

University of Hull

**‘Constitutional institutions are splendid things’: An Analysis of the
Conservative Party’s Constitutional Positions from 1832 to 2020.**

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Abstract

The Conservative Party is the most electorally successful party in British politics. It has been the party of Government more than its political rivals. This is an important fact for the study of the British constitution or the policies of any British political parties towards the constitution as constitutional major changes, reforms or amendments are unlikely to be implemented without being in Government. Therefore, to understand where the Conservative Party's constitutional policies might bend towards after Brexit and the Covid-19 pandemic, it is necessary to analyse the party's constitutional policies of the past. This is the core aim of this thesis; that is, to longitudinally analyse the Conservative Party election addresses and/or manifestos from the 1832 Reform Act to March 2020 (arguably the end of the Age of Brexit) with the main focus on the period between 1900 and 2019. To enable this a discussion on conservative principles will be conducted to provide a framework for analysis. The study utilises qualitative methods to gather and analyse the data. In particular, semi-structured interviews with elite actors within the Conservative Party; a document analysis of the manifestos and election addresses of party leaders as well as other key actors; an analysis of letters, memorandums and internal reports from the Conservative Party Archive at the Bodleian Library, Oxford and the Churchill Archive Centre, Churchill College as well as other archives. This research found that generally the Conservative manifestos did not address constitutional issues *qua* constitutional issues. There were multiple uses of other prisms such as financial, economic, efficiency, foreign policy, and international trade to name a few rather than a constitutional one. Thus, it is difficult to have a coherent constitutionally conservative position on constitution, if it is not viewed through a constitutional prism. Moreover, it was also found that the manifesto shifted in the rhetoric utilised from standard constitutional language to catch-all terms, such as democracy and this was driven by *pathos*. The use of non-constitutional prisms meant there was a lack of an overall vision, and this raises the question of institutional memory loss within the Conservative Party. This has a major implication; that is, constitutional issues are unlikely to be solved by a coherent constitutional policy suite in the future as they are seen through the perspective of other prisms. Finally, the Conservative Party has dwelt in the paradigm of *homo economicus* (especially since 1997) or in other words, the party has fallen into its modern comfort zone of economics and out of its historical one of, what I have called, 'constitutional man'.

Dedication

To my children – Primrose, Montgomery and Peregrine. This is for you.

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Introduction

‘Like many of my fellow Tories, I too have a favourite quotation from Disraeli... “the programme of the Conservative Party is to maintain the Constitution of the country”’¹

The Conservative Party is the most electorally successful party in British politics. Consequently, it has been the party in government more than its political rivals. To understand where the Conservative Party’s constitutional policies might bend towards after Brexit and the Covid-19 pandemic it is necessary to analyse the party stance on the constitution. The Tories positions during Pitt and Addington, in the late 1790s, could be easily summed up utilising the three C’s; that is, Church, Crown and Constitution. Lord Salisbury in a speech at the Free Trade Hall in Manchester said ‘Constitutional institutions are splendid things’² and this quote that has been utilised for the title of the thesis. George Boyce argued that between 1910 and 1914 the Conservatives presented themselves as the party of the constitution.³ Arthur Aughey in *The Conservative Party and the Nation* writes that ‘The constitution and the nation have been central ideas in Conservative politics.’⁴ Disraeli in a famous speech in Manchester in April 1872 said ‘the programme of the Conservative party is to maintain the Constitution of the country.’⁵ In part this thesis is to investigate, if this is still the case.

There was a rapid spread of the term ‘Conservative’ between 1830 and 1832 and before that the adjective ‘conservative’ had been used in its French form for some years. For example, in Wellington Despatches of 1819 and also Wellington spoke of ‘*parti conservateur*’ in 1827. *The Quarterly Review* article in January 1830 is normally cited as the first use of the nomenclature ‘Conservative Party’. The article goes thus: ‘we are, as we always have been, decidedly and conscientiously attached to what is called the Tory, and which might with more propriety be called the Conservative Party’. Blake remarks on the gradual adoption of the use of the term ‘Conservative’ from 1832 onwards ‘was a deliberate attempt to purge the party of its old

¹ Thatcher, M. Article for *The European* (Maastricht), 8 October 1992.

² Speech in the Free Trade Hall, Manchester (16 April 1884) that was quoted in *The Times* (17 April 1884), p. 6

³ Boyce, D.G., “‘Rights of Citizenship’: The Conservative Party and the Constitution, 1906–1914’, in *Government and Institutions in the Post-1832 United Kingdom*, (ed) Alan O’Day (Lampeter, 1995), pp. 215–36.

⁴ Aughey, A., *The Conservative Party and the nation: Union, England and Europe* (Manchester: Manchester University Press, 2018).

⁵ Speech to the Conservatives of Manchester (3 April 1872) quoted in Kebbel, T. E., (ed). *Selected Speeches of the Late Right Honourable the Earl of Beaconsfield, Volume II* (Arkose Press, 2015) p. 491.

associations and symbolize, if not a break with the past, at least a change of course'.⁶ It is in 1832 where this thesis starts. Politics had become more national and less local after the 'Reform crisis' of 1828–32. During this period the Duke of Wellington, in response to Earl Grey's speech on reform of the constitution, demonstrated the High Tory tradition when he said: 'the existing constitution was so perfect' that he could 'not imagine any possible alternative that would be an improvement'.⁷ After the Reform Act of 1832, politics also became more coherent along party lines⁸ as well as more nationally focused.

The focus of this thesis will be on the Conservative Party's positions over time and the aim is to identify themes, periods, policies (or lack of them), prisms, paradigmatic changes and deviation from principles. Thus, analysing change and continuity in the party's policy agenda, which, according to James, is a central question in political science.⁹ The historic approach of the thesis is trying to incorporate or at least acknowledges what Jeremy Black refers to as the 'long-term, seemingly inherent assumptions, the emotions of policy, that help create the context for the politics of the shorter term' into the approach to the subject.¹⁰ Relatedly, the approach has been influenced by Jim Bulpitt's claim that 'political science would benefit from another attempt to reformalise its connections with past politics.'¹¹ This has been included in the thesis in the form of analysing historical Conservative manifestos and is thus concerned with historical context and temporal development and rupture. This requires the need to understand political and constitutional development in a long-term context.¹² To quote, Bulpitt, 'This sort

⁶ Blake, R., *The Conservative Party from Peel to Major* (London: William Heinemann Ltd, 1997). p7.

⁷ Hansard, HL Ded., vol. 1, cols. 44-53, 2 November 1830.

⁸ O'Gorman, F., *The Emergence of the British Two-Party System, 1760–1832* (New York: Hodder Arnold, 1982); O'Gorman, F., *Patrons and Parties: The Unreformed Electorate of Hanoverian England, 1734 -1832* (Oxford: Clarendon Press 1992); Cox, G.W., (1984) 'The Development of Party Voting in England, 1832-1918', *Historical Social Research*, 41 pp. 2-37; Cox, G.W., (1986) 'The Development of a Party-Orientated Electorate in England, 1832-1918', *British Journal of Political Science*, 16 pp. 187-216; Cox, G.W., *The Efficient Secret: The Cabinet and the development of Political Parties in Victorian England*, (Cambridge: Cambridge University Press, 1987); Hill, B. W., *British Parliamentary Parties 1742-1832* (London: Harper Collins Publishers Ltd, 1985), pp. 222-5.

⁹ James, T. (2016) 'Neo-Statecraft Theory, Historical Institutionalism and Institutional Change'. *Government and Opposition*, 51(1), 84-110.

¹⁰ Black, J., *The Tory World, Deep History and the Tory Theme in British Foreign Policy, 1679-2014* (London: Routledge, 2016). p. x.

¹¹ Bulpitt J., (1995), 'Historical Politics: Macro, In-time, Governing Regime Analysis', in J. Lovenduski and J. Stanyer (eds), *Contemporary Political Studies Vol. 2* (Belfast: Political Studies Association, 1995): 510–520. p. 510.

¹² Bradbury, J. (2010), 'Interpreting Political Development and Bringing the Government of the State Back In: Jim Bulpitt's Territory and Power and the Case of the United Kingdom', *Government and Opposition*, 45(3): 318–44. p. 339

of approach requires an appropriate historical perspective'.¹³ Moreover, the aim is not to provide a history of election results or battles as this has already been researched.¹⁴

According to James, 'The study of political elites and leaders is one of the cornerstones of political science and of central importance to any society.'¹⁵ T.E. Kebbel writes that:

parties must be judged by the policy of their leaders and the most prominent members...The acts of the Leader are the acts of the party... [and] the work which they respectively accomplish is the work of the party which they lead, and when it ceases to be considered so, the party system will expire'.¹⁶

Thus, the leader of the Conservative Party and some essential politicians and the party's manifestos will be the core focus of the thesis (more on the methods in the methods section of this chapter). Officially the leader of the Conservative Party is the fount of all policy, and the manifestos are the official depository of those policies and positions. Manifestos provide the fullest official statement of each party's policy proposals,¹⁷ and frequent and somewhat systematic, which provides an anchor for a systematic analysis across time. According to Budge:

...while political manifestos are not widely read by the British public: Their importance is that they are read by the political and media elite and reported intensively in newspapers, TV and radio. Thus their textual emphases set the tone and themes of campaign discussion. The document does, therefore, represent the way party leaders, after lengthy consideration, want to present themselves to the public.¹⁸

¹³ Bulpitt, J., (1986) 'The Discipline of the New Democracy: Mrs Thatcher's Domestic Statecraft', *Political Studies*, 34(1), 19-39 p.21.

¹⁴ For election results, facts and when the Conservative Party was in Government or Opposition see Craig F.W.S., *British Electoral Facts 1832-1987* (Aldershot: Gower Publishing Company, 1989) or Rallings, C., and Thrasher, M., *British Electoral Facts 1832-1999* (Aldershot, Ashgate Publishing, 2000).

¹⁵ James, *Neo-Statecraft Theory*. p.85.

¹⁶ Kebbel, T.E., *A History of Toryism* (Richmond: Richmond Publishing, 1972) pp. 407-8.

¹⁷ Norris, P., Curtice, J., Sanders, D., Scammell, M., and Semetko, H., *On Message: Communicating the Campaign* (London: SAGE Publications Ltd, 1999). p. 44.

¹⁸ See Budge, I. (2000) 'Expert Opinions of Party Policy Positions: Uses and Limitations in Political Research', *European Journal of Political Research* 37, 103-113; and Budge, I and Hofferbert, R., 'Comparative Textual Analyses of Government and Party Activity: The Work of the Manifesto Research Group', in Imbeau, L., and McKinley R.D. (eds) *Comparing Government Activity*, pp. 82-100 (London/ Macmillan, 1996).

In a letter from Rab Butler to Winston Churchill dated 31st of May 1945, Butler stressed the importance of the manifesto and that ‘It is very difficult for our people to conduct the campaign until the Manifesto is out’ and it was ‘very important’ that local candidates should have the ‘Manifesto as a basis,¹⁹ to write their election addresses. According to Thomas, ‘leading reformers like Salisbury in 1922 and Selborne in 1923 asked the party leader simply to make reference to second chamber reform in their election addresses’.²⁰ Their addresses should be ‘general’ for ‘what is important is that it should not be possible to say after the election that the subject was never before the electors.’²¹ As such they are important documents, and they are also a way of holding parties to account and for a party to be able to state they have a mandate to introduce their manifesto pledges.

The aim of this thesis is to analyse longitudinally the Conservative Party election addresses and/or manifestos from the 1832 Reform Act²² to March 2020 (European Union (Withdrawal Agreement) Act 2020) with the main focus on the period between 1900 and 2019. In other words, to analyse the Conservatives’ constitutional policy agenda in detail.²³ The reasons for studying this topic are threefold. The first and foremost is that institutions matter,²⁴ and there has been great change in the British constitution. The British constitution is now and has been a matter of political debate and controversy. This has not always been the case, for example, between 1945 and the early 1970s there was a broad consensus in favour of the constitution as it was. The reason for recent controversy is because there is a lack of consensus on the recent constitutional changes, including Brexit, and the shape and form the constitution should take in the future. It has been argued that the constitution is about to ‘unravel’ or is in ‘flux’. This is problematic for all political parties but especially for the Conservative Party who are one of great parties of State and are currently in Government.²⁵ A Conservative policy platform will have to stop the constitution from becoming completely unravelled and/or to stabilise the

¹⁹ Churchill Archive Centre CHAR 2/554.

²⁰ Thomas, G., (2012) ‘Conservatives, the Constitution and the Quest for a ‘Representative’ House of Lords, 1911–35 *Parliamentary History* (31)3 pp. 419-443.

²¹ *Ibid.*

²² See McDowell, R.B. *British Conservatism 1832-1924* (London: Faber and Faber, 1959) who also chosen to start in 1832. Nevertheless, McDowell’s focus is on conservatism rather than on the Conservative Party.

²³ This research draws inspiration from Dorey, P. (2004) ‘Attention to Detail: The Conservative Policy Agenda’, *The Political Quarterly*, 75(4), 373-377 in this regard.

²⁴ March, J.G. and Olsen, J.P. (1984), ‘The New Institutionalism: Organisational Factors in Political Life’, *American Political Science Review*, 78, 734–49. See also Lowndes V. and Roberts, M. (2013), *Why Institutions Matter* (Basingstoke: Palgrave); Peters, B. G. *Institutional Theory in Political Science: The ‘New Institutionalism’*. 2nd edition (London: Continuum, 2005).

²⁵ The other party is the Labour Party.

constitution. From 1997–2010 the Labour Party introduced a series of reforms that altered Britain’s constitutional landscape. Some examples are devolution in Scotland and Wales, House of Lords reform, Human Rights Act and a new Supreme Court.²⁶ According to Loughlin, in 2013, ‘constitutionally speaking, we are living through a period of considerable uncertainty’.²⁷ The debate about reform is widespread, varied and indeed is lacking in consensus and therefore of critical importance. Therefore, because of this uncertainty in relation to the constitutional changes and the constitutional events surrounding Brexit and the recent Supreme Court rulings on Article 50,²⁸ and the Prorogation of Parliament ruling,²⁹ further understanding of the Conservative Party’s position towards the British constitution is of critical importance. This is because a Conservative Government will be required to have a policy platform to deal with these changes. Of course, the consequences are pertinent for all parties, but especially the Conservative Party who are now in Government and are (or have been) wedded to a traditional view of the constitution. Nevertheless, despite the critical importance of the topic and the debate surrounding the constitution and the lack of consensus in both the academic and political spheres, there has been a dearth of academic work on the constitution *qua* constitution or the taking of a step back and viewing the constitution from afar or investigating the Conservative Party’s policy, positions, or themes from 1832 to 2020. Seldon and Ball in 1992 wrote that ‘Constitutional issues are one of largest gaps in the existing literature’.³⁰ Despite the centrality of the British constitution to Conservative thinking and to the Conservative Party its policies have not been examined across this length of time nor has it been the subject to systematic analysis, especially not from 1832 to 2020.

²⁶ In 1996 four lectures by Stephen Dorrell, Michael Forsyth, William Hague, and William Waldegrave called the *Battle for the Constitution* where published. See the Conservative Party Archive PUB 184/9.

²⁷ Loughlin, M., *The British Constitution: A Very Short Introduction* (Oxford: Oxford University Press, 2013).

²⁸ On the on 24 January 2017, in a majority decision, the Supreme Court judged that an Act of Parliament was necessary to enable Government Ministers to provide Notice under Article 50 that the UK desired to exit the European Union (R (on the application of Miller and Dos Santos) v Secretary of State for Exiting the European Union and associated references).

²⁹ The Supreme Court unanimously decided on the 24 September 2019 that the prorogation of Parliament was unlawful. This was following from the Appeals of R (on the application of Miller) v The Prime Minister and Cherry and others v Advocate General for Scotland. Nevertheless, before the Supreme Court’s decision the Divisional Court in England concluded that prorogation was not justiciable as the exercise of the power was not susceptible to legal review and therefore not unlawful.

³⁰ Seldon, A., and Ball, S., *Conservative Century: The Conservative Party since 1900* (Oxford: Oxford University Press, 1992).

The second reason is that the Conservative Party is the most successful political party in British history,³¹ but there is a relative paucity of the material on the Conservative Party.³² As Norton indicates, it has been an important force in British politics for more than a century and a half. During this time period, such was its dominance the party became known, as ‘the natural party of government,’ or in other words, the Conservatives have been the ‘in’ party.³³ While some historians and politicians have gone so far as to argue that the party has been one of the world’s most successful political organisations, there is no doubt that it has the greatest endurance of any other party within the British political system. Certainly, no party in Britain can match its record. It is also the most successful electoral organisation in democratic European history, having governed (either with a majority or in coalition) for 91 of the 111 years of the ‘long Conservative century’ between 1886 and 1997.³⁴ In the late-Victorian and Edwardian era there was Conservative hegemony, when that party was in power for 17 of the 20 years after 1886. Of the twelve 20th century leaders only two, Austen Chamberlain (Leader March 1921-October 1922) and William Hague (Leader, June 1997 - September 2001) did not become Prime Minister.³⁵ Moreover, when appearing to be in terminal decline in 1906, in 1945 and in 1997 general elections,³⁶ it has successfully returned to a position of political strength.³⁷ For example, returning to government in 1915, in 1951 and 2010.³⁸ Since 2010 it has now been in government for 12 years. Such success should attract academic attention. Yet despite the party’s record, it has been much less studied than its less successful rivals the Labour Party³⁹ or the Liberal Party. Therefore, according to Seldon some areas of research in relation to the Conservative Party have ‘not been investigated or remain under-researched’⁴⁰ and the

³¹ Norton, P., (ed.), *The Conservative Party* (Hemel Hempstead: Prentice Hall, 1996) see also Bale, T., *The Conservative Party: From Thatcher to Cameron* (Cambridge: Polity Press, 2010). pp. 3-4.

