role of the House of Commons is as a publicist and critic of Government activities, though within this overall role it is possible to distinguish between three main forms of Parliamentary activity. In classical constitutional terms the functions of the Commons are to legislate, to approve the granting of finance to the Government, and to examine and criticize the activities of the Government (Punnett, 232). The House of Commons meets most weekday afternoons (outside lengthy vacations), although business can continue beyond midnight. Many MPs then spend the weekend in their constituencies attending to business. They may also follow their professions (such as lawyers) on a part-time basis. The organization and procedures of the Commons have been criticized. It is felt that the number of hours spent in the House should be reduced and that pay and resources should be improved.

The House of Commons is in charge of debating and passing four types of bills<sup>1</sup>, which, once they have been read, debated and voted by the House of Lords, and given royal assent, become Acts of Parliament. The four types of bills are as follows :



-**public bills**, introduced by the government in the interest of the nation as a whole ;

-**private bills**, also introduced by the government, in the interest of specific institutions ;

-**private Members' bills**, introduced by Members of Parliament ; can only be introduced every three months with the approval of the government ;

-**money bills**, introduced by the government (are not debated in the House of Lords)

Debating and passing a bill in the House of Commons involves the following stages :

-first reading : the purpose of the bill is stated ; if it is a public, private or money bill, the government publishes a Green Paper explaining the reasons why the government had proposed the bill ;

-second reading : the general principles of the bills are discussed in relation to the government's White Paper, which states the government's intentions and argues the advantages of the bill. Then voting takes place to determine whether the bill will go on to the next stage or not ;

-discussion in standing committee : the bill is discussed in detail by a specific committee of 16 to 50 members appointed according to party strength in the House itself, so that the proportion is respected ; amendments are made ;

-report stage : the whole House once again considers the bill and makes further amendments if necessary ; it is then that the debates are most heated as both sides of the House try to get their way ;

-third reading : the bill is discussed one last time and the vote is passed. The vote is not, amazingly, by secret ballot but as follows, the Members line up to the right and left of the Speaker, according to whether they vote yes or no, and are counted as they file past (Ayasch, 108).

With majority based, governments in the Commons are normally able to pass whatever legislation they wished, from time to time there were likely to be bills, which, in whole or part, aroused considerable controversy.

## **1.2 An Unrepresentative Composition**

The House of Commons comprises 646 Members of Parliament (MPs). They are elected by voters (from age eighteen) and represent citizens in Parliament. 126 of them are women. But women face problems in being selected as parliamentary candidates and winning seats in the Commons. There are 529 parliamentary seats for England, 41 for Wales, 59 for Scotland and 18 for Northern Ireland. There were 15 MPs elected at the 2005 general election from an ethnic minority.

The idea of representation plays a central role in indirect or representative democracy. Along with the notion of the responsibility of the government to the people, representation of the people serves as a litmus test as to the worth of any actually existing democracy. The basic question addressed here is : In what sense can a Member of Parliament be said to represent his constituents ? Given that an MP is invariably elected by a minority of the electorate, in what sense is the present system representative ?

The House of Commons does not mirror the population as a whole because it does not mirror the social composition of the nation. It is overwhelmingly white with a percentage of about 92%. "The party becomes irredeemably middle class (Maguire,

7)". Many MPs are from the middle class. Whereas Labour saw it as its mission to bring 'workers' into Parliament, this is no longer the case. In 1918, 83 per cent of its MPs were working class ; by 2005, the figure had dropped to 10 per cent (Watts, 94). Other than the law, many Conservative MPs derive from business and City backgrounds, with a fair proportion of professionals who have worked in the media and public relations. Sixty per cent of them have been to public school, so that by occupation and education elected members are socially unrepresentative of those whom they serve (Watts, 94).

Ethnic minorities make up about 8% of the population of the United Kingdom, but are generally under-represented in politics and government. Few members in the Commons belong to ethnic minorities or have a working-class background. Of those elected up to and including the intake of 2005, all ethnic minority members belonged to the Labour Party. In 2005, of a record fifteen ethnic minority MPs which represents 2.3% of the 646 MPs from all parties, two Conservatives were returned.<sup>2</sup> Four MPs in the current House are Muslims. Only two of the fifteen non-white members are female. If the non-white population were represented proportionally in the House of Commons, there would be 51 MPs.<sup>3</sup>

The following table shows that Non-white MPs still represent a very low proportion of the total :

### Ethnicity of MPs elected at General Elections 1997 to 2005

	White			Non-white			Total		
	1997	2001	2005	1997	2001	2005	1997	2001	2005
<b>Labour</b>	409	400	342	9	12	13	418	412	355
<b>Conservative</b>	165	166	196	0	0	2	165	166	198
<b>Liberal Dem</b>	46	52	62	0	0	0	46	52	62
<b>Other</b>	30	29	31	0	0	0	30	29	31
<b>Total</b>	650	647	631	9	12	15	659	659	646

Sources : Dod on Disk, Butler and Kavanagh : The British General Election of 1997

Operation Black Vote

House of Commons Library Research Paper 05/33

Women are under-represented, although at 18.4 per cent of the membership in May 2005, barely more so than in the lower chamber. Ethnic minority women are particularly under-represented. At present there are only two black women Members, and no Asian woman has ever been elected. The Fawcett Society calculated that at the present rate of change it would be more than three centuries before Parliament represents Britain's population of women from ethnic minorities.<sup>4</sup>

There is a symbolic aspect to be considered. If the Commons is not a mirror of the nation then it, and the government drawn from it, may well come to lack legitimacy in the eyes of those under-represented (Dearlove and Saunders, 85). This may foster a dangerous alienation from the overall political system that could bubble over into riot and anti-parliamentary politics on the part of those who are excluded.

### 1.3 The present uselessness of the House of Commons

One can divide the role of the House of Commons into two parts : the legislative and the control of the executive. The quality of legislation coming from the House of Commons is poor, and the quality of Parliamentary discussion of it is poor. This is

particularly true in the Commons. If one was marking the House of Commons for legislative efficiency, the mark nowadays would be very low (Hurd, 63-64). The following factors have been responsible for lessening the power of the Commons :

- **Loyalty to party system** : Parliamentary government became party government. Typically, two large parties competed for the popular vote. Striving for an overall majority of MPs which would enable them to govern for the maximum term. The MPs' role is now dominated by the support for his or her own party and opposition to others. Debates ceased to unseat governments, and the real debates take place offstage in the meetings of the majority parliamentary party. Strict party discipline was enforced : The ability of MPs to act effectively and independently as free agents has been restricted by the demands of party loyalty and by increasing domination of the House of Commons by the government of the day (Watts, 85). MPs know that without a party label endorsement their re-election will be virtually impossible. They know also that their parties expect them to show support in the lobbies and that opportunities for independent thought and action are few. For those MPs who have no hopes of future promotion or whose parliamentary career is coming to an end, party discipline may not be a problem. For most, it is an obvious constraint.
- **Bureaucracy** : The numbers employed in the civil service have grown enormously as government responsibilities have expanded in scope and complexity : under 50.000 were employed at the turn of the century compared with some half a million at present (Jones and Kavanagh, 137). The number of ministers has only doubled during the same period, and the relatively temporary part-time, amateur politicians have found it increasingly difficult to challenge, or even critically assess, the advice offered by their highly professional and permanent civil servants.
- **Growth of pressure-group influence** : As government's powers and responsibilities have increases, it has come to rely upon pressure (or interest) groups for advice, information and co-operation in its day-to day runnig. Moreover, new legislation is often formulated jointly by ministers,

civil servants and pressure-group representatives before Parliament has any chance to see it. The capacity of MPs to challenge the corporate wisdom of the 'troika' is limited.

#### **1.4 Is there a possibility for reform of the Commons?**

The House of Commons has been the target of criticism by academics and politicians for many years. The result is that the House of Commons now enjoys low levels of support at elite and popular level. The combination means that the House has relatively few friends. The conduct of MPs has often been the cause of public complaint and cynicism. Public distrust in MPs increased as more stories appeared drawing attention to their outside interests. According to Philip Norton a number of MPs were employed by professional political lobbying firms ; others hired out their services as parliamentary advisers to companies and other bodies (Norton, 31). Media stories about the activities of MPs serving as lobbyists served to undermine popular trust in MPs.

Because of this unacceptable rotten situation, two of Labour policy-makers, in an influential book published before the 1997 election, declared that "Parliament [...] needs to be dragged (probably kicking and screaming) into modern times" (Liddle and Mandelson, 203). But the modernisation process will not fundamentally change the nature of Parliament. Deeper reform runs up against the vested interests of both government and Opposition, as Peter Riddell points out :

Reform of the Commons always proceeds slowly because of the opposition of two opposite, but influential, vested interests. First, Opposition parties are always suspicious of changes that might be seen to threaten their theoretical, in practice largely illusory, power to hold up government business. Second, government whips dislike any changes that

might strengthen the role of the Commons and make their control of business less predictable (3).

It is further questionable whether the reforms up till now have really increased the effectiveness of the House in holding the government to account. Unless the politics of the House is to change, reform is likely to add up to little more than tinkering. It is, in other words, unrealistic that the current reforms could make the House of Commons perform all the functions commonly expected of it. Party politicians and their parties can only perform party political functions, which in some cases contradict with government's desires.

The main focus, in renewing Parliament as a key to wider modernization of the UK's constitutional arrangements, is on the House of Commons. It is recognized by many critics that the House no longer holds ministers to account and legislation is not given the scrutiny it requires. But despite the commitment of the Labour and the Liberal Democrats, modernization of the House proved very difficult to achieve in Parliament. The fact of the matter is that the House of Commons is incapable of taking initiatives to modernize itself, and the parties which make up the groupings in the House, though they are rivals and competitive with one another, are attached to and defensive of the highly tribal system of the Commons.

## **2 Can the House of Lords adapt into a modern political system?**

As with the Monarchy, and as with so many aspects of the British Constitution, the very existence of the House of Lords is often criticised, for the obvious reason though it is not an elected chamber, it has enough power, in theory and in practice, to slow down, if not to counter-balance, the decisions of the elected bodies. The problem with regard to the House of Lords is that of adapting into a modern political system. For this reason, one of Tony Blair's first endeavours upon his arrival at 10, Downing Street, was to set in motion a reform of the House of Lords, as promised in the New Labour election platform in 1997.

## 2.1 An anomalous Composition of the Lords

The two main aspects of the problem of the House of Lords have been its composition and its functions, the two aspects being inevitably closely bound together. Basically the problem has been that of composition, the House of Lords being a large and unwieldy body, based on unelected members, with a secured clear dominance for the two main parties, Labour and Conservatives.