³² Peele, G. (1978). Inside The Conservatives, *Government and Opposition*, 13(3).

³³ For Conservative Administrations and facts about the party see Crowson, N.J., *The Longman Companion to: The Conservative Party Since 1830* (Edinburgh: Pearson Education, 2001).

³⁴ Seldon, A., and Snowdon P., *A New Conservative Century?* (London: Centre For Policy Studies, 2001) p. 27.

³⁵ The next two leaders also did not go on to become Prime Minister either but the next four have done so.

³⁶ The 1997 General Election result was one of the worst in Conservative Party’s history with the number of MPs at 165 the lowest level since 1906 when it was 144.

³⁷ Cowley, P., Stuart, M. (2003) ‘Parliament: More Revolts, More Reform’, *Parliamentary Affairs*, 56(2) 188–204.

³⁸ See Crowson, *the Conservative Party Since 1830* (London: Pearson, 2001) see also Ball, S., and Seldon, A., (ed.). *Recovering Power: The Conservatives in Opposition Since 1867* (Basingstoke: Palgrave Macmillan, 2005).

³⁹ Seldon, A. The Conservative Party Since 1945 in (eds) Gourvish, T., and O’Day, A., *Britain Since 1945* (Basingstoke: The MacMillan Education, 1991).

⁴⁰ Seldon, *The Conservative Party since 1945*, p.233.

constitution is one of those areas. As the Conservative Party has been the ‘in’ party for most of its history the party has been in a position to reform, change or shape the British constitution and consequently had to deal with constitutional questions and dilemmas, whilst in Government. Moreover, when the party was not in Government, they were His/Her Majesty’s Loyal Opposition; meaning that the party was a ‘government-in-waiting’ and consequently that the party should have had policies and positions on constitutional policies of the Liberal or Labour Governments once they back were in Government.

The third reason for study is namely that with the minimal published academic literature in this field there is a gap in our knowledge (more on this in the literature review). Addison notes, despite the Conservative Party’s status as the oldest surviving political party in Britain, for much of the twentieth century it was a neglected area of historical study: it was, quite simply, “out of fashion”.⁴¹ Especially, it seems with constitutional policies. One would have expected that constitutional policies would be the subject of greater academic attention like some elements of the party. Despite the importance of the subject, Ball in 1994 noted in relation to the Conservative Party that ‘constitutional issues are one of largest gaps in the existing literature’.⁴² Twenty years later in 2014, Munce wrote that there is a ‘rather thin amount of academic literature on the Conservative Party and the constitution’.⁴³ Burch and Holliday argued in 1992 that ‘if effective constitutional reform is to be achieved, in either a systematic or a piecemeal fashion, it is therefore imperative that the matter of Conservative attitudes towards the issue be addressed’.⁴⁴ I would argue that it is also imperative that we understand the Conservative Party’s policies and how they have been articulated overtime. Johnson argued that it is difficult to see how a Conservative constitutional reformers can set about reform ‘without first undertaking an examination of principles.’⁴⁵ Nevertheless, according to Norton ‘attempts to locate and delineate the body of principles that constitute Conservatism in Britain have been relatively rare’.⁴⁶ Moreover, Conservative *principles* also require addressing as well

⁴¹ Addison, P., (1999) The British Conservative Party from Churchill to Heath: Doctrine or Men? *Contemporary European History*, 8 (2) 289 – 298. p. 289.

⁴² Seldon and Ball, *Conservative Century*.

⁴³ Munce, P., (2014) ‘The Conservative Party and Constitutional Reform : Revisiting the Conservative Dilemma through Cameron’s Bill of Rights’, *Parliamentary Affairs*, 67, 80–101. p 82.

⁴⁴ Burch, M., and Holliday, I., (1992) ‘The Conservative Party and Constitutional Reform: The Case of Devolution’, *Parliamentary Affairs*, 45 (3) 386–398.

⁴⁵ Johnson, N., ‘Constitutional Reform: Some Dilemmas for a Conservative Philosophy’, in *Conservative Party Politics* (ed) by Layton-Henry, Z., (London: The MacMillan Press, 1980) p. 128.

⁴⁶ Norton, P., ‘Philosophy: the principles of conservatism’, in *The Conservative Party* (ed.) by P., Norton (London: Prentice Hall/Harvester Wheatsheaf, 1996) p. 68.

as Conservative *attitudes*. According to Gee and Webber, recent attempts to examine conservatism are often ‘aimed primarily at popular audiences’⁴⁷ rather than at an academic audience. Therefore, this thesis endeavours to contribute to the minimal but ongoing literature on the Conservative Party and the British constitution by attempting to locate and delineate a body of principles that would constitute what a coherent conservative view of the British constitution looks like and utilise this a framework for analysis.

⁴⁷ Gee, G., and Webber, G., (2019) ‘A Conservative Disposition and Constitutional Change’, *Oxford Journal of Legal Studies*, 39.3 526 – 552.

Methods and Research Questions

In this section the principal research questions will be presented. The methods utilised in this thesis will be justified and the limitations and suitability of those methods will be discussed. The methods adopted in this research project have been chosen in order to address the main research questions as well as the aims and the objectives of the research. Two major qualitative methods are utilised. These are: (1) document analysis and (2) semi-structured interviews.

The Research Questions are:

1. Were the Conservative Party's manifesto policies towards the British constitution from the Reform Act 1832 to early part of 2020 consistent with conservative ideas and principles?
2. To what extent has there been continuity and innovation within the Conservative Party's constitutional policies?
3. To what extent were the policies and positions in relation to constitutional policies couched in constitutional terms, forms or ideas?

Methodology

There is no one-size-fits-all methodological approach to the study of political practice. The same subject or concept may be examined in a variety of different ways. Consequently, the methods of inquiry require a decision that ensures that the methods selected are the best suited to address the aim of the study and enables the researcher to answer the research questions at hand. Therefore, the chosen methods have been informed by their suitability to answer the research questions. A chosen methodological approach may be subject to legitimate criticism from scholars who analyse the subject from a different perspective. According to Gerring, it is essential to acknowledge explicitly and justify the advantages and limitations of the methodological approach adopted.⁴⁸ Consequently, the methods used in the thesis shall be justified and the limitations discussed.

The analytical approach for this thesis is problem solving and is also based on interpretive approach or to be more precise the branch of hermeneutics.⁴⁹ The research sought to recover

⁴⁸ Gerring, J. *Social Science Methodology: A Criterial Framework* (New York: Cambridge University Press, 2001). pp 4-5.

⁴⁹ See Burnham, P., Gilland Lutz, K., Grant, W. and Layton-Henry, Z. (2008) *Research Methods in Politics* (2nd edition.) (Basingstoke: Palgrave Macmillan, 2008) and also Marsh, D., and Stoker., G.,

the meaning of the words used as well as to addressing specific research questions (outlined above) in identifying whether the Conservative Party utilised a conservative view of the constitution to inform and convey their approach to the British constitution within their manifestos and elections addresses. Thus, indicating some level of ideational significance and obtaining important data in relation to the central research questions.⁵⁰ This forms the basis for the subsequent analytical task of considering the questions in relation to both the historical and contemporary positions of the Conservatives in relation to constitutional affairs across time. Therefore, the thesis is longitudinal. The reason for this is because taking a step back is required to understand the trends and patterns of constitutional policy over time. This enables the researcher to view the constitution as a constitution and for the constitution to be set within the waves of constitutional change. According to Sanders, ‘human political interactions’ should be studied ‘sequentially, as life is lived, rather than to take a snapshot of those interactions at only one point in time.’⁵¹ This study has taken this perspective and has thus enabled an investigation into whether a conservative position was articulated on the shape of the constitution that is appropriate for the United Kingdom. In other words, to view the constitution as a whole and in a holistic manner rather than seeing constitutional changes as discrete or seeing the constitution as disparate parts within a short time span.

As was previously stated a qualitative approach has been taken whereas quantitative research focuses upon the analysis of numerical data, and in doing so usually makes use of large sets of data to make generalisations and predictions, qualitative analysis utilises smaller samples to be able to gain an in-depth understanding of the research topic. These smaller samples are selected with great care to explore the topic in greater detail.⁵² Relatedly, qualitative researchers chose a case or cases that are ‘substantively important’; that is, worth studying and examining in detail.⁵³ The case chosen is the Conservative Party and its constitutional policies. Moreover, qualitative research analyses political attitudes or policies that are not possible or desirable to

(ed.) *Theory and Methods in Political Science* (Basingstoke: Palgrave Macmillan, 2002) and also see MacIntyre, A., *Mistake about Causality in Social Science*, in Laslett, P., and Runciman, W.G., (eds) *Philosophy, Politics and Society: Series 2* (Oxford: Blackwell, 1962).

⁵⁰ Braun V., and Clarke V., (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3, pp. 77–101. p. 82.

⁵¹ Sanders, E. (2006), Historical Institutionalism, in R.A.W. Rhodes, S.A. Binder and B.A. Rockman (eds), *The Oxford Handbook of Political Institutions* (Oxford: Oxford University Press): 39–55. p.39.

⁵² Saunders, M., Lewis, P., and Thornhill, A. *Research methods for business students* (Harlow, England: Financial Times/Prentice Hall, 2007).

⁵³ Mahoney, J. and Goertz, G. (2016), A Tale of Two Cultures: Contrasting Quantitative and Qualitative Research, *Political Analysis*, 14, 227–249 p. 242.

quantify. In other words, qualitative research ‘tends to focus on exploring, in as much detail as possible, smaller numbers of instances or examples which are seen as being interesting or illuminating, and aims to achieve “depth” rather than “breadth”’.⁵⁴

According to Pierce, there are four core attributes often ascribed to a qualitative approach to conducting political science research. These are: (1) an inductive analysis that is premised on discovering categories and being exploratory with open questions, rather than testing theoretically derived hypotheses through deduction; (2) taking an holistic perspective that seeks to understand all of the phenomenon and the complex interdependence in issues of interest, rather than reducing analysis to a few discrete variables; (3) qualitative and adaptive data collection are based on detailed ‘thick’ description and depth; (4) empathetic neutrality in conducting the research is important as most qualitative researchers believe complete objectivity is impossible.⁵⁵ This approach has been adopted as it is suited to the research project.

This thesis is explicitly concerned with the Conservative Party from 1832 to early 2020. Historical explanations and understandings rely on context. For the qualitative researcher, explanation and understanding of human, social and political behaviour cannot be independent of context. Moreover, sensitivity to the context is required as the analysis is located in the social, historical and temporal context from which data has been gathered. In other words, the political context is required as the constitution and constitutional change is an explicitly political exercise.⁵⁶ Tilly writes that:

Not only do all political processes occur in history and therefore call for knowledge of their historical contexts, but also where and when processes occur influence how they occur. History thus becomes an essential element of sound explanations for political processes.⁵⁷

Therefore, a qualitative approach is suitable for this research project as it aims to generate rich historical explanations as an in-depth focus on the Conservative Party’s manifestos constitutional positions that had the potential to drive party policy. Moreover, according to Yanow and others, an in-depth qualitative study requires interviews, and/or document

⁵⁴ Blaxter, L., Hughes, C., and Tight, M., *How To Research* (Oxford: OUP, 1996). p. 60.

⁵⁵ Pierce, R., *Research Methods in Politics* (London: SAGE Publications Ltd, 2008).

⁵⁶ Norton, P., (2021) The Conservative Nation Redivivus? *Political Quarterly*, (92)3, 420-427.

⁵⁷ Tilly, C. (2006) ‘Why and How History Matters’ in Goodin, R. and Tilly, C. (eds.) *The Oxford Handbook of Contextual Political Analysis* (Oxford: Oxford University Press). p. 420.

analysis⁵⁸ and thus these two approaches have been utilised. According to Nowels *et al.* the ‘thematic analysis is a qualitative research method that can be widely used across a range of epistemologies and research questions’.⁵⁹ Thus a thematic approach has been adopted and each chapter covers a theme or an interrelated set of themes. The thesis is structured thematically to aid the analyse of key constitutional issues but to also take a holistic view.

Semi-structured interviews

A semi-structured interview was utilised to enable the capture of data that is qualitative in nature.⁶⁰ A major benefit of conducting these interviews was that they facilitated the researcher’s ability to glean information that is not recorded in documents, manifestos or elsewhere.⁶¹ Stedward suggested that the interview is a great vehicle for bringing a research topic to life.⁶² Indeed, they allowed the researcher to develop further understandings of existing documents, and the personalities involved in constitutional events and policy formation. The interview is also an excellent method of obtaining data about contemporary subjects which have not been extensively studied and for which there is little literature. This was particularly useful in relation to the recent constitutional events, which have not been extensively written about or when the politicians were not willing to express their views publicly as it was still a ‘hot topic’ as well as when the Government was still formulating constitutional policy. For example, two Government ministers asked for an embargo on their contributions to the research and four asked not to be named at all. Moyser and Wagstaffe note:

Elite interviewing is not, of course, one method or technique but a whole family comprising varied alternatives. One principal axis along which such alternatives differ is the degree of structure or directiveness employed by the interviewer...⁶³

⁵⁸ Yanow, D. (2009), Organizational ethnography and methodological angst: myths and challenges in the field, *Qualitative Research in Organizations and Management*, (4) 2, pp. 186-199; Miettinen, R., Samra-Fredericks, D., and Yanow, D. (2009). Re-Turn to Practice: An Introductory Essay. *Organization Studies*, 30(12), 1309–1327.

⁵⁹ Nowell L., Norris J., White D., Moules N., (2017) Thematic Analysis: Striving to Meet the Trustworthiness Criteria, *International Journal of Qualitative Methods*.

⁶⁰ Yin, R., *Applications of Case Study Research* (Stage Publications, Thousand Oaks, 2002).

⁶¹ See Arksey, H. and Knight, P., *Interviewing for Social Scientists* (London: Sage, 1999); Fielding, N., (ed.), *Interviewing* (London, Sage, 2003); Gillham, B., *Research Interviewing* (Maidenhead: Open University Press, 2005); and Marsh and Stoker (ed.) *Theory and Methods in Political Science* for the use of interviews as a research tool.

⁶² Stedward G., On the Record: An Introduction to Interviewing, in Burnham P. (ed.), *Surviving the Research Process in Politics* (London: Pinter, 1997) p. 151.

⁶³ Moyser, G. and Wagstaffe M., (eds) *Research Methods for Elite Studies* (London: Allen and Unwin, 1986). p.18

Moyser and Wagstaffe added:

This helps to identify three major variants: the fully structured, the semi-structured and the unstructured interview, the first two having been more extensively utilized in the study of elites than the last. The choice between them is ultimately a decision about which data-generation strategy best fits the particular research design and theoretical problems being addressed.⁶⁴

According to Rossman and Rallis, ‘elites respond well to inquiries about broad topics and to intelligent, provocative, open ended questions that allow them the freedom to use their knowledge and imagination’.⁶⁵ Relatedly, according to Cowley, ‘structured interviews rarely work with politicians’.⁶⁶ Consequently, a semi-structured approach with open ended questions was utilised as this method elicited the ‘best’ responses that also allowed the participants to use their knowledge and imagination. It also allowed for scope for the participant to respond to the interviewee’s questions and deviate into areas that were not previously thought to be significant. The interview thus become an in-depth conversation with a greater ‘give and take’ that allowed the participant, in part, to set the agenda according to what the individual perceived to be important and for the interview itself to be on topics and on particular strengths in knowledge and understanding of the participant. Therefore, on areas of interest to the participants. A fully structured interview, therefore, was not chosen for this research as a more standardised interview might have precluded discussion.⁶⁷ In other words, some of the control over the interview was transferred to the participant while still maintaining a coherent core across the interviews.⁶⁸ Relatedly, it allowed for divergent interpretations and therefore for richer and more detailed data to be obtained. The questions were tailored to the participants expertise or experience. For example, one of the participants was a member of the Cabinet during the final years of the Major administration and had written a pamphlet on local government reform, therefore the questions were tailored to the constitutional situation of the time and towards local government. Nevertheless, there were also generic questions that were asked (or at least planned to be asked). For example, every participant was asked: ‘if you could

⁶⁴ Ibid, p.18.

⁶⁵ Rallis, S., and Rossman, G., *Learning in the field: An introduction to qualitative research* (2nd ed.). (Thousand Oaks, CA: SAGE 2003). p. 192.

⁶⁶ Cowley, P., (2021) Interviewing MPs, *SSRN*. p.11.

⁶⁷ Manheim, J.B., Rich, R.C., Willnat, L. *Empirical political analysis: research methods in political science* (USA: Longman, 2002). p 321-323.

⁶⁸ Bernard, H.R. and Ryan, G.W. *Analysing qualitative data: systemic approaches*, (California and London: SAGE Publications, 2010). pp. 29-30.

have one constitutional reform implemented straight way, what would it be?’ As Cowley observes ‘interviews with politicians are often better described as barely structured’,⁶⁹ as the politician may wish to go down a different path to what the researcher had anticipated, and the researcher has to be ready to adapt and improvise during the interview and this was the case in terms of this research. To ensure that interview flowed the researcher built on from the last comments of the interviewee rather than trying to go through a set of questions sequentially and therefore key questions were slotted into the flow of the interview. The lack of standardisation in the delivery of the interview is not a major concern⁷⁰ as the data is not going to be quantified.

The potential drawback of ‘going off-piste’ or being caught off guard was rigorously planned for. To ensure that the potential drawbacks were turned into a positive for the research, the interviewer engaged in detailed preparation before the interview, such as reading the participants’ contributions on the debates the constitution in Parliament and/or reading articles or books that participants have written on the subject. This meant that the interview could be more detailed and go deeper into the subject to gain rich and thick understanding of the participants views that went beyond what is already available in the public domain. This research project is both historical and contemporary in nature and most of the interviewees in this research project are still active politicians, and some of them have not published their version of events in term political memoirs or diaries so this added to the originality of the research. Nevertheless, there are specific difficulties and challenges inherent in real time research. These include, for example, the problem of maintaining perspective with regard to the wider significance of particular events, which according to Hazell and Yong, becomes increasingly difficult towards the end of the time period in question.⁷¹ Consequently, the research period will be up to March 2020 and will not cover the ‘Coronavirus period’ and the impact of it on the constitution or the Conservative Party’s constitutional response to it.