The House of Lords, as of 1 July 2009:

Affiliation	Life peers	Hereditary peers			Lords spiritual	Total
		Elected by party †	Elected by whole house	Royal office-holders		
<u>Labour</u>	210	2	2	-	-	<b>214</b>
<u>Conservative</u>	148	39	9	-	-	<b>196</b>
<u>Liberal Democrats</u>	66	3	2	-	-	<b>71</b>
<u>UKIP</u>	1	1	-	-	-	<b>2</b>
<u>Crossbenchers</u>	169	28	2	2	-	<b>201</b>
<u>Lords Spiritual</u>	-	-	-	-	26	<b>26</b>
Other	14	1	-	-	-	<b>15</b>
<b>Total</b>	<b>608</b>	<b>74</b>	<b>15</b>	<b>2</b>	<b>26</b>	<b>725</b>

*Note: These figures exclude 12 peers who are on leave of absence, 2 peers who are suspended and 1 peer who is disqualified as an MEP.*

**Sources** : Parliament Website, House of Lords : Breakdown of Lords by party strength and type of peerage. [http://www.parliament.uk/directories/house\\_of\\_lords\\_information\\_office/analysis\\_by\\_composition.cfm](http://www.parliament.uk/directories/house_of_lords_information_office/analysis_by_composition.cfm). Retrieved on 2009-01-19



Conservative : 41 %

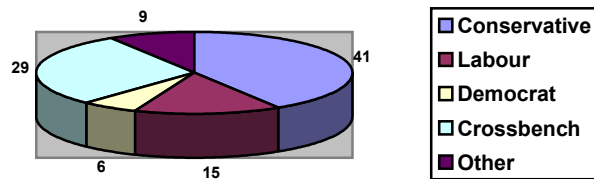
Labour : 15 %

Democrat : 6 %

Crossbench : 29 %

Other : 9 %

**pre-reform composition of the House of Lords (april 1999)**



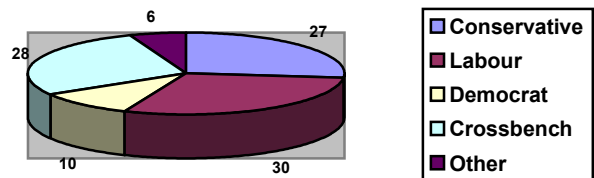
**The post-reform composition (July 2009) is :**

Conservative : 27 %

Labour : 30 %, Crossbench : 28 %

Democrat : 10 %, Other : 6 %

**post-reform composition (July 2009)  
House of Lords (april 1999)**



The figures in the House of Lords vary: life peers die and are not replaced and new members are created through the Honour's list. These new members are appointed nominally by the Crown, but really upon the recommendation of the Prime Minister (Spalding, 14). When the title of the ennobled one is casually mentioned, the first question which is generally asked is "who he was before he assumed it?". These new peers have reached the culminating point in their careers and the doors of the House close upon them like the gates of oblivion. (Spalding, 12) The only permanent figure is that of the Clergy : there are 26 high ranking clergymen in the House of Lords : the 2 Lords Spiritual, the Archbishop of Canterbury (Dr Rowan Williams) and the Archbishop of York (Dr John Sentamu) <sup>5</sup>, plus 24 bishops out of the 42—the Bishops of London, Durham and Winchester, and 21 others chosen in the order of seniority.

The House's major affront to democracy lay in the fact that, recently, one party, the Labour, has a strong predominance. About half of peers belong to one of the two

main political parties, the Labour party or the Conservatives. Of the remainder, a minority belong to the Liberal Democrat party but the majority have no party affiliation. These are known as cross-benchers and form a loose group with no common policy except not to have one (Crewe, 2). The latest figures, of 1 July 2009, show that out of the total number of 608 Life Peers, The Labour has 210 ; the Conservatives has 148 ; while the Liberal Democrats has only 66. As none is elected by popular franchise, democratic legitimacy is absent from the House of Lords. Power consequently resides in the Commons, and the Lords has been under threat of abolition or at least radical reform, for a century or more.

The most obvious way for British Governments to deal with the problem is to review the Composition of the Lords so as to remove the permanent Labour majority. A major reform of Composition was not attempted, however, largely it would seem because of the fear that as long as the Lords retained the power to obstruct legislation, a reformed and thereby strengthened House of Lords would emerge as a serious rival to the House of Commons (Punnett, 282). Thus to date, the only changes in composition that have been made are the Life Peerages Act 1958,<sup>6</sup> the Peerage Act 1963 (both passed by a Conservative Government) <sup>7</sup>, and the 1999 Peerage Act (passed by the Labour government) which made only minor adjustments of composition.

It is argued that the great advantage of an Upper House consists in the calm, deliberate consideration which is given to proposed legislation by men who are qualified to pronounce upon such questions, uninfluenced by the necessity of pandering to popular opinion and independent of the pressure of external influences. But such an advantage must be reduced to a minimum in a House in which actual attendance is low. At the beginning of each Parliament, Peers receive a Writ of

Summons to attend the Lords, and those who do not reply are excluded from attending the House for the rest of the Parliament. Even among those who do reply to the Writ of Summons, however, the majority attend only infrequently or not at all. (Punnett, 280). Absentee-ism is rampant in the Upper House, as many Lords are not necessarily involved in political life. Without constituents to whom to feel responsible, many peers feel little or no obligation to attend the House. Some others drop in occasionally and others not at all (not surprisingly, with an average of sixty eight, some are too infirm to attend) (Crewe, 2). The daily attendance on average is rather less than two hundred, while only about one hundred and fifty are regularly engaged in the work of the House (Punnett, 280). This attendance of habitual absentees is in proportion to the importance of the question to be decided upon. The result is that such a question has to be submitted, not to the judgement of men who give persistent and serious attention to public business, but to a host of irregulars who answer unwillingly to the urgent call of the party whips (Spalding, 17). In operation, therefore, the Lords is a small and intimate body, though attendance can be much greater when controversial issues are being dealt with.

Despite its undemocratic and unrepresentative nature, most commentators accept that the House of Lords has a valuable part to play in the British constitutional process.

## **2.2 What is the House of Lords for ?**

Countries with second chambers have them for several reasons. Sometimes their role is to provide continuity and stability in Parliament and Law-making ; sometimes to act as a constitutional long stop (preventing or delaying the passage of

radical innovations) ; sometimes to act as a revising body. The House of Lords fulfills all three roles.

In constitutional doctrine, The House of Lords is seen as a forum for revising government legislation, a sort of ‘legislative long-stop’, giving a further chance to amend bills before they are passed ; and as a mechanism for delaying legislation to allow for second thoughts- particularly if the legislation concerned affects fundamental or constitutional rights (Wright and Clements, 201-202). The Lords can only delay legislation, not block it entirely. Although the Lords’ veto on a bill cannot exceed two years, they still have ways of slowing down its adoption, since a whole year must go by between the second and the third reading (Ayasch, 106). This affords the possibility for the Lords to put aside the bills they disagree with for 12 months.

It may be questioned whether there is any merit in allowing the second chamber to have even a nominal delaying power. In its defence, and thus in defence of the role of the second chamber as an obstructive body, it is sometimes argued that when a Government dominates the Commons through a secure party majority, the Lords remains as the only real Parliamentary limitation on the Government’s power (Punnett, 287). It is claimed that there should be some such Parliamentary check upon Governments, additional to that imposed by the House of Commons.

The Lords also deals initially with the majority of Private Bills that are introduced each session. Bills that have been passed too quickly through the Commons can be re-examined in the Lords, and amendments made along lines acceptable to the Government (Punnett, 288). The Lords’ powers in financial legislation have for a long time been minimal. Conscious of their lack of democratic legitimacy, the Lords are wary about using even the powers they do possess.

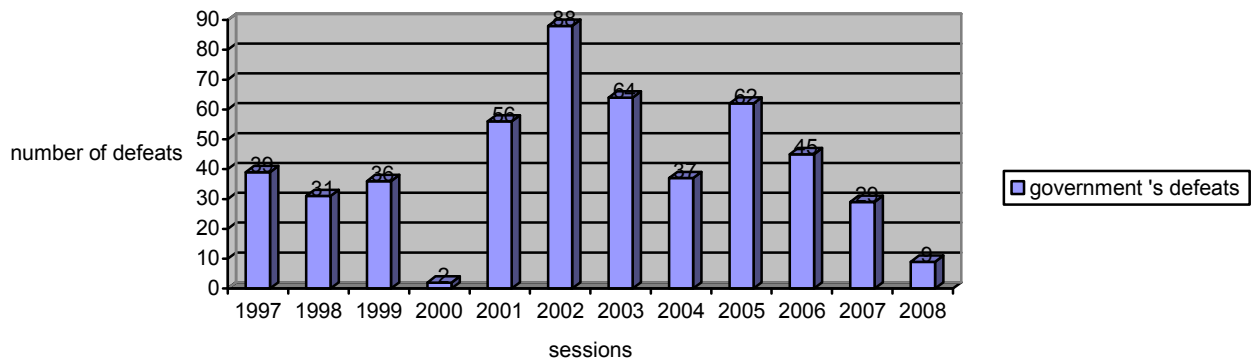
Despite these significant functions, the Lords is considered by many- particularly MPs and especially members of the government- a political backwater, and it is neglected by political journalists. MPs will do anything for publicity, while peers are seldom interested in the press (Crewe, 5). In relation to government, the House of Lords presents the paradox that while there can be no democracy without opposition, when the government has a hefty majority in the Commons, the only effective opposition in Parliament comes from the unelected chamber. There have been no government defeats in the Commons since 1997, whereas, the following table shows government defeats<sup>8</sup> in the Lords from 1997 to 2009 :

**Government defeats 1997-2009**

<b>Governing party</b>	<b>Session</b>	<b>Number of defeats</b>
Labour	1997-1998	39
	1998-1999	31
	1999- 2000	36
	2000- 2001	2
	2001- 2002	56
	2002-2003	88
	2003-2004	64
	2004-2005	37
	2005-2006	62
	2006-2007	45
	2007-2008	29
	2008-2009	9 (As of 12/05/2009)

**Source: House of Lords Information Office FAQ's on Government defeats**

**Government's defeats 1997\_ 2009**



The House of Lords has shown a marked increase in rebelliousness against the House of Commons and the government of the day since 1997. When most hereditary peers lost their right to sit in the House of Lords, the remaining peers feel that the Upper House has gained legitimacy and as a result have become more assertive.

Research by the University of London Constitution Unit<sup>9</sup> has shown that the Liberal Democrats have been the key party in bringing about the increase in Government defeats and more insistence on amendments (Russel and Sciarra, 5). According to this research, almost one in four Lords amendments end up being accepted by the Government.

### **2.3 Whither the House of Lords ?**

The case against the abolition of the House of Lords, leaving Britain with a unicameral Parliament, rests on two types of arguments : first, that the existing second chamber, whatever the anomalies of its composition, does necessary or sufficiently useful work to justify its retention. Many writers still feel that a second chamber produces a valuable opportunity for careful scrutiny of government work. The House actually performs this role rather well. The removal of the hereditaries means that

members now are mostly life peers, chosen because they have something special to contribute (Watts, 73); and secondly, that a single chamber dominated by party, as the House of Commons is limited only by periodic elections and the uncertain willingness of MPs to defy their parties (Rush, 25). Unicameralism would be impossible without major streamlining of the House of Commons.