There is also a lack of research on some aspects on the party’s history and the present time is still undocumented. Consequently, the interview method will augment the document analysis rather than replicating it by another method. Therefore, the semi-structured interviews with Conservative political elites are a complementary source of evidence in relation to the

⁶⁹ Cowley, *Interviewing MPs*, p.11.

⁷⁰ Burnham, P., Gilland Lutz, K., Grant, W. and Layton-Henry, Z. (2008) *Research methods in Politics (2nd edition.)* (Basingstoke: Palgrave Macmillan, 2008). p. 240.

⁷¹ Hazell, R. and Yong, B., *The politics of coalition: how the Conservative-Liberal Democrat Government works* (Oxford: Hart Publishing Ltd, 2012). p. 6.

Conservative Party's policies and positions on the constitution and the extent and nature of them within the manifestos. Thus, they go beyond analysing the documents for policy content and asks *why* the party or the individual adopted a particular constitutional policy or why they did not. These methods assisted in gaining data on the *thinking* and *prisms* used that were behind the policy positions and further enabled the analysis into whether they were based on a conservative view of the constitution, which is a core question of the research.

Relatedly, the interviews allowed the exploration of the *thinking* about constitutional policies that took place below the surface or behind closed doors of the Conservative Party. For example, a debate within Conservative Party's leadership may have taken place internally but this may not translate into party documents or in the public domain. Thus, the interviews were used as a method to investigate if this was the case. The interviews were also utilised to get up to date views,⁷² and to address the gaps in the documents and to go into further detail. For example, one participant stated that his views on the constitution have changed since he wrote his book in the 1970s. This information could not have been gleaned from a document analysis alone, therefore the interview augmented the data and provide triangulation but also ensured that the facts utilised were up to date.

Nevertheless, there are drawbacks to utilising interview as a research method, other than the aforementioned one of participants 'going off-piste'. Seldon identifies three challenges to the validity of employing interviews as a research tool: (1) the limitations of memory, especially in relation to factual information; (2) qualitative interviews inevitably involve unrepresentative sampling, although this can be avoided by 'drawing up systematic of potential interviewees from a wide variety of different organisations, backgrounds, sympathies, or whatever distinctions may be relevant';⁷³ and (3) qualitative interviewing can be time-consuming and costly. The cost of qualitative interviewing has also been noted by other researchers, for example Stedward writes that: 'Aside from the time actually spent interviewing and travelling to the interview, you need to account for preparation, obtaining and setting up interviews, writing up'.⁷⁴ Interviewing can also be demanding,⁷⁵ especially when the participants are used to being interviewed as politicians are. Thus, the selection of interviewees was important. Elite

⁷² Seldon, A. Elite Interviews, in *The Contemporary History Handbook*, in Brivati, B., Buxton, J., and Seldon, A., (eds) (Manchester & New York: Manchester University Press) 353–365, p. 358.

⁷³ Seldon, *Elite Interviews*, p. 7.

⁷⁴ Stedward, *On the Record*, p. 152.

⁷⁵ See Hilary and Knight, *Interviewing for Social Scientists*; Fielding, *Interviewing*; Gillham, *Research Interviewing* and Marsh, and Stoker *Theory and Methods in Political Science*.

interviewing involves questioning people who may offer a unique perspective on the research subject. There was an emphasis on the distinctive nature of the population and a criteria-based explanation for purposive sampling (rather than random sampling) used to select interviewees. In this case, this meant the leaders themselves and key leadership figures, especially those who held constitutional briefs, or other figures who had been involved in policy discussions or had a distinctive standpoint in relation to the Conservatives adoption of constitutional policies. A second drawback is that it is not possible to achieve an exactly representative sample of people from different sections of the party. Nevertheless, participants were drawn from sections of the party, if there was potential for a differing view. Nevertheless, in qualitative study, such as this one, an exact representative sample is not essential. Instead, the individuals were chosen to participate based on their ability to provide in-depth analysis. Therefore, interviewees were selected on the basis of their experience in relation to the workings of the constitution, positions within the party and on their knowledge of constitutional policies as well as their knowledge of conservative thought.

Indeed, it became apparent from the first stage of the research process that there were a small group of Conservative politicians both MPs and Peers who have important knowledge of constitutional events and the Conservative Party's positions. They were selected because they (1) held a constitutional brief, (2) or were the leader of the Conservative Party, (3) or made a contribution on the topic of the constitution, or (4) had 'constitutional affairs' declared as a 'Political Interest' on Parliament's website or in Dods Parliamentary Companion.⁷⁶ These criteria enabled a high success rate as 50 individuals were contacted, and 32 interviews were undertaken with 30 individuals, which is a 60% per cent return rate. Moreover, the strict criteria minimised the time spent obtaining and setting up interviews as the participants had knowledge and interest in the subject. In other words, only participants who would be likely to take an interest in the topic were contacted, which minimised the amount of leg work. The interviews were sought by writing to these politicians, first by letter and then by email.⁷⁷ Moreover, these elite interviews provided the researcher with a unique opportunity to understand 'the theoretical

⁷⁶ Newton, E. (eds.) *Dods Parliamentary Companion 2017* (London: Dods, 2017).

⁷⁷ The majority of the selected participants responded promptly to the initial letter. Nevertheless, when no response was received within three weeks, a follow-up e-mail was sent. This normally generated a response from the participants' office either accepting or declining participation. If there was no response to the first email then a second email (which was the third approach) was sent. The main reason for declining participation was 'time pressures' due to the increase in workload due to the Covid-19 pandemic.

position of the interviewee; his/her perceptions, beliefs and ideologies'.⁷⁸ The personal and subjective impression of the participant was part of this process of understanding the individual's as well as the Conservative Party's theoretical position in relation to its constitutional policies and positions within its manifestos. Moreover, interviewing works well as a means of investigating the complex issue of actors' subjective interpretations of problems and goals,⁷⁹ such as constitutional policy positions and enable the exploration of prisms and view utilised to formalise the interviewees positions.

During the interview process there was a 'snowballing' effect.⁸⁰ The snowball approach is an organic approach utilised in social and political science research, whereby access to sources and/or participants occurs naturally in a series of distinct stages throughout the course of the fieldwork in a chain of referrals from one recommendation to another. The approach was also adopted (as well as the purposive strategy) and at the end of the interview or after the interview via email the interviewee suggested others (known as chain referral technique) who have knowledge on the topic and may be able to contribute to building a holistic picture. This was conducted at the end or after the interview for one main reason. This was that the interviewees then understood the nature of the research and the relevance of this study to the Conservative Party, and they would feel comfortable in recommending other participants. Especially, those participants who were unwilling to be interviewed without a personal recommendation.

The interviews were originally to be conducted over a four-month period from December 2019 to April 2020 and they were meant to be face-to-face interviews held in Westminster and indeed two interviews were conducted face-to-face. Nevertheless, due to the global pandemic and the General Election 2019, the interviews were postponed and then rescheduled numerous times as face-to-face interviews were the preferred method and the Covid-19 restrictions did not allow for this, which unfortunately add to the time cost of the project. A small minority of interviews were postponed indefinitely, as the pandemic continued and as 'strangers' were not permitted onto the parliamentary estate the decision was made that the interviews must be conducted via Teleconferencing. The decision did have time and cost benefits as it reduced the amount of time and the cost of travelling and allowed (in the end) for the interviews to go

⁷⁸ Richards, D. (1996) 'Elite interviewing: approaches and pitfalls', *Politics*, 16 (3), pp. 199-204.

⁷⁹ Furlong, P. and Marsh, D. 'A skin not a sweater: ontology and epistemology in political science', in Marsh, D., and Stoker G., *Theory and Methods in Political Science [3rd edition]*, (London: Palgrave, 2010). p. 200.

⁸⁰ See, Bernard, H.R., *Research Methods in Anthropology: Qualitative and Quantitative Approaches* (Rowman & Littlefield, Landham, 2006). pp.192-194.

ahead. Video calls via Zoom allowed the interviewer to read the body language of the participant, which minimised some of the drawbacks of non-face-to-face interviews. Nevertheless, a small minority of interview were conducted over the telephone. These were conducted over a seven-week period from November to December 2020 around a year later than originally planned.

All, but four interviews,⁸¹ were recorded and all but four were on the record. Therefore, the majority of the quotes will be attribute directly (e.g. ‘John Hayes MP said...’) or indirectly (e.g. ‘a Conservative Peer said...’) if the individual did not wish for the quote to attributed to him/her directly. For Stedward, the optimal number of interviews in a single day is four. The recommendation was followed but used as a maximum. Seldon also noted that interviews held too soon after the event may be ‘clouded personal impressions’.⁸² This is the main limitation of the semi-structured interview is that the participant might not remembers the exact details⁸³. According to Richards:

This often results from failures in his/her memory. The older the witness, and the further from events they are, the less reliable the information (though the more willing they may be to talk). This is partly a result of the stretch of time, but interviewees also have the problem of confusing what they can actually remember of events, with what they have later read on the same subject. They may also adjust their interpretation of an event in order to avoid being seen in a poor light or, in some cases, they may have an axe to grind.

Stedward suggests, to employ interviews in the process of triangulation; that is, in conjunction with other methods. This has been done through analysing archive material and party documents, especially manifesto and elections addresses. Therefore, the facts are derived from historical documents: policy documents, manifestos or any other materials that have been authored or produced within a particular historical period as well as personal impressions such as diaries journals, books as well as the interviews. Consequently, it was important that the semi-structured interviews were not the only source of data but were used to support and develop findings from other data collection techniques such as document analysis.

⁸¹ Four interviewees requested that their interviews were not recorded.

⁸² Seldon, *Elite Interviews*, p. 6.

⁸³ Richards, *Elite interviewing: approaches and pitfalls*, p. 200.

Documents Analysis

The research was conducted in two stages; however, these stages overlapped, and the process was iterative rather than linear. The first stage was desk-research related. This entail gathering information. For example, the perusal of political diaries, memoirs and (auto)biographies, periodicals, speeches, manifestos, and newspaper articles. These sources can be classified into three main groups: (1) primary, (2) secondary, and (3) tertiary. According, to Burnham *et al.*, primary sources are ‘evidence that was actually part of or produced by the event in question’; secondary sources are ‘other evidence relating to and produced soon after the event’; and tertiary sources consist of ‘material written afterwards to reconstruct the event’.⁸⁴ All three were utilised at the desk-research stage.

Five main research archives were utilised to gain access to the required documents. The researcher visited the Conservative Party Archive in the Bodleian Library, Oxford in August 2021 and The Churchill Archive Centre at Churchill College, Cambridge⁸⁵ in July/August 2022.⁸⁶ The Margaret Thatcher Foundation Archive, The Times Archive and The British Newspaper Archives were also utilised online. The latter two were particularly useful for election addresses of the leaders of the party before 1900 and for other Conservative candidates. Access to these archives were useful for documents such as the Party’s Campaign Guide and Election Manual; Speakers’ Notes, (also known as Candidates’ Notes from 1991 to 1992); Notes for Speakers (from 2010 to the present); Conservative Political Centre (CPC) pamphlets and the Conservative Research Department (CRD).⁸⁷ Plus, some handwritten notes by Winston Churchill on his draft manifestos and other notes from Conservative politicians to name just a few interesting documents.

Some important speeches were also part of the document analysis as they are a vital means by which politicians attempt to communicate with their party, their voters and the general public. They can be analysed to discover positions and policies that the politicians wish to promote. Speeches of other senior members (for example, members of the cabinet or shadow cabinet), and especially those who have held a constitutional brief were included in the document analysis stage. Moreover, speeches can be utilised to identify patterns and themes and to track

⁸⁴ Burnham *et al.*, *Research Methods in Politics*, p. 165.

⁸⁵ This visit was funded by the Churchill Centre Archive’s grant called the Jennie Churchill Fund.

⁸⁶ Both of the visits to these archives were postponed due to Covid-19 restrictions.

⁸⁷ For ease of reference and access the original documents have been cited when at times rather than the Archive’s code.

if or how policies has evolved over time. Another advantage of primary sources, such as speeches is that they are accessible. Nevertheless, a limitation of speeches as a document to analyses is that sections of the of the speech may be left out, lost or forgotten. For example, when William Hague was leader of the Conservative Party, a section of his Party Conference speech on law and order ‘just got missed out’, in other words, the pages were removed from the speech without Hague’s knowledge or approval.⁸⁸ Hague was praised at the time for not pandering to the Tory prejudices on law and order even though Hague was going to take a hard-line on this issue. In other words, sections of speeches can be forgotten. For example, Ed Miliband’s 2014 Conference speech where he had forgotten to mention the budget deficit.⁸⁹ Consequently, the data collection did not rely on speeches as the core focus was on policies with in the manifestos.

It is important to acknowledge that documents are ‘non-reactive’ sources. They can only ever tell part of the story and may not reflect the difficult internal compromises.⁹⁰ Therefore, the methods were ‘mixed and matched’ as approaches and strategies do not exist in isolation for the benefit of the project.⁹¹ Furthermore, utilising multiple methods of data collection can ensure triangulation as well as providing different views on the subject phenomena, thus further reinforcing the results.⁹² Moreover, it also built up a picture that drew upon several sources. Fundamentally, the document analysis provided a means of triangulation which is essential in supplementing and allowing cross-checking of the material obtained through the semi-structured interviews.⁹³ This assisted in filling in the gaps in the interview data and providing additional material which strengthens the confidence of the conclusions drawn from the project.⁹⁴ Indeed, both the document analysis and semi-structured interviews complemented

⁸⁸ Chorley, M., (2020, April) Becoming leader when nobody cares, in Red Box (Times) URL: <https://podcasts.apple.com/gb/podcast/becoming-leader-when-nobody-cares/id660638948?i=1000470337702>

⁸⁹ Wintour, P., ‘Ed Miliband admits he forgot key section of Labour conference speech’, *The Guardian* (24 Sep 2014). Available at: <https://www.theguardian.com/politics/2014/sep/24/ed-miliband-forgets-labour-conference-speech>.

⁹⁰ Webb, P., Use of Archival Sources in Bulmer, M. (ed.) *Sociological Research Methods* (2nd edition) (London: Macmillan, 1996).

⁹¹ Robson, C., *Real World Research: A Resource for Social Scientists and Practitioner-Researchers* (2nd edition) (Oxford: Blackwell Publishers Ltd, 2002).

⁹² Saunders *et al.*, *Research Methods*.

⁹³ Davies, P.H.J. (2001) ‘Spies as informants: triangulation and the interpretation of elite interview data in the study of the intelligence and security services’, *Politics*, 21 (1), pp. 73-80.

⁹⁴ Lilleker, D.G. (2003) ‘Interviewing the political elite: navigating a potential minefield’, *Politics*, 23 (3), pp. 207-214.

each other well, and they have been used to augment each other in the confirmation of the research findings. Thus, ensuring triangulation in the data.

A Literature Review: The Conservative Party and the Constitution

This literature review shall critically review the seminal and extant literature based on the theoretical framework that underpins this thesis and therefore the review is based around three key interlinking themes the Conservative Party, the British constitution⁹⁵ and conservatism⁹⁶. The purpose of this review is to evaluate the nature and the breadth of the literature and to identify gaps in the literature and consequently the gaps in our knowledge on this subject. Moreover, this literature review also demonstrates where this study sits within the literature and also demonstrates that there is no direct current literature addressing this issue. Consequently, this thesis aims to fill the core gap that has been identified by undertaking this literature review; that is, a longitudinal analyse of the Conservative Party's constitutional policies within its manifestos. Thus, an original contribution to our knowledge on this topic shall be made and the potential for future research in this area shall be elucidated. The literature review has demonstrated that the current literature focuses on a short time span and individual aspects of the Conservative Party's policies towards the constitution or on a particular leader and very rarely a group of leaders. Therefore, there is a gap to be filled within the field for a longitudinal research project that investigates policy positions across a long time span that analyses change and continuity.

There are several books, book chapters and academic articles on the subject matter of the Conservative Party. Ball in a book called *Conservative Century* provided an extensive bibliography of the scholarship that has been conducted on the party up and until 1994.⁹⁷ This literature has covered many different aspects and periods in the party's history.⁹⁸ For example, the party's beliefs, its organisation, its leaders and so on but it is still the 'most neglected and misunderstood of all the main parties'.⁹⁹ Thus, the subject is still insufficiently explored on many fronts. There has been research conducted on or around the party as the defenders of the 'Protestant Constitution'. For example, Feiling's *The Second Tory Party 1714-1832*,¹⁰⁰

⁹⁵ In chapter two, a context of the British constitution shall be provided as well as a discussion of the core literature on this topic.

⁹⁶ Conservatism as a concept and the literature around this topic shall be discussed and analysed in chapter three.

⁹⁷ Ball, S., Bibliography in Seldon A., and Ball S., (eds). *Conservative Century: The Conservative Party since 1900* (Oxford: Oxford University Press, 1994). pp. 727-773.

⁹⁸ See Blake, *The Conservative Party from Peel to Major*; Harris, R., *The Conservatives - A History* (London: Corgi, 2013); Bale, *The Conservative Party: From Thatcher to Cameron*.

⁹⁹ Seldon and Ball. *Conservative Century*. p. Front Matter.