The first argument is mundane but powerful : in the absence of the Upper House what the House of Lords currently does the House of Commons would have to do or leave undone. The additional scrutiny of primary and secondary legislation, of government policy and administration, and the airing of various issues would fall on the Commons and on no-one. In particular, the government would have to find ways of amending its own legislation through further or better scrutiny in the Commons, or subsequently amending bills, or make even greater use of delegated legislation, or leave much legislation in an unamended and unsatisfactory state (Rush, 25). The ability of the Commons to undertake this task, must, however, be in doubt.

The second argument- curbing the power of a party- dominated House of Commons- should not be seen simply as arguing for a bulwark against dictatorship, a form of constitutional longstop. It is well established that governments of all complexions have used their majorities in the Commons to force through policies which were in serious conflict with public opinion. This raises questions relating to democracy and the nature of representation. Although the House of Lords has from time to time modified unpopular policies, it cannot be said to have provided regular protection against a government determined to persist with demonstrably unpopular policies (Rush, 25). Ironically, the very membership of the House of Lords,

representing no one as it does, hardly strengthens its case for standing in the way of the Commons.

Additionally, defence of the House of Lords has in the past been made more difficult because of its largely hereditary composition. This was widely regarded as inappropriate for a democratic age. Now that the hereditary element has gone, it is easier to concentrate on the merits of the House. Points for the defence are that :

- An appointed house provides an opportunity to bring in more women and members of minority groups, especially if appointment is placed in the hands of an independent appointments commission (Watts73).
- A second chamber can fulfil a number of roles within a modern Constitutional system of government. It can represent territorial interests within the community, as thus the Senate in the United States federal system (Punnett, 279).

Again, the second chamber can be seen not as an obstructive force, but as a body designed merely to ease the legislative and deliberative burden of the lower house. The House of Lords has never filled the Senatorial role of representing territorial interests, but at different times in its history the Lords has been seen as performing these other functions.

#### **2.4 Reforming the Lords?**

The House of Lords as presently constituted looks anomalous in a modern democracy. The Labour Government sought (though without success) to adapt and modernize the Lords through a full-scale reform of both composition and powers.

Thus, A White Paper, stating the government's intentions, was introduced on 22 January 1999 by Baroness Jay of Paddington<sup>10</sup>, then Lord Privy Seal, Leader of the



House of Lords and Minister of Women. It is entitled 'Modernising the House of Lords', and includes the following provisions :

- the removal of the rights of hereditary peers to sit and vote in the House : this was implemented on 12 November 1999 ;
- the nomination of life peers through an independent Appointments Committee, which would take over from the Prime Minister the function of nominating cross bench peers and oversee the propriety of all recommendations of political peers. This Committee would operate and open a transparent system actively encouraging the nominations by the public of 'people's peers' ;
- the establishment of a Royal Commission to consider longer-term reform and make recommendations on the composition, role and function of the Upper House.

Parts of this bill having become an Act of Parliament, the rights of more than 700 dukes, earles, and other hereditary peers to sit and vote in the Upper House are now removed. Hereditary peers are, however, given the right to vote in parliamentary elections and stand as candidates for the House of Commons without having to disclaim their peerages (Sholes, 63). The reform does not affect the institution of the peerage, only the political powers which is conferred until 12 November 1999. Peers retain their titles, degrees of rank and precedence, and the right to inherit their titles according to existing rules. There is to be no change in position of either the Law Lords or the members of the Clergy.

So it was in 1999 that the Blair Labour government dramatically expelled hereditary peers from the Lords to create a second chamber where life peers now outnumbered hereditary peers for the first time ever. Then at the 2005 dissolution, it made Labour the largest party in the Lords for the first time in history by creating more than three times as many new Labour as Tory peers (Abbott, 32).

In February 2007, the government released a White Paper entitled *The House of Lords : Reform*. Several options for a reformed House were presented in the paper :

- an all-appointed House ;
- an all-elected House ; and
- a hybrid, consisting of 50% of members elected by a form of proportional representation ; 30% appointed by political parties ; and 20% appointed by a non-partisan appointments commission (Department for Constitutional Affairs, 30-31).

Parliament held a free vote on the reform proposals in the White Paper On 7 March 2007. The House of Commons voted 337 to 224 in favour of a 100% elected House of Lords. On 14 March 2007, the House of Lords voted 361 to 121 in favour of a 100% appointed House. These free votes were non-binding on the government.

Another White Paper was released by the government in July 2008 : *An Elected Second Chamber : Further reform of the House of Lords*.<sup>11</sup> At the outset, the paper states that a new name for a reformed House should be created to reflect the fact that a reformed house would no longer be composed of Lords alone, but primarily or entirely of elected and appointed members. No specific name for a reformed House is recommended, but the term ‘reformed second chamber’ is used throughout the document to refer to a reformed House.

The 2008 White Paper recommends a wholly or mainly elected reformed second chamber. It states also that the elected and appointed members would serve three non-renewable terms totalling 12 to 15 years. The paper proposes no specific size for a reformed second chamber, apart from indicating that its size should be reduced gradually over time to make it smaller than the House of Commons.