¹⁰⁰ Feiling, K., *The Second Tory Party 1714-1832* (Basingstoke: Macmillan, 1938), pp. 365-373

Stewart's *The Foundation of the Conservative Party, 1830-1867*,¹⁰¹ but these are not solely focused on the constitution and are either before the timeframe covered in this research or just cover the early period.¹⁰² E.H.H Green's book called *The Crisis of Conservatism* covers the time period of 1880 to 1914.¹⁰³ There are, of course other works that cover the history of the Conservative Party and essays on Conservative leaders such as Lindsay and Harrington's *The Conservative Party 1919-1970*,¹⁰⁴ Charmey's *A History of Conservative Politics, 1900-1996*,¹⁰⁵ Fisher's *The Tory Leaders*,¹⁰⁶ Southgate's *The Conservative Leadership 1832-1932*,¹⁰⁷ Butler's *The Conservatives: A History from their Origins to 1965*,¹⁰⁸ Ramsden's *An Appetite for Power: A History of the Conservative Party Since 1830*,¹⁰⁹ Gamble's chapter on the Conservative Party in *Multi-Party Britain*¹¹⁰ and Seldon's chapter on the party in *Britain Since 1945*.¹¹¹ There are other example, such as Ball's *The Conservative Party and British Politics 1902-1951*¹¹² and Fleming's *Britannia's Zealots*.¹¹³ There have also been works that have focused on the concept of the nation state or national identity, but they are not focused on the constitutional policies *per se*.¹¹⁴ Yet, some of the leaders of the Conservative Party have been analysed in relation to their view on the constitution. Theakston's book on Churchill and the

¹⁰¹ Stewart, R., *The Foundation of the Conservative Party, 1830-1867* (London: Prentice Hall Press 1978), pp. 26-57.

¹⁰² See also O'Gorman, F., *The Emergence of the British Two Party System 1760-1832*; Clark, C. D., *English Society 1688-1832* (Cambridge, 1985) pp. 400-4; Cannon, J., *Parliamentary Reform 1660-1832* (Cambridge, 1972) pp. 191-197; Brock, M., *The Great Reform Act* (London: HarperCollins Publishers Ltd, 1973), pp. 5 5-67.

¹⁰³ Green, E.H.H., *The Crisis of Conservatism: The Politics, economics and ideology of the Conservative Party, 1880 -1914* (London: Routledge, 1995).

¹⁰⁴ Lindsay, T.F., and Harrington, M., *The Conservative Party 1919-1970* (Basingstoke: The MacMillan Press, 1974).

¹⁰⁵ Charmey, J., *A History of Conservative Politics, 1900-1996* (Basingstoke: The MacMillan Press, 1996).

¹⁰⁶ Fisher, N. *The Tory Leaders* (London: Weidenfeld and Nicolson, 1977).

¹⁰⁷ Southgate, D., (ed) *The Conservative Leadership 1832-1932* (Basingstoke: The MacMillan Press, 1974).

¹⁰⁸ Butler, L. *The Conservatives: A History from their Origins to 1965* (London: George Allen & Unwin, 1977).

¹⁰⁹ Ramsden, J. *An Appetite for Power: A History of the Conservative Party Since 1830* (London: HarperCollins, 1999); see also Ludlam S., and Smith, M.J., (ed.) *Contemporary British Conservatism* (New York, St. Martin's Press, 1996).

¹¹⁰ Gamble, A. The Conservative Party in (ed) Druker, H.M. *Multi- Party Britain*, (Basingstoke: The MacMillan Press, 1974). pp. 25-53.

¹¹¹ Seldon, A. The Conservative Party Since 1945 in (eds) Gourvish, T., and O'Day, A., *Britain Since 1945* (Basingstoke: The MacMillan Education, 1991). pp. 233-261.

¹¹² Ball, S. *The Conservative Party and British Politics 1902-1951* (London: Routledge, 1995).

¹¹³ Fleming N.C. *Britannia's Zealots: Volume 1: Tradition, Empire and the Forging of the Conservative Right* (London: Bloomsbury Academic, 2019).

¹¹⁴ Clark, A. *The Tories: Conservatives and the Nation State 1922-1997* (London: BCA, 1998); see also Aughey, *The Conservative Party and the Nation*.

constitution¹¹⁵ and Norton's chapter called *The Constitution* in a book called *John Major: An Unsuccessful Prime Minister?: Reappraising John Major* are two examples.¹¹⁶ Norton argues that Major was the 'last Conservative Party leader to address, on any systematic and reflective basis, the UK constitution as a constitution and to pursue policies designed to preserve that constitution'.¹¹⁷ Moreover, according to the Norton, Major was at the heart of the Conservative's policies on the constitution and the drive force and had 'a clear objective and that was to defend the integrity of the extant constitution'¹¹⁸ and this objective and his philosophy was articulated in both the 1992 and 1997 Conservative Manifestos and that 'Major emphasised that the opposition was not to change, but to proposals that would undermine the existing constitution. He wanted to strengthen the citizen within the existing framework'.¹¹⁹

Whilst certain Conservative leaders have attracted considerable academic work other leaders of the Conservative Party have received considerably less. The literature to date has focused only to a very limited extent on Iain Duncan Smith (2001 - 2003), because, according to Hayton and Heppell, his leadership of the Conservative Party by political scientists has been relatively neglected.¹²⁰ The literature is even more limited on his and the party's position on the British constitution and the New Labour reforms during his leadership. Consequently, there is a gap in our knowledge on the Conservative Party's ideas and policies in this important period of constitutional change. Furthermore, Michael Howard (2003 – 2005), Theresa May (2016 – 2019)¹²¹ and Boris Johnson (2019 – 2022) are other leaders that lack academic attention. Especially in relation to the British constitution and their manifesto policies during their leaderships. Perhaps, because of the Conservative Party was in opposition during the some of the period of major constitutional changes the focus of academic work has been on the Labour Party and its leaders. There has been a lack of scholarship on the Conservative Party both narrowly focusing on their leaders, if at all, but there is also a lack of research on the party from 1832 to 2020. Nevertheless, the Conservative Party has been in Government more than it has

¹¹⁵ Theakston, K., *Winston Churchill and the British Constitution* (London: Politico's Publishing, 2004).

¹¹⁶ Norton, P. 'The Constitution' in *John Major: An Unsuccessful Prime Minister?: Reappraising John Major* (ed.) by Hickson, K., and Williams, B., (Biteback Publishing, 2017).

¹¹⁷ *Ibid*, p.62.

¹¹⁸ *Ibid*, p.63.

¹¹⁹ *Ibid*, p.65.

¹²⁰ Hayton R., and Heppell, T., (2010) 'The Quiet Man of British Politics: The Rise, Fall and Significance of Iain Duncan Smith', *Parliamentary Affairs*, 63(3), 425–445; See Dorey, P. (2004) 'The Conservative Party Under Iain Duncan Smith'. In S. Lancaster (ed) *Developments in Politics: An Annual Review, Vol. 15* (Ormskirk: Causeway Press) pp. 1–29, for another work on Duncan Smith.

¹²¹ There have been some biographies about May one example is Prince, R. *The Enigmatic Prime Minister* (London: Biteback Publishing, 2017).

been in opposition. Moreover, it was in Government during the early 1970s when the first post-war wave of constitutional changes was ebbing and flowing, and they were also in Government throughout the 1980s and most of the 1990s and from 2010 to the present. This means research is required on party's positions across the whole of this period.

Theakston's article, whilst not on Conservatives *per se* does cover Conservative Prime Ministers (as well as Labour ones) from 1945. It sets out the centrality and importance of the Prime Minister in relation to the British constitution and why Prime Minister's views and positions on the constitution matter and why they ought to be studied. He surveyed the thinking of Prime Ministers since 1945 to 2005 on the British constitution. The article is a rarity in the literature as it takes a step back and therefore takes a broader and longer perspective. Theakston concluded, in the article, that Prime Ministers since 1945 have been 'mostly constitutional conservatives' and they believed in the 'established institutions and orthodoxies of the Westminster model'.¹²² The article does not situate the Conservative Prime Ministers' thoughts and policy on the constitution within conservative thinking or constitutional principles but rather delineates the policy positions of the Prime Ministers only and does not focus on the Conservative Party's manifestos.

There has been extensive research conducted on Thatcher. A closer look at the literature on Thatcher and the constitution, however, reveals a number of gaps and shortcomings. To provide just one example, there is a distinct lack of literature on the major constitutional event during Thatcher's Premiership (1979-1990), which was the passing of the Single European Market (SEM) Act 1986 (or The European Communities (Amendment) Act 1986). This act was the first Act to amend the European Communities Act 1972 after thirteen years of membership. The academic literature is lacking research on the SEM Act as a *constitutional* moment and there is a gap in the literature in relation to placing the Act within a wider framework of conservative thinking on the constitution as a constitution and *not* as an economic or political tool.¹²³

Graham and Prosser's paper has a much narrower focus than Theakston's article. They focus on one Prime Minister, Margaret Thatcher, or perhaps more precisely the belief system that her name has been attached to. They examined the relationship between 'Thatcherism' and changes

¹²² Theakston, K., (2005) 'Prime Ministers and the Constitution: Attlee to Blair', *Parliamentary Affairs*, 58(1), pp. 17-37. p.37.

¹²³ See Norton, P., *New Directions in British Politics?: Essays on the Evolving Constitution* (London: Edward Elgar Publishing, 1991). p. 6 for other gaps in the literature.

in the constitution.¹²⁴ They argue that ‘since the 1979 Conservative government, there have been fundamental constitutional changes, albeit with little recognition of this and little debate’.¹²⁵ Moreover, they argued that Thatcherism ‘has not carried with it any new system of constitutional thought’ and that ‘there have been virtually no proposals reflecting a conscious and thought-out plan to redraw the constitutional map in Thatcherism’s own image’. They indicate that the Thatcher’s Government approach ‘has been instrumental and tactical, rather than strategic and principled’.¹²⁶ Graham and Prosser believed the central point in their article was that the Thatcher government had instituted a major shift in state structures and institutions and that these developments need to be seen in constitutional terms.¹²⁷ Graham and Prosser advocate that constitutional changes should be seen and analysed in constitutional terms and forms.¹²⁸ The article is narrowly timebound and the focus is on Thatcherism rather than on Conservatism or Conservative Party itself.

Norton’s chapter called *The Constitution* in the book *The Political Thought of The Conservative Party Since 1945* describes what a constitution is and their importance.¹²⁹ The chapter is a significant one within the literature. Norton describes two problems as the internal dilemma (continuity and change) within the Conservative Party and the external threat (other parties, and the vulnerability of the constitution to change). Norton suggest that the external threat is the greater of the two problems. These problems are important, according to Norton, because they raise the question as to what stance a Conservative Government should take in relation to the constitutional changes, and he offers three stances that are open to the party. These are Reactionary, Conservative and Radical. The timeframe is from 1945 to 2005 and is an example of a work in the literature that takes a broader and longer view.¹³⁰

¹²⁴ Graham, C., and Prosser, T., (1989) ‘The Constitution and the New Conservatives’, *Parliamentary Affairs*, (67)1, 330–49.

¹²⁵ *Ibid*, p.334.

¹²⁶ *Ibid*, p.341.

¹²⁷ *Ibid*, p.347.

¹²⁸ The authors go on to argue for further constitutional change and advocate, for example, a so-called ‘written’ constitution and a new way of looking at law, which they believe would provide better clarity in relation to ‘what is’ and ‘what is not’ constitutional change. They believe a more informed debate about the constitution would arise by having a ‘written’ constitution. Nevertheless, the advocated reforms do not sit within Conservative thinking on the constitution and therefore they are unlikely reforms for the Conservative Party to make.

¹²⁹ Norton, P., ‘The Constitution’ in *The Political Thought of The Conservative Party Since 1945*, (ed.) by Hickson, K., (London: Palgrave Macmillan, 2005).

¹³⁰ Norton, ‘The Constitution’ in *The Political Thought of The Conservative Party Since 1945*, p. 99.

A seminal work in the area of the British constitution and Conservatism is the book chapter called *Constitutional Reform: Some Dilemmas for a Conservative Philosophy* by Nevil Johnson in the book *Conservative Party Politics*.¹³¹ There are two important aspects of Johnson's chapter: (1) the argument that Conservatives being the protagonists of constitutional reform presents serious dilemma for Conservative philosophy, especially of the Burkean kind; and (2) the four criticism of the constitution and the five topics he believed to be on the agenda for constitutional reform. These were: (1) the House of Lords, (2) devolution, (3) electoral reform, (4) referendums and (5) rights.¹³² These reforms, as in most of the literature, were discussed as individual reforms rather than setting them within the constitutional or historical context. He argued that Conservatives were worried about the constitution and the state that it is in. Johnson draws from a form of elective dictatorship thesis arguing that the conventions no longer impose much restraint on governments and the actions of the Labour years in government and opposition from 1967 to 1979 was a clear example of the lack of restraint. This is why Conservatives were worried.¹³³ The most influential part of the chapter is when Johnson argues that Conservatives being the 'protagonists' of constitutional reform presents a serious dilemma for Conservative philosophy. His purpose in the chapter was to demonstrate that Burkean Conservatives have a dilemma in relation to change because they do not support 'dry abstract principles' *inter alia* and it fails to offer 'an adequate explanation of deliberate change'.¹³⁴ Consequently, Johnson argues that Conservatives can no longer rely on Burkean Conservative thought in this area. He argued that 'rational conservatism', based on thinkers like Montesquieu, Hamilton, Madison or Jay are better guides to constitutional re-appraisal than Burke. By referring to thinkers in the Liberal tradition it seems that Johnson would have liked the Conservative Party to take a liberal view of the constitution not a conservative one. His conclusion points in this direction as he asserted that 'the unwritten tradition, is nearing the end of its useful life and that it would be prudent to set in train a radical overhaul',¹³⁵ which a conservative view of the constitution would not be able to argue for. Eric Barendt and Gillian Peele both wrote book chapters on the constitution and the Conservative dilemma in *The*

¹³¹ Johnson, N., 'Constitutional Reform: Some Dilemmas for a Conservative Philosophy', in *Conservative Party Politics* (ed) by Layton-Henry, Z., (London: The MacMillan Press, 1980). pp.126-155.

¹³² Ibid.

¹³³ Ibid, p. 138.

¹³⁴ Ibid. pp. 128 and 153.

¹³⁵ Ibid, p. 151.

Conservative Opportunity edited by Blake and Patten in 1976.¹³⁶ Ramsden also explored the Conservative constitutional ideology from an historical perspective and this study has drawn some inspiration from that book chapter.¹³⁷

Devolution and the Conservative Party

Devolution and the Conservative Party is an area that has received more attention than other constitutional issues; however, the literature has mostly focused on Scotland as a single issue. Bogdanor's chapter called *Devolution* is a seminal work and a prime example.¹³⁸ The chapter focuses on the Conservative Party's position on Scottish devolution under Heath's leadership, but it also discusses, but at a much shorter length Thatcher's early position on Scottish devolution (mostly in relation to the Referendums in 1979). Bogdanor's timeframe for his analysis is from the mid-1960s to 1979. The chapter is useful as it explains Heath's position during the set time period. Scottish devolution is not set in a wider policy platform of the Conservative Party, nor is Heath or Thatcher's positions towards the constitution beyond Scottish devolution.

The purpose of Burch and Holliday's 1992 article, according to the authors, was to start the debate on the Conservative Party and the constitution because 'reform cannot be sensibly debated unless some consideration is given to the position and potential of the Conservative Party'.¹³⁹ They set out to review the Conservative constitutionalist tradition and examine three aspects of it. These are according to the authors are: (1) past practice (2) policy positions; and (3) the strategic considerations relating to the party's pursuit of power.¹⁴⁰ Nevertheless, the article's scope and timeframe are similar to the chapter written by Bogdanor in 1980. Burch and Holliday address the issue of devolution and especially its Scottish dimension and the timeframe of the article is from 1967 to 1979. The authors believed, writing in 1992, that this was the last time the Conservative Party had major debate on constitutional reform. The focus of the article is on a single constitutional issue; that is, Scottish devolution. The article does not situate devolution for Scotland into an overall constitutional framework for the United

¹³⁶ Peele, G. *The Conservative Dilemma*, in (eds) Blake, R., and Patten J., *The Conservative Opportunity* (Basingstoke: The MacMillan Press, 1976) pp. 13-26 and Barendt, E., *Constitutional Reforms* in the same work, pp. 27-41.

¹³⁷ Ramsden, J., *Political Parties: Conservative Political and Constitutional Ideology* in (ed) Blackburn, R., *Constitutional Studies: Contemporary Issues and Controversies* (London: Mansell Publishing, 1992). pp. 79-91.

¹³⁸ Bogdanor, *Devolution*.

¹³⁹ Burch and Holliday, *The Conservative Party and Constitutional Reform*, p.386.

¹⁴⁰ *Ibid.*

Kingdom or within the Conservative Party's constitutional policies or positions across a longer time period. Doing so would have enabled further understanding of why the Conservative Party held the positions it did. Nevertheless, the article does touch upon some of the Conservative MPs' views as well as the leaders; however, these views are not assessed in terms of a coherent constitutional approach or systematically across time. Moreover, a limited evaluation of six Conservative principles were provided. These are: decentralisation of power, community, and the importance of place and identity, suspicion of the state, freedom of the subject under the law, maintenance of the union, organic and piecemeal change.¹⁴¹

More recently, Convery in his 2014 article, has a similar emphasis to Bogdanor, and Burch and Holliday; that is, on the Conservative Party and Scottish devolution, but he had also broadened the scope of his article to include Wales.¹⁴² Lynch's article is again on the Conservative Party's policies towards devolution in Scotland and Wales. Lynch makes an important contribution to the literature by also adding the further dimension of how devolution has caused problems for the Conservative Party and its leadership during the early 2000s in particular.¹⁴³ In the article, the devolution positions of Conservative leaders Iain Duncan Smith and Michael Howard (and very briefly Thatcher, Major and Hague,) are mentioned in a rather *ad hoc* way but the core focus of the article remains the time period of 2001 to 2004. The scope is further broadened out to the electoral performances of the Scottish and Welsh Conservatives in the 2003 elections. Nevertheless, the article does not set the party's policies or the party leader's thinking in a wider constitutional or historical context. To do so would demonstrate why devolution had caused the Conservative Party problems. Moreover, it does not compare the policy positions to previous positions as set out, for example, in the party's manifestos in a systematic way and the focus again is on Scotland and Wales only.