Many members of Parliament would like to see a reformed second chamber, provided that it did not exercise its powers as a rival to the House of Commons ; but a newly created second chamber would fairly assume that it had been given powers in order to use them from time to time (Brazier, 55). There is a risk that a fully elected second chamber (claiming a different but equally legitimate mandate from the Commons) would compete with the latter and produce political legal deadlock and instability (Abbott, 31). Other democratic reformers are highly sceptical of the old argument that an elected second chamber with enhanced powers could become an alternative power base and pose a threat to the legitimacy of the Commons and undermine political stability and governmental effectiveness. By the late 20th century, the fact that Commons-based governments were able to unilaterally strip power from the Lords and reform other parts of the political system without their consent was proof that the Constitution was already seriously unbalanced (Abbott, 31). Commons-based governments had become far too powerful, and new checks and balances were required to protect democracy and basic rights and freedoms. Only a directly elected Upper House would be able to provide a legitimate and sustained effective check and balance on Commons-based governmental power.

What is the best reconstruction for the Lords then ? A reconstituted second chamber could not be elected by the same method and by the same time as the House of Commons, because it would be then a pointless duplicate of that House ; but if it were elected by a different method and at different times that could result in a chamber with a political make-up different from that of the Commons, thus making conflict between the two houses inevitable. If the second chamber were to be elected by proportional representation, the objection that is currently made that the House of Lords has no political legitimacy would disappear ; but if it were so elected the new

House would have greater political authority and be more representative than a House of Commons which remained elected by the first-past-the-post method.

## **2.5 What can be done ?**

So what is to be done about the House of Lords ? Abolition of the second chamber will not be a sensible way forward. Without a second chamber, elective dictatorship would be utterly unfettered. Legislation, moreover, will become worse than it is now : even at its present rate of overworking, the House of Commons manages to pass badly-written legislation, tracts of which are cut off by the guillotine from debate and amendment ; a second revising chamber of some sort is, as most other states believe, essential.

The implications of an elected second chamber are of considerable importance. The House of Commons is acknowledged as the superior of the two Houses of Parliament precisely because it is the elected chamber ; an elected second chamber would secure a significant degree of democratic legitimacy which the House of Lords at present inevitably lacks. The pressure for this fully elected second chamber is strong, but a case might be made for allotting membership to various individuals eminent in their field or using nominated members as a means of ensuring that a government party is adequately represented in the second chamber (Rush, 26).

Moreover, if the members of the House of Lords are elected by proportional representation, the Lords will be more representative than the House of Commons itself. The political advantage enjoyed over the centuries by one party in the second chamber will be ended. But such schemes would share certain disadvantages. Conflicts

between the House of Commons and an elected second chamber will be unavoidable ; even a second chamber with weaker powers than the House of Lords would have to irritate the Commons on occasion if it is to have a reason for being at all.

## **2.6 The future of the House of Lords**

The Future of the House of Lords seems uncertain. It could be abolished, leaving Parliament as a single-chamber legislature. The value of the Lords as a revising body, however, would seem to militate against this, despite the vehement calls for abolition that are made from time to time at Labour Party Conferences. This Upper chamber is recognized as being capable of performing useful legislative and deliberative functions, especially for Labour Governments which tend to have heavier legislative programmes than Conservative Governments (Punnett 290-291). Thus it is when a Labour Government is in power that the second chamber is most useful as a constructive legislative body.

However, the importance of the second chamber must not be exaggerated. It is much less powerful and less significant than the Commons. The House of Commons is rightly pre-eminent and is the cradle of British democracy, which needs and deserves all the urgent reformist energy that can be mustered. Accordingly, what should be done is to continue in the gradualist tradition of limited and pragmatic reforms, wherever possible pursued through agreement between the parties.

Historically, the Labour Party saw the House of Lords as a barrier to socialist objectives. Reforms have so far proved difficult, however. The debate over the British House of Lords has focused on abolition or varying degrees of reform. There is no consensus over what form reform should take. In part, the disagreement stems from uncertainty and misinformation about what precisely is the function of a second

chamber, as well as on questions of composition, role, powers, and relationships with the first chamber, the executive and the judiciary. Nevertheless, some balance is needed : the Lords should have greater democratic legitimacy or it will continue to be a second-class sidelined body, unwilling to assert its will even when it has a strong argument.

## **Conclusion**

The existing record of the House of Commons in respect to several responsibilities is patchy, retrospective, and generally, compliant. Some changes are taking place within the House because of decisions taken by the House. However, those changes do not meet the demands made by those pressing for reform, at either an elite or a mass level. The bottle of parliamentary reform remains half empty or, in the eyes of some reformers, more than half empty. Wider constitutional change will add to the pressures for reform.

Additionally, there have been long demands that the unrepresentative, unelected House of Lords should be replaced. The problem lies in deciding on an alternative model. A wholly elected second chamber could threaten the powers of the House of Commons and result in conflict between the two chambers of Parliament. The current attempt to reform the House of Lords has managed to achieve what previous efforts have tried to do and failed- namely, to dramatically reduce the number of hereditary peers who may sit and vote in Parliament's upper house. Since the initial flurry of activity, however, the initiative has become bogged down and steeped in acrimony. There has been no shortage of proposals, but there appears to be little likelihood of consensus developing.

**Endnotes:**

<sup>1</sup> A bill is a draft law that Parliament proposes to make. If approved and passed by Parliament, the Bill becomes an Act.