Coalition Years: 2010-2015

The Conservative and Liberal Democrat Coalition of 2010-15 has been another area of study that the academic literature has focused upon. Perhaps, this is not surprising as the Coalition Government was a time of constitutional change and suggested constitutional reforms. The

¹⁴¹ The authors have provided these six principles to try and prove that constitutional change is embedded within the Conservative tradition (p.386). As they wish to argue that their purposed radical, non-conservative changes to the constitution would not be a move away from the Conservative Party's traditions and principles but would be remaining true to them.

¹⁴² Convery, A., (2014) 'Devolution and the Limits of Tory Statecraft: The Conservative Party in Coalition and Scotland and Wales', *Parliamentary Affairs*, (67)1, 25–44.

¹⁴³ Lynch, P., (2004) 'Saving the Union: Conservatives and the "Celtic Fringe"', *The Political Quarterly*, (75)4, 386–91.

emphasis of the academic literature on the 2010-15 period is, of course, on the Coalition, consequently the Conservative Party's views and positions on the constitution has been in, some of the literature, blurred with the Coalition's position. This is because the unit of analysis in the research has been, in the most part, the Coalition Government but the Conservative Party had distinct constitutional positions within its manifestos and this requires analysing. Bogdanor wrote a substantial book called *The Coalition and the Constitution*,¹⁴⁴ which covered the formation of the Coalition, the structure of the Coalition Government and its policies such as electoral reform and the Fixed-Term Parliaments Act 2011. The emphasis in the book is, of course the Coalition, not the Conservative Party *per se* and the timeframe is the first year of the Government consequently the other four years are not included.

Hayton's article analyses the events and explores the possible consequences of David Cameron's announcement that the fulfilment of the promise of further devolution to Scotland must be accompanied by an answer to the West Lothian Question at Westminster.¹⁴⁵ Hayton argues that a reform of parliamentary procedures along the lines outlined in the report of the McKay Commission looks increasingly likely, but that this will not mark a resolution of the broader English Question, and the future of the Union remains in doubt. As a lot of the academic literature on the Conservative Party and the constitution, the focus is on devolution and, in this instance, on the consequences of 'devo max' (maximum devolution) in Scotland and the impact on the 'English question'.¹⁴⁶ In the article, there is no overview of conservative thinking on the topic and moreover the article does not take a historical or broader view.

Norton noted that the Coalition Government followed a primarily Liberal Democrat agenda.¹⁴⁷ Moreover according to Norton and Thompson, the Coalition held together, 'not so much because of the Coalition programme for constitutional change, but rather despite it'.¹⁴⁸ This was because the 'two parties started from diametrically opposite positions on constitutional change'. Moreover, the 'Coalition almost failed at the first hurdle, that of formation, because

¹⁴⁴ Bogdanor, V., *The Coalition and the Constitution* (London: Hart Publishing, 2011).

¹⁴⁵ Hayton, R. (2015) The Coalition and the Politics of the English Question, *Political Quarterly*, 86.1, 125–32.

¹⁴⁶ The author suggests to 'secure the long-term future of the Union a new settlement, probably along federal lines, is required'.¹⁴⁶

¹⁴⁷ Norton, P. 'The Con–Lib Agenda for the 'New Politics' and Constitutional Reform' in *The Cameron- The Cameron-Clegg Government: Coalition Politics in an Age of Austerity* (eds) Lee, S. and Beech, M., (London: Palgrave MacMillan, 2011). pp. 153-167.

¹⁴⁸ Norton, P. and Thompson, L., Parliament and the Constitution: The Coalition in Conflict, in *The Conservative-Liberal Coalition Examining the Cameron-Clegg Government*, (eds) Beech., M and Lee, S. (London: Palgrave MacMillan, 2015), pp. 129–44.

of the parties' stances on the electoral system' and that 'They would doubtless have happily gone their own ways in dealing with the constitution of the United Kingdom.'¹⁴⁹ It seems that Loughlin and Viney agree with Norton and Thomson that a critical issue on which the formation of the Coalition rested on constitutional reform and on this there was 'considerable'¹⁵⁰ distance between the parties.

Matthews wrote a couple of articles on the topic of the Coalition and the constitution. One of the articles foci is on how the first Coalition in modern times effected the procedures. For example, of the civil service and how political and administrative actors were responding to the challenges of 'coalitionisation'.¹⁵¹ The focus was not on the Conservative Party's manifesto policy positions or the party's view of the constitution. In the other article, Matthews purports to offer the first complete in-depth analysis of the 2010–2015 Coalition Government's record on the constitution. The emphasis of the article is on the gap between the rhetoric and reform of the constitution.¹⁵² Matthews argued that three critical factors explain the Coalition's record on the constitution: (1) the clash of constitutional philosophies within the Coalition; (2) the dilemmas with which the Liberal Democrats were confronted with the transition from opposition to government; and, (3) the extent to which the governing norms of the constitution effectively neuter attempts to its reform.¹⁵³ The focus is again on the Coalition Government and the extent to which its policies were introduced and from which party the policies emanated from. Therefore, research on the Conservative Party as an entity, in and of itself, is also required during the Coalition Government years. This is because using the Coalition as the only unit of analysis does not provide answers about the Conservative Party's view of the constitution as the literature demonstrates the Liberal Democrats 'got the better of the deal' on constitutional issues.

Cameron and the UK Bill of Rights

David Cameron as leader of the Conservative Party and particularly some of his policy positions has received attention, especially his 'modernisation'. The academic articles on the constitution have tended to focus on Cameron's position on the Human Rights Act 1998 (HRA)

¹⁴⁹ Ibid, p. 142.

¹⁵⁰ Loughlin, M., and Viney, C., (2015) *The Coalition and the Constitution*. in: Seldon, Anthony and Finn, Mike, (eds.) *The Coalition Effect, 2010–2015*. (Cambridge: University Press), pp. 59-86.

¹⁵¹ Matthews, F., (2011) *Constitutional Stretching: Coalition Governance and the Westminster Model*, *Commonwealth and Comparative Politics*, (49)4, 486–509.

¹⁵² Matthews, F., (2015) *Inaction and Reaction - Coalition Government and Constitutional Reform in the United Kingdom*, *British Politics*, (10)3, 308–334.

¹⁵³ Ibid.

and his policy to introduce a UK Bill of Rights (BoR). Munce's article in 2012 is a prime example of this.¹⁵⁴ Munce argued in his paper that Cameron's position on HRA and a BoR was fundamentally un-conservative on two levels: (1) constitutional and (2) philosophical. Munce did sprinkle his article with a few short quotations from other Conservative MPs; however, it is difficult to ascertain whether Munce's conclusion could also be applied to these MPs.¹⁵⁵ In a later article, in 2014, Munce addresses some of the limitations in his previous article, because he sets out to subject Cameron's BoR proposal to closer scrutiny by placing it in the wider ideational context of Conservative thinking about constitutional reform.¹⁵⁶ Moreover, in the 2014 article, Munce emphasised more views of previous leaders of the party and other Conservative MPs. Nevertheless, again the core focus of the article is Cameron's views on the HRA and BoR, and not on constitutional policy holistically. Munce argued again that Cameron's approach to addressing Conservative concerns about human rights law in Britain, by advocating the repeal of the HRA and replacing it with a BoR is inconsistent with many of the key themes of a generally orthodox conservative approach to constitutional reform and is therefore unconservative. Munce also discerns four overlapping phases to the Conservative Party's response to the HRA: which he calls 'initial opposition', 'ineffectual opposition', 'purposeful opposition' and 'constrained opposition'.¹⁵⁷ It is demonstrated from Munce's research that the Conservative leadership did not have a settled position on the HRA over this time period. Munce further stressed the dilemma that Conservatives have in relation to reacting to the constitutional changes that were conducted under the Labour Government and in relation to constitutional changes in general. Munce argued that the problem was because of conservatism and Conservative Party's attachment to 'the importance of an evolutionary, incremental and organic approach to change'.¹⁵⁸

Flinders' focus in his 2009 article is on the Conservative Party's attitude to constitutional reform and democratic renewal. Flinders draws on three approaches that were set out by Norton and the difficulties with these approaches. Flinders' argues that the Conservative Party was incredibly consistent from 1997 up and until David Cameron became leader. He argues that 'under William Hague, Ian Duncan Smith and Michael Howard the focus was to rebuild the

¹⁵⁴ Munce, P., (2012) 'Profoundly Un-Conservative? David Cameron and the UK Bill of Rights Debate', *The Political Quarterly*, (83)1, 60-68.

¹⁵⁵ Ibid.

¹⁵⁶ Munce, *Profoundly Un-Conservative?*.

¹⁵⁷ Munce, P., (2014) The Conservative Party and Constitutional Reform: Revisiting the Conservative Dilemma through Cameron's Bill of Rights, *Parliamentary Affairs*, (67)1, 80–101, p.84.

¹⁵⁸ Ibid. p.84.

role of Parliament and protect the concept of parliamentary sovereignty'.¹⁵⁹ Flinders argues that David Cameron's election as leader 'appeared to represent a new stage in recent Conservative constitutional thinking'.¹⁶⁰ He argued that it was possible to trace the evolution of three distinct strands of thinking on the topic. These are: (1) his in 'initial standpoint', which was closely associated with the Democracy Taskforce and focused on parliamentary reform and shifting the balance of power from the government to legislative; (2) a policy of a British Bill of Rights from around mid-2006; and (3) from mid-2007 Cameron's focus shifted suddenly towards devolving power to the localities and individuals. Flinders' article focusing on Cameron's thinking on certain parts of the constitution and his positions and policies over a period of time but not on his manifestos.¹⁶¹

Dominic Grieve, who was a Conservative MP at the time, provided a critical exposition of the Conservatives position in a paper called '*Protecting Human Rights in the UK: the Conservatives' Proposals for changing Britain's Human Rights Laws*'. He concluded that the Conservatives should want to remain within the jurisdiction of the ECHR to maintain and ensure the Court's effectiveness and continued viability.¹⁶² Relatedly, Tugendhat argued the conservative case for human rights.¹⁶³ Arguing that Conservative values and Conservative Party politicians helped to shape the Universal Declaration of Human Rights (UDHR) in 1948 and the European Convention on Human rights (ECHR) in 1950. He does this by providing an overview of the history of conservatism in the UK with a focus on the way that Conservative Party administrations promoted the protection of human rights. The author argues that the Conservative Party should continue to play a key role in protecting human rights legislation. The focus in both articles is on a narrow aspect of the constitutional policy.

Conclusion and Research to be Explored

Most studies in the literature on the Conservative Party have focused on a particular aspect of party's policies rather than on the constitutional policies holistically. Moreover, these policies have not been put into a historical framework and especially not from 1832 to 2020. The recent literature has focused mainly on Scottish devolution and Cameron's view of the Human Rights

¹⁵⁹ Flinders, M., (2009) 'Conserving the Constitution? The Conservative Party and Democratic Renewal', *The Political Quarterly*, (80)2, 248-258.

¹⁶⁰ Flinders, *Conserving the Constitution?*. p. 252.

¹⁶¹ For an analysis of the Conservative under Cameron's leadership in opposition see Beech, M. and Lee, S. *The Conservatives under David Cameron : built to last?*, (Basingstoke: Palgrave, 2009).

¹⁶² Grieve, D., (2015) 'Why Human Rights Should Matter to Conservatives', *Political Quarterly*, (86)1, 62-71.

¹⁶³ Tugendhat, M., (2019) 'The Conservative Case for Human Rights', *Political Quarterly*, (90)3, 1-8.

Act 1998. Nevertheless, there has been relatively little amount of literature published on Conservative Party's position, policies, views and themes in relation to the constitution throughout its history. This is because the literature has taken a 'bottom up' approach. This approach focuses on single (or sometimes, but rarely on multiple) issues and the research is normally focused on a narrow timespan. Consequently, the literature is lacking an approach that includes the wider or historical framework that informs the current constitutional issues that the Conservative Party faces. Or, in other words, the literature has not taken a broad and longitudinal view, rather than a narrow and a short-term view. Accordingly, the Conservative Party's position, policies and views on the constitution within its manifestos and elections addresses, whilst taking a longitudinal and an historical view has not been addressed, especially whilst setting it within conservative thinking. The possibility of contributing towards rectifying this situation is a rather appealing prospect.

Chapter Plan

In order to answer the research questions and to achieve the aim and objective of the research, the thesis is arranged into two halves. The first half has two distinct parts, and these are putting the *British Constitution in Context* (chapter 2) and the other part sets out the conservative constitutional goods and conservative principles in a chapter called *A Conservative View of the British Constitution* (chapter 3). This first section provides the theoretical framework for the thesis. The second part of the thesis provides the empirical sections and these are analysed thematically around the key constitutional issues. Chapter four deals with The Union and devolution; chapter five with the European Question; chapter six with human rights and the courts; chapter 7 with the House of Lords, the Commons and referendums; chapter eight with local government and chapter nine provides that conclusion to the thesis.

The British Constitution in Context

‘Britain’s constitution has never been set in stone, but has evolved and adapted to cope with the changing circumstances of different centuries.’¹⁶⁴

What is a Constitution?

Arthur Balfour believed what was particular to the British constitution and perhaps to British politicians was their ‘intention to make the *thing* work’,¹⁶⁵ but what is that thing? Therefore, first of all, a definitional exercise is required in relation to what a constitution is. A brief discussion of the definitions within the academic literature will be provided, and then subsequently the definition that will be utilised in this thesis will be stipulated. Then a discussion of the twin tenets of the constitutional arrangements of the United Kingdom will take place before providing a conservative view of the British constitution in the following chapter.

There is no one definition of a constitution that has elicited comprehensive agreement within the academic literature,¹⁶⁶ which makes the attempt of defining a constitution challenging but not insurmountable. It is, however, problematic as any definition that is chosen to be utilised has the potential to generate disagreement. Constitutions have been defined in multiple ways. These definitions have fallen into two broad categories: (1) the ‘broad and abstract’ and (2) the ‘narrow and concrete’.¹⁶⁷ Moreover, constitutions have also been classified as ‘traditional’ or ‘modern’. These approaches to defining constitutions have embodied different and competing philosophical standpoints.¹⁶⁸

¹⁶⁴ Conservative Party (2001) *Time for Common Sense*. [Online]. [Accessed 25 November 2021]. Available from: <http://www.conservativemanifesto.com/2001/2001-conservative-manifesto.shtml>

¹⁶⁵ Quoted in Blanche E. C. Dugdale, *Arthur James Balfour, First Earl of Balfour, K.G., O.M., F.R.S., Etc. 1906–1930* (London: Hutchinson & Co. Ltd, 1936), p. 267.

¹⁶⁶ For differing meanings and understandings of the term constitution, see, for example, King, A. *The British Constitution* (Oxford University Press, Oxford, 2007). p.3.

¹⁶⁷ See, for example, Wheare, K. *Modern Constitutions, 2nd edn*, (Oxford, Oxford University Press, 1966) and Phillips, O.H., *Reform of the Constitution* (Chatto & Windus, Charles Knight, London, 1970). See also the table called A few Examples of Definitions of Constitutions.

¹⁶⁸ Loughlin, *The British Constitution*.

Harvey and Bather write that a ‘constitution lays down the political institutions that will be allowed to exist, the functions of those different institutions, and the distribution of powers among them.’¹⁶⁹ They also note that in most countries the fundamental rules and principles are written down and codified into one document, ‘which the word “constitution” is reserved.’¹⁷⁰ Of course, this is not the case in relation to the United Kingdom. Wheare and Bather’s definition demonstrates the influence of the ‘narrower’ definitions of constitutions, which are based upon the ‘modern’ understanding; that is, a constitution is defined as a *particular document* in which the rules are embodied.¹⁷¹ This view of a constitution as a particular document is evidently influenced by the work of Thomas Paine. In his *Rights of Man*,¹⁷² Paine provided a statement of what he thought a constitution was. According to Loughlin, Paine’s statement has been seen as the first statement of what a *modern* constitution is and should be.¹⁷³ Therefore, Paine’s book has been seen as a seminal work in the modernist approach to constitutions. Paine argued a constitution must possess four key features: and the first was that it must have a real existence in a document. This partly explains why some definitions stress a constitution as a document. Additionally, in more recent times, F.F. Ridley in 1988, stipulated that for a constitution to be a constitution it must embody the rules, and this must be entrenched and only be amendable by some extraordinary procedure.¹⁷⁴ Again, the thinking of Paine is apparent in Ridley’s approach. Paine’s fourth feature of a constitution, he argued, should have the status of fundamental law and a higher form of law. Therefore, governments and legislatures should have no authority to alter constitutional law and it should be entrenched. Consequently, these modern, narrow and concrete definitions set constitutional provisions on a different plane than ordinary (i.e., non-constitutional) law. This narrow definition led Paine in 1791 to dismiss the United Kingdom’s constitution and concluded that the United Kingdom does not have a constitution at all. Such a conclusion generates the result that both Paine and Ridley sought for; that is, a critical debate on Britain’s constitutional arrangements and perhaps

¹⁶⁹ Harvey, J. and Bather, L. *The British Constitution*. Basingstoke (Basingstoke: Palgrave Macmillan, 1964). p.6.

¹⁷⁰ Harvey and Bather, *The British Constitution*. p.6.

¹⁷¹ See Wheare, *Modern Constitutions*.

¹⁷² Paine, M. *Rights of Man* (Penguin, London, 1984).

¹⁷³ Loughlin, *The British Constitution*.

¹⁷⁴ Ridley, F.F., (1988) There Is No British Constitution: A Dangerous Case of The Emperor's Clothes, *Parliamentary Affairs*, (41)3, 340–361.

a complete overhaul of the constitution itself. If Paine's conclusion was right, it is rather problematic as it is difficult to overhaul something that does not exist. Nevertheless, Ridley claimed that his conclusion forces the requirement for a new term for the system of rules that previously had been referred to as a constitution.¹⁷⁵ Ridley's conclusion in a way echoes Paine's claim that 'it is not sufficient that we adopt the word', which he means constitution, 'we must fix also a standard specification to it'.¹⁷⁶ Interestingly, Michael Foley describes how the UK constitution:

is said to fall foul of Thomas Paine's celebrated criteria of a constitution – namely, that it should be antecedent of government; that it should define the authority of government; and that where the distinction between the constitution and the government is not observed there is in effect no constitution'¹⁷⁷

Paine, desired to provide a definition of a constitution that was very modern, narrow and concrete and as a consequence constitutions, such as United Kingdom's, that are based on the traditional, broad and abstract definitions would seem untenable. Those scholars who do not adopt the modern, narrow and concrete definition of a constitution have argued that this type of definition is far too limiting and not helpful in relation to understanding the British constitution. For example, King provides us with a definition, in the broad and abstract sense, defining a constitution as:

the set of the most important rules and common understandings in any given country that regulate the relations among that country's governing institutions and also the relations between that country's governing institutions and the people of that country.¹⁷⁸

Garnett, Dorey and Lynch define a constitution 'as an authoritative set of laws, rules and practices which specifies how a state is to be governed and the relationship between the state and the individual'.¹⁷⁹ They also write that:

It provides a framework for the political system and establishes the main institutions of government, outlining their powers and the relationship between them. It also

¹⁷⁵ Ibid.

¹⁷⁶ Paine, *Rights of Man*. p.122.

¹⁷⁷ Foley, M. *The Politics of the British Constitution* (Manchester University Press, Manchester, 1999). p.2.

¹⁷⁸ King, *The British Constitution*, p.3.

¹⁷⁹ Garnett, M., Dorey, P., and Lynch, P., *The Constitution in Exploring British Politics* (eds) Garnett, M., Dorey, P., Lynch, P., (London: Routledge, 2020). p.135.

determines where ‘sovereignty’ – traditionally defined as the ultimate decision-making power – resides within the state.¹⁸⁰

Griffith, who essentially provided a descriptive account of the constitution, provided this succinct definition: the ‘constitution is no more and no less than what happens’.¹⁸¹ The definition that shall be utilised in this research project shall be:

the set of laws, rules and practices that create the basic institutions of the state, and its component and related parts, and stipulate the powers of those institutions and the relationship between the different institutions and between those institutions and the individual.¹⁸²

Adopting this broader rather than a narrower definition is not out of the ordinary and is suitable for the project at hand. A document should be considered a form in which a constitution can be expressed not a definition of what a constitution is. Other academics have utilised similar definitions, such as Phillips in his book *Constitutional and Administrative Law* in 1978.¹⁸³ King acknowledges that his ‘definition is far from perfect... but it will do for our purposes’.¹⁸⁴ This research project adopts a similar approach; that is, the definition is not perfect but will do for the purposes of this research.

Britain’s Uncodified Constitution

In the academic literature it has often been stated that the British constitution is not static and is has evolved and that this type of change is a hallmark of the British constitution or at least since the Glorious Revolution of 1688/9. Hennessy has argued that another hallmark of the constitution is its capacity for ‘muddling through’.¹⁸⁵ The constitution has been seen as continuity rather than discontinuity (or until more recent times) and the ‘process of adaptation covering a period of over a thousand years’.¹⁸⁶ According to Stevens, the patching and reconstructing of the constitution was ‘organic’ and ‘the rate of change glacial’.¹⁸⁷ The Cabinet

¹⁸⁰ Ibid. p.135.

¹⁸¹ J.A.G. Griffith as cited by Hennessy. p.306.

¹⁸² House of Lords Constitution Committee. 2001. *Constitution - First Report* (HL) Session 2000-01. London. [Online]. [Accessed 20 September 2021] Available at <https://publications.parliament.uk/pa/ld200102/ldselect/ldconst/11/1103.htm>

¹⁸³ Phillips, O.H., *Constitutional and Administrative Law* (London: Sweet & Maxwell, 1978).

¹⁸⁴ King *The British Constitution*, p.1.

¹⁸⁵ Hennessy, P. *Muddling Through: Power, Politics and the Quality of Government in Post-War Britain* (London: Phoenix, 1997).

¹⁸⁶ Harvey and Bather, *The British Constitution*, p. 12.

¹⁸⁷ Stevens, R. *The English Judges* (Hart Publishing, 2002), pp. xii-xiv.

Manual also states that the constitution has ‘evolved over time’¹⁸⁸ and, according to Allison, it can be viewed as a historical conglomeration.¹⁸⁹ Low proclaimed in 1904 that whilst ‘Other constitutions have been built ... that of England has been allowed to grow’.¹⁹⁰ It has been argued that the constitution has been allowed to grow because there has been no cut off point or radical rupture. Leslie Wolf-Phillips writes that:

The course of British constitutional developments has seen a sequence of invasions and Foreign overlords, the squabbling of petty monarchs, the struggle between the nobility and the king for supremacy, the later struggle for domination between the king and parliament, the recognition of the supremacy of parliament over the king, the decline in the influence of the monarch, the rise of the middle classes in terms of constitutional recognition, and, finally, the decline of the power of the House of Lords and the central place of a House of Commons elected on a basis of universal adult suffrage.¹⁹¹

New constitutions are generally enacted when a constitutional upheaval arrives, such as following war, revolution, or colonial independence. As this has not happened in Britain the constitution has continued to grow as it has not been cut down or rebuilt, the building has merely continued to be added to. Jennings, takes a similar view,¹⁹² explaining that:

The building has been constantly added to, patched, and partially re-constructed, so that it has been renewed from century to century; but it has never been razed to the ground and rebuilt on new foundations. If a constitution consists of institutions and not of paper that describes them, the British Constitution has not been made but has grown – and there is no paper.¹⁹³

Jennings in his first chapter of his book *The Law and the Constitution* utilised the subheading ‘no written constitution’.¹⁹⁴ Previously, A. V. Dicey also wrote about the non-existence, in the UK constitution, ‘of any written or enacted constitutional statute or charter’.¹⁹⁵ Indeed, there is

¹⁸⁸ Cabinet Office, *The Cabinet Manual: A guide to the laws, conventions and rules on the operation of government, 1st edition October 2011* (Cabinet Office, London, 2011) p.2.

¹⁸⁹ Allison, J.W.F., *The English Historical Constitution: Continuity, Change and European Effects* (Cambridge University Press, Cambridge, 2007). pp.7-45

¹⁹⁰ Low, S. *The Governance of England* (London: Unwin, 1904). p. 12.

¹⁹¹ Woolf-Phillips, L. (1964) A long look at the British Constitution, *Parliamentary Affairs*, (37)4 pp. 385–402, p. 392.

¹⁹² Jennings, W., I., *The Law and the Constitution* (University of London Press, London, 1959). p.7.

¹⁹³ Ibid, p. 8.

¹⁹⁴ Ibid, p.7.

¹⁹⁵ Dicey, A. V., *Introduction to the Study of the Law of the Constitution* (Liberty Fund, Indianapolis, 1982), reprint of eighth edition, first published 1915, first edition published 1885, p.38.

a perception amongst some scholars and this perception can also be seen in the political discourse that the UK's constitution is completely 'unwritten' and that is unique to Britain but of course, this is not the case. The sources of the constitution are fourfold: these are in order of pre-eminence: (1) statute law,¹⁹⁶ (2) common law, (3) conventions, and (4) works of authority.¹⁹⁷ Indeed, some provisions of the constitution are embodied quite clearly in written form.¹⁹⁸ More recently the Cabinet Manual cites that the 'UK does not have a codified constitution'¹⁹⁹; that is, it is not written down and formally gathered together all in *one* place.²⁰⁰ Indeed, there is no accepted and agreed list of statutes, which form that part of the constitution.²⁰¹ There are, however, *primary sources* (written documents) and *secondary sources* (e.g., judicial interpretation, legislative acts, established practice). As King writes:

The truth is that constitutions, as we are using the term here, are never - repeat, never-written down in their entirety, so the fact that Britain lacks a capital-C Constitution is far less important than is often made out. On the one hand, large chunks of Britain's small-c constitution are written down. On the other, large and important chunks of other countries' capital-C Constitutions are not written down. Moreover, many other countries' capital-C Constitutions contain provisions that, far from being among those countries' most important rules and common understandings, border on the comic.²⁰²

Britain's constitution, therefore, is not unwritten but part written and uncodified. This is not unique to Britain as New Zealand and Israel also have uncodified constitution. According to Foley, the evolutionary character and uncodification of the British constitution is a 'virtue of

¹⁹⁶ These are some indicative examples of constitutional statute law: Declaration of Arbroath 1320; Magna Carta 1215; The Habeas Corpus Act 1679; Bill of Rights 1689; Scottish Claim of Right 1689, The Act of Settlement 1701; The act of Union with Scotland 1706; The Parliament Acts 1911; Public Order Act 1936; The Parliament Acts 1949; Administration of Justice Act 1960; European Communities Act 1972 and the Single European Act 1986. See Wicks, E., *The Evolution of a Constitution: Eight Key Moments in British Constitutional History* (Hart, Oxford, 2006); and Bradley, A., 'The sovereignty of Parliament – form or substance?' in Jowell, J., and Oliver, D., (eds) *The Changing Constitution, seventh edition* (Oxford University Press, Oxford, 2011), pp.51-52.

¹⁹⁷ See Ministry of Justice, *The Governance of Britain*, CM 7170 (Stationery Office, London, 2007), p.17, and Norton, P. (1989) The changing constitution, *Contemporary British History*, (3)1, pp. 9-12.

¹⁹⁸ One example is the Parliament Act 1911.

¹⁹⁹ Cabinet Office, *The Cabinet Manual*, p.2. For discussion about what conventions are or should be see: Jennings, *The Law and the Constitution*, p.133; Marshall, G., and Moodie, G.C., *Some Problems of the Constitution* (Hutchinson University Library, London, 1971). pp.26-8.

²⁰⁰ King, *The British Constitution*, p.6.

²⁰¹ See Table 2 for an indicative Chronology of Constitutional Events from the 1832 Reform Act to European Union (Withdrawal Agreement) Act 2020.

²⁰² King, *The British Constitution*, p.5.

collective experience and consensual expression' and only 'a mature and effectively functioning political community could operate and maintain such an ethereal set of rules'.²⁰³

One of the Twin Pillars: Parliamentary Supremacy

Statute law provides the principal written element of the constitution. Its pre-eminence derives from the doctrine of parliamentary sovereignty,²⁰⁴ which is also known as parliamentary supremacy or the supremacy of Parliament, but perhaps more appropriately referred to as the Sovereignty of the Crown in Parliament. Parliament is an inter-institutional relationship that comprises the Monarch, the House of Commons and the House of Lords acting together. According to Philips and Jackson, this 'may indeed be called the one fundamental law of the British Constitution'.²⁰⁵ According to Jennings, 'Supremacy lay in Parliament, but national policy was determined by the king subject to certain controlling powers of Parliament'.²⁰⁶

As early as the 17th century it was thought that the fundamental principle of parliamentary sovereignty was 'so transcendent and absolute, that it cannot be confined, either for causes or persons, within any bounds.'²⁰⁷ Blackstone in the 18th century defined it as 'omnipotence ... to do everything that is not naturally impossible.'²⁰⁸ In the late nineteenth century, because of Dicey's attempts to give an account of the British constitution's formal and substantive characteristics, a new consensus on the constitution was eventually reached. This consensus came to dominate political and judicial thinking during the first half of the twentieth century. In Dicey's account of the constitution in an *Introduction to the Study of the Law of the Constitution*, he proclaimed that 'the dominant characteristic of our political institutions'²⁰⁹ was the doctrine of parliamentary sovereignty writing that:

Parliament ... has, under the English constitution the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament.²¹⁰

²⁰³ Foley, *The Politics of the British Constitution*, p.1.

²⁰⁴ Goldsworthy, J., *The Sovereignty of Parliament: History and Philosophy* (Oxford University Press, Oxford, 1999).

²⁰⁵ Philips, O. H., and Jackson, P.O., *Hood Phillips' Constitutional and Administrative Law* (6th edition) (London: Sweet & Maxwell 1978). p.51.

²⁰⁶ Jennings, *The Law and the Constitution*, p.18.

²⁰⁷ Coke, E., quoted in Blackstone, W. ([1765] 1809). *Commentaries on The Laws of England (15th edition)*. (London, A Strahan), p. 160.

²⁰⁸ Blackstone, *Commentaries*, pp. 160-161.

²⁰⁹ Dicey, *Introduction to the Study of the Law of the Constitution*, p. 3.

²¹⁰ *Ibid*, pp. 3-4.

According to Dicey, because of the ‘Unlimited Legislative Authority of Parliament,’ there exists ‘no marked or clear distinction between laws which are not fundamental or constitutional and laws which are fundamental or constitutional.’²¹¹ As a consequence of this, the role of the courts under the constitution is acquiescent to Parliament. According to Norton, this judicially self-imposed doctrine was confirmed by the Glorious Revolution of 1688/9 and the Bill of Rights.²¹² As Dicey explained:

The principle then of Parliamentary sovereignty may, looked at from its positive side, be thus described: Any Act of parliament, or any part of an Act of Parliament, which makes new law, or repeals or modifies an existing law, will be obeyed by the Courts.²¹³

Nevertheless, Dicey also adds:

The same principle, looked at from its negative side, may be thus stated: there is no person or body of persons who can, under the English constitution, make rules which override or derogate from an Act of Parliament, or which (to express the same thing in other words) will be enforced by the Courts in contravention of an Act of Parliament.²¹⁴

Therefore, major measures of constitutional change are enacted, debated and scrutinised in a very similar way as ordinary law,²¹⁵ and conventions.²¹⁶ Marshall and Moodie meant ‘by conventions of the Constitution...we mean certain rules of constitutional behaviour which are considered to be binding by and upon those who operate the Constitution, but which are not enforced by the law courts’.²¹⁷ There is no means by which particular provisions of the constitution may be entrenched and constitutional change in Britain can be seen as ‘easy’.²¹⁸

²¹¹ Ibid, p. 4.

²¹² Norton, P. (1989) The Changing Constitution-part 2, *Contemporary British History*, (3)2, pp. 9-10. Norton, P. (1989) The Glorious Revolution of 1688 Its Continuing Relevance, *Parliamentary Affairs*, (4)2, pp. 135-147.

²¹³ Dicey, *Introduction to the Study of the Law of the Constitution*, p. 4.

²¹⁴ Ibid, p. 4.

²¹⁵ The only procedural difference is that measures of constitutional significance are more likely to have their committee stage in the House of Commons taken in Committee of the Whole House.

²¹⁶ See, Flinders, M. *Democratic Drift, Majoritarian Modification and Democratic Anomie in the United Kingdom* (Oxford University Press, Oxford, 2010). pp.219-22; and Hazell, R., *Time for a New Convention: Parliamentary Scrutiny of Constitutional Bills, 1997-2005* (London, Constitution Unit, 2006).

²¹⁷ Marshall, G., and Moodie, G., C., *Some Problems of the Constitution* (4th revised ed, Hutchinson & Co., 1967) p. 26. See also Marshall, G. *Constitutional Conventions* (Clarendon Press, 1984) and Jaconelli, J. "Continuity and Change in Constitutional Conventions" in Qvortrup, M. (ed), *The British Constitution: Continuity and Change* (Hart Publishing, 2013).

²¹⁸ Scarman, L.G., *Why Britain needs a Written Constitution, The Fourth Sovereignty Lecture* (Charter 88 Trust, London, 1992). p.4.

Arend Lijphart, in a comparative study of 36 international democracies, ranked countries from 1.0–4.0, according to their constitutional rigidity or flexibility, with 1.0 being the most flexible and 4.0 as the most rigid. The UK’s constitution was rated at 1.0.²¹⁹ As Dicey wrote:

A Bill for reforming the House of Commons, a Bill for abolishing the House of Lords, a Bill to give London a municipality, a Bill to make valid marriages celebrated by a pretended clergyman, found after their celebration not to be in orders, are each equally within the competence of Parliament, they may each be passed in substantially the same manner, they none of them when passed will be, legally speaking, a whit more sacred or immutable than the others, for they each will be neither more nor less than an Act of Parliament, which can be repealed as it has been passed by Parliament, and cannot be annulled by any other power.²²⁰

Thus, according to Jennings, legally speaking, ‘the King in Parliament can do anything’. Nevertheless, there are two doctrines of parliamentary sovereignty. The first is *continuing*; that is, Parliament cannot abrogate its own sovereignty.²²¹ The second is the concept of *self-embracing*; that is, Parliament can alter or dispense parliamentary sovereignty.²²² Another key pillar of the British constitution is the rule of law, which we shall now turn to.²²³

One of the Twin Pillars: Rule of Law

The other twin pillar of the constitution that was identified by Dicey was the rule of law.²²⁴ Dicey believed that the rule of law was the predominance of regular law over arbitrary power, equality before the law, and the constitution being the result of the ordinary law based on judicial decisions over many centuries. According to Dicey, the rule of law is ‘the security given under the English constitution to the rights of individuals’ and the ‘right to individual

²¹⁹ Lijphart, A., *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (Yale, University Press, London, 1999). p.220.

²²⁰ Dicey, *Introduction to the Study of the Law of the Constitution*, p. 37.