<sup>2</sup> Based on the list given by Operation Black Vote

<sup>3</sup> Based on the current estimated UK population of 60.6 million of whom 7.9% are non-white, according to the 2001 census: <http://www.ons.gov.uk/census/index.html> . More recent estimates of the non-white population can be higher, and estimates for a representative number of minority ethnic MPs may vary: the report for the Government Equalities Office *How to achieve better BME political representation*, published in May 2008, put the figure at 58.

<sup>4</sup> Fawcett Society, *Ethnic Minority Women: Routes to Power*, Government Equalities Office, May 2008.

<sup>5</sup> Archbishop Williams was confirmed on 2 December 2002 as the 104th bishop of the See of Canterbury. The first Welsh successor to St Augustine of Canterbury and the first since the mid-thirteenth century to be appointed from beyond the English Church; On 17 June 2005, John Tucker Mugabi Sentamu became the 97th Archbishop of York, Metropolitan of the province of York, and Primate of England.

<sup>6</sup>The Life Peerages Act 1958 allowed the creation of life peers. This included women, meaning women were able to sit in the House of Lords for the first time fifty years ago.

<sup>7</sup>The Peerage Act 1963 is a significant act in the history of the British Peerage. It allowed the disclaiming of peerages, and permitted female and Scottish hereditary peers to sit in the House of Lords.

<sup>8</sup>A Government defeat is defined as a Division in which the tellers on the losing side were Government Whips.

<sup>9</sup>This research was presented to the 2006 Political Studies Association Conference. It mainly analyses what contributes to Lords defeats and the role played by the different groups in the chamber.

<sup>10</sup>Margaret Ann Jay, Baroness Jay of Paddington is a British politician for the Labour Party. From 1998 she was Leader of the House of Lords, playing a pivotal role in the major reform that led to the removal of most of its hereditary members. She retired from active politics in 2001.

<sup>11</sup>This Paper was presented to Parliament by the Lord Chancellor and Secretary of State for Justice in July 2008.



## Conclusion

The Labour government which swept to power on May 1997 did so committed to make many and vital reforms to the British political life. In this endeavour, it was supported fully by the Liberal Democrats. Some commentators, however, point to the lack of a coherent rationale for the reforms or their final destination, viewing Labour's pragmatism as deriving from its lack of a coherent philosophy of the state. And Although Britain has been attempting the most rapid rate of Constitutional reform in its thousand year history, there is still a lively constitutional debate in Britain about the nature of the British Constitution, the value of the still existing monarchy, Parliamentary sovereignty, devolution to the regions, reforms in the House of Lords, and such matters.

For a start, many analysts are now in favour of the introduction of a written and codified judiciable Constitution to protect democracy in the long-term in Britain-together with a generalized political cultural shift from the top to the bottom. Under a new constitutional settlement, the British people could be formally and legally declared to be in charge of the political system and the government to be their agent rather than their master. The people could be given the power not only to finally approve the new written constitution, but also to decide any amendments to it. This means that once it was in place, no temporarily elected Parliament or government would be able to unilaterally hand over power to a foreign government, a domestic bureaucratic authority, or any other third party.

For the monarchy, there is the British royal family, a family that acquire their status as heads of state, not from elections, but from tradition and privilege. This idea that some members of society are more important than others runs contrary to the democratic notion that all men are equal, yet it is inherent in the British system of

government. The immediate aim of democracy is political. It seeks to overthrow every form of class rule and bring about such changes in existing governments as will make the will of the people supreme. Under the influence of this new conception of the state the monarchies and aristocracies of the past must be removed and be replaced by democracies of the future.

Parliament is like most institutions in crisis. It is a symptom of an institution that has real problems with reform. Liberal Democrats have long criticised the traditional British constitutional doctrine of parliamentary sovereignty –i.e., that there is and should be no authority superior to Parliament in general and the elected House of Commons in particular- for producing a dangerously high level of concentration of political power. This triumphant claim of the British Parliament to have become sovereign, and so able to govern subject to no law, may prove to have been the death-knell of both individual freedom and democracy.

Irrespective of how or why the situation had come about, the plain fact is that the doctrine of parliamentary sovereignty, and the weakening of traditional constitutional- legal checks and balances- had enabled the transfer of large parts of the governance of the country to the EU authorities in the first place. It had become legally subject to a superior foreign authority, compelled to do certain things and prohibited from doing others. Therefore, the democratic parentage of the British Parliament is at best doubtful and its true significance is increasingly a matter for debate. What happens when the sources of power, the key interests, are no longer represented by politicians in the British Parliament? If, for instance, power moves to the European Union? What does parliamentary sovereignty add up to then? It represents, at best, the right to say no, to withdraw, to justify a confrontation with whatever source of new

power exists outside Parliament. This seems an increasingly abstract and even unreal power.

Another issue which raises many unanswerable questions within the British Parliament is devolution. Devolution legislation has been enacted. One of the effects of this measure, as it is planned, will be to tilt the balance of constitutional power in the United Kingdom away from London and towards other institutions and indeed towards citizens themselves. The British constitution will embrace a Scottish Parliament and Wales and Northern Ireland assemblies. This step, however, contributes to a reduction of sovereignty in the UK parliament, as Scotland, Wales and Northern Ireland can now make policies of their own. This affects the UK's relevancy, as it shows that all powers are no longer held by the parliament, and Westminster is controlling less and less of the UK. If Parliament no longer controls or connects to the sources of power, and is unwilling to assert its political authority, then to murmur happily that the Parliament is sovereign is sloppy to the point of being meaningless.