²²¹ Wade, H. W. R., (1955) ‘The Basis of Legal Sovereignty’, *Cambridge Law Journal*, pp.172-197.

²²² See: Hart, H. L. A. *The Concept of Law, Second Edition* (Clarendon Press, Oxford, 1997), pp.149-50, for an account of the ‘continuing’ and ‘self-embracing’ theories of parliamentary sovereignty.

²²³ For discussions on the relationship of the Rule of Law and Parliamentary sovereignty see: Jowell, J. (2006) ‘Parliamentary Sovereignty under the New Constitutional Hypothesis’, *Public Law Autumn*, pp.562-80; Bogdanor, *The New British Constitution* and Goldsworthy, J., *Parliamentary Sovereignty* (Cambridge University Press, Cambridge, 2010).

²²⁴ The rule of law has been seen as an ambiguous concept that has been defined very narrowly such as guaranteeing certain procedural rights or very widely as a political order governed by law. See for example: Jowell, J., ‘The rule of law and its underlying values’ in Jowell, J., and Oliver, D., (eds), *The Changing Constitution, Seventh Edition* (Oxford University Press, Oxford, 2011), p.24.

freedom is part of the constitution,' as 'it is inherent in the ordinary law of the land.'²²⁵

According to Barnett:

The essence of the rule of law is that of the sovereignty or supremacy of law over man. The rule of law insists that every person – irrespective of rank and status in society – be subject to the law. For the citizen, the rule of law is both prescriptive – dictating the conduct required by law – and protective of citizens – demanding that government acts according to the law.²²⁶

There is a potential tension between these twin constitutional pillars.²²⁷ Dicey himself recognised that the pillars were not of equal size. He contended that the rule of law was protected from statutory encroachment by internal checks and balances within the political system. Lord Bingham wrote that:

We live in a society dedicated to the rule of law; in which Parliament has power, subject to limited, self-imposed restraints, to legislate as it wishes; in which Parliament may therefore legislate in a way which infringes the rule of law; and in which the judges consistently with their constitutional duty to administer justice according to the laws and usages of the realm, cannot fail to give effect to such legislation if it is clearly and unambiguously expressed.²²⁸

Thus, there is potential for a clash between parliamentary sovereignty and the rule of law and these clashes and potential for conflict may be a problem from a conservative perspective. The conservative constitutional position (more on this in the next chapter) takes the view that Parliament is the body that can be relied upon to protect rather than undermine the rule of law.

The Constitution after the Second World War

In the literature it is often noted that in the twenty-five years after the Second World War, the United Kingdom's constitution rarely figured on the British political agenda,²²⁹ if it did surface as a topic of political discussion, it was most likely to be lavished with praise. Since the 1970s,

²²⁵ Dicey, *Introduction to the Study of the Law of the Constitution*, p. 120.

²²⁶ Barnett, H., *Constitutional and Administrative Law, Ninth Edition* (Routledge, London, 2011), p.48.

²²⁷ See: Scarman, *Why Britain needs a Written Constitution*, p.5. and Norton, P. *Governing Britain: Parliament, Ministers and our Ambiguous Constitution* (Manchester: Manchester University Press, 2020). Especially the chapter called Constitutional twin pillars: does parliamentary sovereignty trump the rule of Law?

²²⁸ Bingham, T., *The Rule of Law* (Penguin: London, 2010). p.168.

²²⁹ See King, *The British Constitution* and also see Blackburn, R., and. Plant R., (eds) *Constitutional Reform* (London: Longman, 1999).

changes in Britain's constitution have occurred,²³⁰ and a step change occurred in the 1970s with a new wave of constitutional writing on various aspects of the constitution. According to Gamble, a lot of the writing was 'critical' and was concerned with trying to account for what was seen by these critical writers as the 'failure of the system' to deliver either representative or responsible government.²³¹ A finding of this research is that Churchill's 1951 manifesto was also a step change on many constitutional issues. In the 1980s, it seemed to be quite the fashion to advocate constitutional change with celebrities advocating change as well as academics on the Left. There have been a plethora of theories attributing the problems of British politics and the British constitution, such as, (1) the harmful effects of adversary politics; (2) the overloading of government; (3) the economic consequences of democracy; (4) elective dictatorship; (5) the unfairness of the electoral system; and (6) the drift of power to the centre, to name just a few. The multitude of theories and the disagreement and the contradiction between and within them demonstrate that there is a lack of consensus on the problems or whether there is a problem at all with the British constitution.

Moreover, during this period competing and divergent theses emerged to explain the phenomenon or the 'failure of the system' to utilise Gamble's words. The three main theses were: (1) the Elective Dictatorship thesis;²³² (2) Constitutional Fragmentation thesis;²³³ and (3) the Dynamic Pluralism thesis²³⁴. The elective dictatorship thesis contends that there has been a concentration of power in the centre of British politics.²³⁵ The Dynamic Pluralism thesis is similar to the fragmentation thesis, but it reaches a diametrically opposed conclusion.

In more recent times, there have been numerous studies to investigate the changes in the British constitution and 2009 was particularly fruitful year for books on the constitution. According to King, commentaries on the British constitution since the middle of the nineteenth century have fallen into two broad categories. These are books and articles that deal with the constitution from a mainly legal point of view or a mainly political point of view. This has meant that contemporary constitutional discourse has become dominated by an ongoing debate between

²³⁰ See Wicks, *The Evolution of a Constitution*; Bogdanor, *The New British Constitution*; Flinders, *Democratic Drift*, King, *the British Constitution*; McLean, I., *What's Wrong with the British Constitution?* (Oxford: Oxford University Press, 2009).

²³¹ Gamble, A., *The Free Economy and the Strong State* (Basingstoke: Macmillan, 1988).

²³² See Hailsham, L., *Dimbleby Lecture*, also Hailsham, L., *The Dilemma of Democracy*, (London, 1978).

²³³ Norton, *The Changing Constitution-part 2*.

²³⁴ Ibid.

²³⁵ Gamble, *The Free Economy and the Strong State*.

two broad and seemingly opposed schools of constitutionalism. This constitutionalism is a normative political doctrine that:

denotes a type of political regime constructed in accordance with certain principles or ideals, which principles or ideals are judged to be good in themselves and against which a given constitutional regime's performance can be, and ought to be, judged.²³⁶

Sajó notes that constitutionalism is a concept which people did not refer to until the nineteenth century.²³⁷ Both schools of thought purport to provide the best framework from which compliance with the concept of constitutionalism can be achieved. Broadly speaking, the legal school of thought makes the case for greater judicial oversight of constitutional issues, advocating constitutional review of primary legislation and powers of the courts to strike down Acts of Parliament as unconstitutional. In other words, changing the very essence of the British constitution and turning it into a replica of, for example, the American Constitution. On the other hand, the political school of thought reinterprets the traditional tenets of the British constitution to make the case for greater reliance upon political forms of accountability, namely through parliament and elections rather than the courts. With an emphasis on convention, that is, the rules of behaviour are followed in order to make the constitution work, but which are not enforceable in the courts or by either House of Parliament.

Not all scholars were 'critical' of the British constitution. For example, in 1979, J.A.G. Griffith, in an attempt to challenge the emerging change in attitude towards the British constitution, made a renewed defence of what he called the 'political constitution.' In making his *de facto* case for the compatibility of the British constitution and its traditional tenets with constitutionalism, Griffith argued that accountable government can be better facilitated by leaving questions such as rights, not to judges under a Bill of Rights, but instead to democratically-elected politicians. Griffith argued that such a position held advantages. Griffith writes:

A further advantage in treating what others call rights as political claims is that their acceptance or rejection will be in the hands of politicians rather than judges and the advantage of that is not that politicians are more likely to come up with the right answer

²³⁶ King, *The British Constitution*, p.10.

²³⁷ Sajó, A. *Limiting Government: An Introduction to Constitutionalism* (Budapest: Central European Press, 1999).

but that, as I have said, they are so much more vulnerable than judges and can be dismissed or at least made to suffer in their reputation.²³⁸

Consequently, the literature on the British constitution has become increasingly polarised and lacking in agreement and consensus. The late 1990s and 2000s sparked a new wave of articles being published on the British constitution as the then Labour Government (1997-2010) embarked on a radical constitutional agenda. This sparked articles, book chapters and books in favour and against the Labour Governments policies.²³⁹

The recent constitutional changes can be viewed in three significant waves. These three waves of constitutional change are: (1) the ‘European wave’ (1973 membership of the European Community now the European Union and the leaving of it); (2) the Labour years of 1997 to 2010; and (3) 2010 to the present day (including the Coalition years and the following Conservative Governments under David Cameron, Theresa May and Boris Johnson). It has been argued that these constitutional changes have challenged the traditional Westminster Model.²⁴⁰

It has also been argued that these constitutional changes were in combination on a scale not witnessed in modern British politics.²⁴¹ Morison described Blair as ‘the most far-reaching, radical reformer of the formal edifice of the constitution since Oliver Cromwell.’²⁴² According to Gamble, the changes to the United Kingdom’s constitution since 1997 have been ‘extensive, but there is no agreement on their long-run significance, and opinion being divided as to whether the changes are substantive or cosmetic and whether they represent the conclusion of a process or the start of a new one’.²⁴³ The impact and the nature of New Labour’s constitutional reforms have been subject to a number of academic commentaries. This scholarship is broadly in agreement on the obvious fact that the constitution is *different* from

²³⁸ Griffith, J. A. G. (1979). The Political Constitution. *The Modern Law Review*, 42(1), 1–21. p.18.

²³⁹ See Sutherland K, (ed.) *The Rape of the Constitution?* (Exeter, UK: Imprint Acad., 2000) that had chapters on both sides of the argument.

²⁴⁰ This system of government has associated with a unitary state, parliamentary sovereignty, strong cabinet government, individual and collective ministerial accountability, an official opposition and majority party government via the House of Commons called ‘majoritarian model’. See Rhodes, R. A. W., and Weller, P, (2005) Westminster transplanted and Westminster implanted: Explanations for political change’ in *Westminster legacies: Democracy and responsible government in Asia, Australasia and the Pacific*. (Eds) Patapan, H., Wanna, J. and Weller, P. (eds) (Sydney: University of New South Wales Press), pp. 1–12; See also Lijphart *Patterns of Democracy*.

²⁴¹ Stevens, *The English Judges*, pp. xii-xiv; Bogdanor, *The New British Constitution*.

²⁴² Morison, J. (1998) The case against constitutional reform? *Journal of Law and Society* 25(4): pp. 510–535. p. 510.

²⁴³ Gamble, A. (2006). The Constitutional Revolution in the United Kingdom. *Publius*, 36(1), 19–35.

what it was *before* Labour entered office in 1997. However, what it does disagree on is the *extent* of that change and if the reforms have been *positive* or *negative*. Consequently, there are varying views in relation to these changes, for example, King believes that the constitution is in ‘a mess’ but a ‘benign mess’.²⁴⁴ Bogdanor, writing in 2009, believed that there has been a creation of a new British constitution and therefore a demise of the old one.²⁴⁵ In other words, the old constitutional order has been replaced by another. According to Norton, the constitution is at least unsettled or unbalanced and is on the edge of being unravelled. It most certainly is in flux.²⁴⁶ Jowell and Oliver thought that the reforms of the post-1997 period were said to ‘constitute hammer blows against our Benthamite and Diceyan traditions’²⁴⁷ Moreover, Stevens has compared the changes to the constitution from the 1970s to 2000s to ‘earlier constitutional revolution’ of the 1640s to 1720s. Stevens added that exceptional change of the 1970s to 2000s was not in line with earlier growth and change, as the ‘growth of the English Constitution has been organic; the rate of change glacial.’²⁴⁸ Gamble claims that the major changes that were made by the Labour Government were unparalleled in recent British history or at least ‘since the secession of the Irish Free State in 1922’.²⁴⁹ Bogdanor seems to agree with Gamble arguing that Britain has been living through an unprecedented period of constitutional change, an era of constitutional reform which began in 1997 and shows no sign of coming to an end. In 2001, Bogdanor thought devolution was the most significant constitutional reform in the UK, since the 1832 Great Reform Act.²⁵⁰ Devolution in the UK is radically asymmetrical and not only have different levels of autonomy and power been granted to Scotland, Wales and Northern Ireland,²⁵¹ according to Hazell, England is ‘the gaping hole in the devolution settlement.’²⁵²

Bogdanor has also argued that the some of the reforms have shifted Britain towards a form of ‘quasi-federalism’.²⁵³ Gamble argued that the ‘constitutional basis of the United Kingdom has

²⁴⁴ King, *The British Constitution*. p.370.

²⁴⁵ Bogdanor, *The New British Constitution*.

²⁴⁶ Norton, *Constitution in Flux*.

²⁴⁷ Jowell J, and Oliver D, (eds) *The Changing Constitution*. (Oxford: Oxford University Press: 2000), p. v.

²⁴⁸ Stevens, *The English Judges*. p. xv.

²⁴⁹ Gamble, A. *The Constitutional Revolution in the United Kingdom*, p.19.

²⁵⁰ Bogdanor, V., *Devolution in the United Kingdom* (Oxford: Oxford University press, 2001).

²⁵¹ The Scotland Act 1998, the Northern Ireland Act 1998, and the Government of Wales Act 1998 respectively.

²⁵² Hazell, R. (2006) The English Question. *Publius: The Journal of Federalism*, (36)1. pp. 37-56. p.1.

²⁵³ Bogdanor, *Devolution in the United Kingdom*. p. 255.

changed in a federal direction, yet in comparative terms it remains a federacy rather than a federation'.²⁵⁴ Gamble writes:

These arrangements are not formally federal arrangements; at best they are quasi-federal, but they mean that the United Kingdom has never been a pure type of unitary state. The term that best captures the kind of quasi-federalism that has developed in the United Kingdom is “federacy,” used to denote a large political unity to which smaller units are federated, even though the larger unit is not itself a federation.²⁵⁵

Gamble adds that:

The British constitution combines a single ultimate source of authority with considerable variation in the territorial arrangements for its component nations and regions, which is why the United Kingdom has sometimes been described as a union state, or even a state of unions, rather than as a unitary state.²⁵⁶

There is a lack of agreement in the literature on the consequences of devolution as some scholars believe that that it has preserved the doctrine of parliamentary sovereignty, and that devolution did not create a federal system of government as, for example, the responsibility for most constitutional matters remains with Westminster.²⁵⁷ For Flinders and Curry, this has resulted in a form of ‘bi-constitutionality’ in which the traditional Westminster rules of the game continue to apply to UK-level elections and government, alongside more consensual approaches in the devolved UK regions thus creating a *de facto* quasi-federal state.²⁵⁸

It has also been argued that the devolution reforms were explicitly designed not to interfere with the UK centre’s ability to take decisions about the governance of England or the UK.²⁵⁹ According to Bogdanor in 2009, the effect of devolution has been to create a *de facto* quasi-federal UK, because whilst (at the time he was writing) it was theoretically possible that the Westminster Parliament could still abolish the Scottish Parliament and Welsh Assembly, it is almost impossible to imagine the circumstances under which it would do so.²⁶⁰ Perhaps, this

²⁵⁴ Gamble, *The Constitutional Revolution*. p.33

²⁵⁵ Ibid, p. 22.

²⁵⁶ Ibid, p. 23.

²⁵⁷ Scotland Act 1998, Schedule five Part one, ‘The Constitution’.

²⁵⁸ Flinders, M., and Curry, D., (2008) ‘Bi-Constitutionalism’: Unravelling New Labour’s Constitutional Orientations, *Parliamentary Affairs*, (61)1, pp. 99–121. p.113.

²⁵⁹ See Mitchell, J. (2010) ‘The Westminster Model and the State of Unions’, *Parliamentary Affairs* 63(1), pp. 85-88 and Convery, A. *The territorial Conservative Party Devolution and party change in Scotland and Wales* (Manchester: Manchester University Press, 2016).

²⁶⁰ Bogdanor, *The New British Constitution*.

could be put another way: it is *constitutional* possible to abolish the devolved governments and assemblies but is more *politically* difficult. King claimed that with ‘the coming of devolution to Scotland and Wales single locus of sovereign authority no longer exists. Or, if it does exist, it exists only on paper.’²⁶¹ Tomkins,²⁶² questions the extent of the change, writing that ‘only bits of the British constitution have been reformed: much remains largely as it was before.’²⁶³ Despite the major changes during the Labour years in office, previous studies have emphasised that they were not based on any coherent principled or ideological position.²⁶⁴ For example, Blair advocated discrete and perhaps incompatible reforms and he also changed his mind at least three times in, for example, in 1994, in 2003 and in 2007 on the reforms of the House of Lords should take. Hazell felt that there was an absence of co-ordination in developing the Labour Government’s reform programme and he cited the lack of joined-up thinking in respect of devolution and reform of the House of Lords from 1997 to 2001.²⁶⁵ Moreover, according to Ashdown, Blair in particular was ambivalent about the nature of the reforms he was implementing.²⁶⁶

There is agreement between Norton and Stevens that the changes during the Labour years ‘were essentially independent acts rather than part of a dramatic period of constitutional restructuring.’²⁶⁷ Lipsey, for example, wrote about the constitutional changes that they were ‘a ragbag of bits-and-pieces bearing little relationship to each other with decidedly variable amounts of thought and merit attached to them.’²⁶⁸ Norton summarised Blair’s approach to the constitution as ‘at once, to retain power at the centre, not to retain power at the centre, and to decide as one goes along’.²⁶⁹ As in the 1970s some academics started to ask what’s wrong with the British constitution?²⁷⁰ The constitutional changes did not cease in 2010; however, when Labour left office after losing the 2010 General Election. The constitutional changes kept a pace under the Coalition Government of the 2010-15. Perhaps not surprisingly a similar lack

²⁶¹ King, *The British Constitution*, p.179.

²⁶² Who has been a Conservative Member of the Scottish Parliament (MSP).