The doctrine of Parliamentary sovereignty has also been used by temporality elected MPs and Commons-based governments to justify the transfer of political authority from Parliament towards government of the day. Governments have claimed that since they are created by and answerable to Parliament, and since the people elect Parliament, they are really expressing the will of the people. However, not all the people (and in many cases not even an absolute majority of them) will have voted for a particular government and its programme. The history of the British government reveals that it is predominantly white, male, middle class educated men. Other races, sexes, and classes are greatly underrepresented, so their views cannot be out forward

as well. Consequently, in Britain, no government has had over 50 per cent of the votes cast since the 1930s. The 2001 Labour government, for example, gained just 41 per cent of the votes cast, which (given a historically low turnout of 59 per cent) was only 24 per cent of the total eligible electorate. Clearly, this raises serious questions about the legitimacy of such indirect elected representatives.

The best form of government is the one that reflects the general will of the people, which is the sum total of those interests that all citizens have in common. The advocate of democracy does not think that it will be a perfect government, but he does believe that it will in the long run be the best, most equitable and most progressive which it is possible to establish. Government by the few and government by the many stand for widely divergent and irreconcilable theories of progress and social well-being. As the methods, aims, and social ideals of an aristocracy are not those of which a democratic society would approve, it necessarily follows that the purposes of democracy can be accomplished only through a government which the people control.

A further point of criticism is that the government is formed from whichever party can command a majority in the House of Commons. Criticism for the system comes from all sides. Marxists believe that democratic parliaments are a front that can be used to exploit the majority of the population. They feel that the competition is between political élites; there is no real choice as fundamentally they all represent the interests of the ruling classes. There is no change in power just the alternating of it. Criticism also comes from the right. Some Conservative ministers have suggested that parliamentary democracy can lead to ‘elective dictatorship’; that representative institutions do not necessarily guarantee freedom, but can do the opposite and prevent it, becoming the “engines of tyranny”. They can be manipulated by minorities, taken

over by extremists, motivated by the self-interest of organised millions. Democracy means that the power is ultimately in the hands of the whole population, and that no smaller group should rule.

Other areas of the government that are less than democratic are the organisations of the civil service. These secret services operate largely outside the public eye and it is only the top members of government that have any genuine interface with these organizations, leaving the average politician, along with the average man on the street, almost completely in the dark. How can citizens be sure that these departments are driven by democracy when there is so little accountability to the general public?

In short, the UK parliament has, to some extent, become irrelevant, as the levels of scrutiny within parliament have become lower in recent years, and devolution has taken powers away from the UK parliament. But the most worrying single truth about the Westminster way is that this turbulent national drama has lost its capacity to engage many millions of Britons. It is almost incapable of reforming itself.

It is interesting to note as a criticism, that the House of Commons is the only democratic element of Parliament. Technically, Acts of Parliament still have to be passed by both Houses and assented to by the Monarch before they become law. In theory, either the Lords or the Monarch could block the enactment of a new statute. However, the Upper House long ago lost its power to block finance bills or other acts regarded as urgent government business. Meanwhile, the British Monarch has no major executive or other substantive powers in the modern British Constitution. The modern British House of Commons has claimed sovereignty, been highly jealous of

its powers, and sought to prevent the emergence of other authorities that might compete with it and threaten political stability and efficient government in the UK.

Another area of British government that is open to criticism is the House of Lords. The issue of its legitimacy goes to the heart of the question of reform. Having an unelected upper House in Parliament, for example, is clearly undemocratic. The House of Lords has the power to block and amend laws passed by parliament and is an integral mechanism in the machinery of British politics, yet it too is undemocratic. The members of the House of Lords are not voted upon by the British people and consequently derive their power from somewhere other than the electorate.

There are very good reasons to recommend that the British abolish the House of Lords and many of its other peculiarities, and that could even make British democracy more democratic. But for the British government, reform of the House of Lords, rather than its abolition, is an issue which has been on the political agenda for many years. The Government believes that, with the three main parties now committed to reform, there is currently an unusual opportunity to find a lasting solution to this question.

At the level of Parliament itself, analysts claim that the most obvious and significant democratizing reform in this respect would be to move to the direct popular election of the membership of the Upper House. A House of Lords wholly, or even partially, elected would change the whole basis of the parliamentary system. It would substantially extend the democratic component of the British political system. It would also give the second chamber great legitimacy and increase its capacity to stop abuses of power by Common-based governments. At the same time, however, this will also mean that the House of Lords will be more willing to challenge the

government on specific matters. Further, it is hardly difficult to expect that hundreds of hereditary or life peers will vote themselves out of a job, unless the Commons makes up its mind first.

Other analysts say that it is advisable to clarify and codify the functions of the Lords before changing its membership. Before MPs decide how the House of Lords should be made up, they need to decide what job they want the House of Lords to do and the limits to its powers. Until that has been decided, they cannot sensibly say how its members should be chosen.

In a modern democracy, it is increasingly difficult to justify a second chamber where there is no elected element. There is a strong case that the electorate should have a say in who is able to contribute to making the laws that govern it. This situation is simply unacceptable, yet any changes to it are coming slowly, if at all.

All discussions of the British political democracy are inconclusive and never-ending. Observing democracy at work in Britain is to be reminded that there is in practice a limitation to the idea ; democracy works but it does not work particularly well. While accepting the undoubtedly democratic basis of the system, it is necessary to realize that many of its features operate in a manner that is very different from the way that is suggested by the idealized democratic theory. Thus, to call Britain a democratic country is only half-right and when it comes to democracy, half-right simply is not good enough. At this time, no prescription is available for correct procedures of democracy.

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