²⁶³ Tomkins, A., (2007) The Rule of Law In Blair’s Britain, *The University of Queensland Law Journal*, 26 (2), pp. 255-299. p. 255.

²⁶⁴ Norton, *Politics UK*.

²⁶⁵ See evidence provided to the House of Lords Constitutional Committee. In *Constitution - Fourth Report*, Session 2001-02.

²⁶⁶ See, for example, Ashdown, P., *The Ashdown Diaries: Volume Two, 1997–1999* (London: Allen Lane, 2001), p. 446.

²⁶⁷ Stevens, *The English Judges*, p. xv.

²⁶⁸ Lipsey, D. (2011) A very peculiar revolution: Britain’s politics and constitution, 1970–2011. *Political Quarterly* 82(3): 351–354. p. 342.

²⁶⁹ Norton, P. (2007) Tony Blair and the constitution. *British Politics* 2(2): 269–281. p. 272.

²⁷⁰ See, for example, McLean, *What’s Wrong with the British Constitution*.

of an intellectually coherent approach was to be found during these years, as the Coalition parties had diametrically opposing stances towards the constitution.²⁷¹ The Liberal Democrat's adhered to the Liberal view of the constitution²⁷² and the Conservatives desired to preserve the essential features of the extant constitution, consequently adhering to the traditional view.²⁷³ Loughlin and Viney also provide a philosophical outline on the difference between the Liberal and Conservative views towards constitutions.²⁷⁴

In the next chapter of the thesis a conservative view of the British constitution shall be discussed and seven principles and seven 'conservative constitutional goods' shall be posited. These will be utilised as a theoretical framework to analyse the Conservative Party's constitutional policies.

²⁷¹ Norton, *The Con-Lib Agenda for the 'New Politics' and Constitutional Reform*.

²⁷² See Norton, *The Constitution in Flux*, for an outline of the Liberal view of the Constitution.

²⁷³ Norton, *The Constitution in Flux*, pp. 279–87.

²⁷⁴ Loughlin, and Viney, *The Coalition and the Constitution*.

A Conservative View of the Constitution

The rationale of this chapter of the thesis is to further build the theoretical framework. It shall also provide an overall picture of a conservative²⁷⁵ view of the British constitution and therefore the theoretical framework is rooted in conservative theory and principle. Moreover, the theoretical framework specifies key principles that influence and create a conservative view of the constitution. Consequently, deriving from these principles, I will argue, there are seven ‘goods’, which I have coined ‘conservative constitutional goods’. These key principles and the conservative constitutional goods will be utilised to examine and highlight whether the Conservative Party have during differing eras and under changing political circumstances advocated these principles and/or goods. The framework can, therefore, provide explanatory power to enable the analysis of the Conservative Party’s positions, prisms and policies on the constitution from the 1832 Reform Act to March 2020. Moreover, it also provides a coherent conservative view of the British constitution to enable a principled stance to be used for analysis as well as providing a common language and a frame of reference. In other words, the theoretical framework provides the structure to answer the three research questions that underpin the thesis.

There are a relatively few academics who currently toil on the topic of conservatism.²⁷⁶ The lack of academic attention and literature is not a new phenomenon. C.D. Broad remarked over a century ago about the scholarly neglect of conservatism.²⁷⁷ Mark Garnett writing in 2018, remarked that ‘whatever the reasons for relative scholarly neglect, the result has been a host of questions about conservatism which are more often addressed by critics than by those who wish to provide plausible answers’.²⁷⁸ Graham Gee and Gregoire Webber noted that the ‘basic set of beliefs, practices and actions that comprise the conservative tradition of political constitutionalism are to be found, for the most part, not in academic works, but rather in the

²⁷⁵ In the discussion below, the term ‘conservatism’ refers to the broader philosophy or disposition, while ‘Conservatism’ refers to the thought of the Conservative Party.

²⁷⁶ See: Beckstein, M. and Cheneval, F., ‘Conservatism: Analytically Reconsidered’. *The Monist*, 99(4) (2016) p. 333; Brennan and Hamlin ‘Practical Conservatism’, *The Monist*, 99(4) p. 336; Freedman, M., *Ideologies and Political Theory: A Conceptual Approach* (Oxford: Clarendon Press, 1996) pp. 318-319; Kekes, J., ‘What is Conservatism?’ *Philosophy*, 72 (281), (1997) p 351; Tännsjö, T., *Conservatism for our Time* (London: Routledge, 1990). pp. 5-6; who have all remarked about the relative scholarly neglect of conservatism.

²⁷⁷ Broad, C. D., ‘Lord Hugh Cecil’s “Conservatism”’, *International Journal of Ethics*, 23(4) (1913) pp. 396-397.

²⁷⁸ Garnett, M. ‘Introduction’ in *Conservative Moments: Reading of Conservative texts*, (ed) Garnett M., (London: Bloomsbury, 2018). p. xvi.

writings of politicians’.²⁷⁹ Gee highlights the contribution to conservative thought of Lord Hugh Cecil, Quintin Hogg and Leo Amery, all three individuals were active Conservative politicians not professional academics.²⁸⁰ Indeed, Amery’s book called *Thoughts on the Constitution*, which was based on a series of lectures that he delivered at All Souls College, Oxford, has some especially germane observations on the development of the British constitution. Geoffrey Marshall in the introduction to the 1964 edition of Amery’s book, noted that ‘the literature of twentieth-century constitutional practice has, it must be admitted, been greatly augmented by the writings of practising politicians’.²⁸¹ Relatedly, Christopher Fear writes that ‘conservative theory and conservative practice are different things and are discussed differently. But they are not *separable* things; in reality, they continuously modify and delimit each other’.²⁸² The extent to which conservative constitutional theory and Conservative Party practice ‘modify and delimit each other’ is, of course, one of the research aims of this thesis. Subsequently, not including the work of practising politicians past and present would not sustain a deep and thorough understanding of the topic at hand and the theoretical framework would be underdeveloped. Consequently, in terms of coverage, this theoretical framework will not be limited to academic works alone and the scope will be extended to cover practising politicians of the past and present. Accordingly, this theoretical framework shall be drawing on conservative thinkers, Conservative politicians and other scholars who have contributed to the literature on conservatism.

T.S. Eliot in *The Literature of Politics* published in 1955, wrote of two discernible and distinct approaches to the development of political thinking. It is useful to quote Eliot here at some length:

I venture to put forward the suggestion that political thinking, that is, thinking that concerns itself with the permanent principles, if any, underlying a Party name, can follow two contrasted lines of development. At the beginning maybe a body of doctrine, perhaps a canonical work: and a band of devoted people can set out to disseminate and popularise this doctrine through their emotional appeal to the interested and the disinterested; and then, as a political party, endeavour to realize a programme based on

²⁷⁹ Gee and Webber, *A Conservative Disposition and Constitutional Change*.

²⁸⁰ Gee, G., (2019) ‘The Political Constitution and the Political Right’, *King’s Law Journal*, 30.1 pp., 148–72.

²⁸¹ Marshall, G., in Amery, L., *Thoughts on the Constitution* (London: OUP, 1964). p.iv.

²⁸² Fear, C., (2020) The “Dialectical” Theory of Conservatism, *Journal of Political Ideologies*, pp. 1–15.

the doctrine. Before arriving at the position of governing, they have envisaged some final state of society of which their doctrines give the outline. The theory has altogether preceded the practice. But political ideas may come into being by an opposite process.

Eliot termed the above approach to political thinking ‘mechanical’. He also outlined another approach termed ‘organic’. It is again useful to quote Eliot verbatim here:

A political party may find that it has had a history, before it is fully aware of or agreed upon its own permanent tenets; it may have arrived at its actual formation through a succession of metamorphoses and adaptations, during which some issues have been superannuated and new issues have arisen. What its fundamental tenets are will probably be found only by careful examination of what its more thoughtful and philosophical minds have said on its behalf; and only accurate historical knowledge and judicious analysis will be able to discriminate between the permanent and transitory: between those doctrines and principles which it must ever, and in all circumstances, maintain, or manifest itself a fraud, and those called forth by special circumstances, which are only intelligible and justifiable in the light of those circumstances.²⁸³

The organic approach to political thinking in the relation to the study of conservative thought and the Conservative Party is more appropriate. As will be discussed in more detail below there is no canonical work that conservatives can turn to that provides the entirety of conservative thought in a systematic way. Consequently, the adoption of the organic approach in this thesis enables a holistic comprehension of conservatism and the Conservative Party that is historically contextualised. Moreover, the below discussions draws upon, in line with Eliot’s view, the ‘thoughtful and philosophical minds’, which enables a ‘judicious analysis’ of conservative principles that are permanent and not transitory and thus to establish what are the fundamental tenets. Or, in other words, what are the permanent conservative constitutional goods. Nevertheless, before the fundamental conservative constitutional goods can be stated and justified an elucidation and discussion of conservative thought and principles is required to create the theoretical framework and elucidate where the conservative constitutional goods derive from. What follows is a defining process of what is meant by conservatism and how its underlying principles are. This creates holistically a conservative view of the British

²⁸³ Eliot, T.S. *The Literature of Politics*, (London: Conservative Political Centre, 1955), pp. 13-14.

constitution and how this approach leads to conservative constitutional goods. Put differently and simply - conservative constitutionalism.

Comprehending Conservatism: An Historical Context

Conservatism's origins and its antecedents has in various forms been identified in different eras, events or with particular writers. For instance, writes such as Plato,²⁸⁴ John of Salisbury,²⁸⁵ Richard Hooker, Robert Filmer,²⁸⁶ and David Hume²⁸⁷ have been identified as being original authors of conservative thought. These writes have also been referred to as *proto-conservatives*; that is, they have expressed conservative views or positions but they were not self-consciously conservative. To paraphrase the expression that Dr Johnson, used to described Hume, they are a conservative by chance.²⁸⁸ Moreover, different eras or historical events have also been identified as the origins and antecedents of conservatism. These are the Middle Ages,²⁸⁹ the Reformation period,²⁹⁰ the Elizabethan Settlement,²⁹¹ the Restoration period of the 1660s,²⁹² as well as the Glorious Revolution and the 1688 Settlement.²⁹³ Nevertheless, these eras, events or writers, according to Garnett, should be seen as 'fertile hints rather than self-conscious "conservative moments"'.²⁹⁴ This is because the term 'conservative' was not utilised in a political context until the French writer Francois-Rene de Chateaubriand (1768 - 1848) founded

²⁸⁴ See Auerbach, M. M., *The Conservative Illusion* (New York: Columbia University Press, 1959) and Austern, D., *The Political Theories of Edmund Burke and Joseph de Maisrre* (Ann Arbor, Michigan University Press, 1984).

²⁸⁵ Auerbach, *The Conservative Illusion*, p. 26.

²⁸⁶ Schochet, G., *Patriarchalism in Political Thought* (Oxford: Blackwell, 1975).

²⁸⁷ Harris, J.A., 'Hume', in *Conservative Moments: Reading of Conservative texts*, (ed) Mark Garnett (London: Bloomsbury, 2018).

²⁸⁸ The expression is 'Tory by Chance'. See Boswell, in Fieser, J. (ed.), *Early Responses to Hume's Life and Reputation: Vols. 9 and 10* (London: Continuum, 2005) p. 290.

²⁸⁹ Kirk R., What is Conservatism? in R. Kirk and G. A. Panichas, (eds) *The Essential Russell Kirk: Selected Essays* (Wilmington, DE: ISI Books, 2007) pp. 4-22; Kirk, R., *The Conservative Mind* (Chicago: Henry Regnery, 1967); Kirk, R., *The Portable Conservative Reader* (Harmondsworth: Penguin, 1982); Nisbet R., *Conservatism* (Milton Keynes: Open University Press, 1986).

²⁹⁰ Cecil, H., *Conservatism* (London: Thornton Butterworth, 1912); Keith Feiling in Hearnshaw, F. J. C., (ed), *Social and Political Ideas of Some Representative Thinkers of the Age of Reaction and Reconstruction*. (Cambridge: W. Heffer, 1949).

²⁹¹ See Quinton, A., *The Politics of Imperfection: the Religious and Secular Traditions of Conservative Thought in England from Hooker to Oakeshott*. (London: Faber & Faber, 1978); Eccleshall, R., (1977) 'English Conservatism as Ideology', *Political Studies*, XXV; Eccleshall, R., *English Conservatism since the Restoration* (London: Unwin Hyman, 1990).

²⁹² O'Gorman, F., *British Conservatism: Conservative Thought from Burke to Thatcher* (London: Longman, 1986).

²⁹³ Halifax, M., *Complete Works* (Harmondsworth: Penguin, 1969).

²⁹⁴ Garnett, *Introduction in Conservative Moments*.

the journal *Le Conservateur* in 1818.²⁹⁵ There is, however, a broad consensus in the literature that the Anglo-Irish Whig politician, Edmund Burke (1729 - 1797), is the founder of *modern* conservative thought.²⁹⁶ As Burke was writing about the French Revolution (1789 - 1799) in his seminal book, the revolution has been viewed as concomitantly creating conservatism in its modern form as a reaction against it. According to Norman Gash, conservative *policies* rather than *thought* first became discernible during the premiership of the Lord Liverpool from 1815 to 1827.²⁹⁷ As can be deduced, conservative thought has lengthy and complex antecedents, but conservatism became *more* systematic and self-conscious after Burke and the French Revolution.

Forms of Conservatism: Typologies and Debate

The British constitution and conservatism have at least one fundamental commonality, which is there is no single book or source that a person can read and then be able to comprehend them in full. Of course, there are seminal books and thinkers in relation to both the British constitution and conservatism but reading only one book or source will not provide the reader with a holistic understanding of either conservatism or indeed the British constitution.

One Conservatism? Two? More than Two?

According to Andrew Vincent there have been three broad approaches to the study of conservatism. These are: (1) the historical nation state; (2) chronologically, and (3) conceptual approaches. Vincent suggests that these approaches are not mutually exclusive and have often overlapped significantly in some studies of conservatism.²⁹⁸

According to Vincent, the historical nation state approach suggests that conservatism can only be classified in terms of the particular historical and cultural circumstances within the nation

²⁹⁵ Garnett, *Conservative Moments*, p. xv.

²⁹⁶ See: Gash, N., From the Origins to Sir Robert Peel in *The Conservatives: A History from their Origins to 1965* (ed) Lord Butler (London: George Allen & Unwin, 1977); Kirk, R., *What is Conservatism?* pp 4-6; O'Hear, A., Conservatism in E. Craig, (ed). *Routledge Encyclopedia of Philosophy*; O'Sullivan, N., *Conservatism* (London: J. M. Dent & Sons Ltd, 1976) pp 9-10; Sigmund, P. E., Conservatism: Theory and Contemporary Political Ideology. in Wright, J. D. (ed), *International Encyclopedia of the Social & Behavioral Sciences*. 2nd edition (Amsterdam: Elsevier, 2015) pp. 689-691; Hamilton, A., Conservatism. in Zalta, E. N. (ed). *The Stanford Encyclopedia of Philosophy*. Fall 2016 edition; Melding, D. *Edmund Burke and the Foundation of Modern Conservatism* (London: Conservative Political Centre, 1991) Conservative Party Archive PUB 182/10.

²⁹⁷ See Gash, N. *Lord Liverpool: Life and Political Career of Robert Banks Jenkinson, Second Earl of Liverpool, 1770-1828* (London: Littlehampton Book Services Ltd, 1984) also Gash, *From the Origins to Sir Robert Peel*.

²⁹⁸ Vincent, A., *Modern Political Ideologies (The Philosophical Quarterly, 1993)*

state.²⁹⁹ In other words, conservatism should be classified as British conservatism, French conservatism, Hungarian conservatism, American conservatism and so on. The second approach classifies conservatisms in chronological terms for example Peelite conservatism Disraelian conservatism, Salisbury's conservatism, each one being superseded by the next.³⁰⁰ The third interpretation of conservatism concentrates on the conceptual classification, and Vincent suggests that there are two general classifications. The first classification claims that there is only *one* conservatism and there is no plurality in conservatism.³⁰¹ It is, therefore, argued that it is futile to attempt to classify types of conservatism. The second conceptual classification argues that there are differing schools within conservatism.³⁰² Clinton Rossiter, in 1956, classified four types of conservatism: 'temperamental' 'possessive,' 'practical', and 'philosophical'.³⁰³ Kirk distinguishes between 'conservatism of desolation' and 'conservatism of mediocrity', and he believed that both of them were not 'genuine' or 'real' conservatism.³⁰⁴ Garnett classified between 'traditional' and 'modern' conservatism.³⁰⁵ These views argue that there is some formal unity of values and ideas within conservatism, but the way these core ideas are *interpreted* can lead to radically different conclusions. Therefore, because conservatism does not have a central single creed, it can 'accommodate a considerable diversity of views on a good many subjects'.³⁰⁶ Nevertheless, it can also be seen as different traditions of thought within conservatism with merely a difference of *emphasis*,³⁰⁷ as certain traditions emphasise a particular aspect of conservatism over other parts.

Various academics have constructed ideological typologies of contemporary British conservatism and how they have manifest themselves within the Conservative Party.³⁰⁸ In 2005, Heppell and Hill considered the design and utilisation of the ideological typologies of

²⁹⁹ Vincent, *Modern Political Ideologies*.

³⁰⁰ *Ibid.* p.63.

³⁰¹ *Ibid.*

³⁰² *Ibid.*

³⁰³ Rossiter, C., *Conservatism in America* (New York: Alfred A. Knopf, 1956). pp. 64-66.

³⁰⁴ Kirk, R., *A Program for Conservatives* (Chicago: Henry Regnery and Co., 1954)

³⁰⁵ Garnett, M., *Conservatism in Wetherly*, P. *Political Ideologies* (Oxford: Oxford University Press, 2017).

³⁰⁶ Kirk, R. *The Politics of Prudence* (Wilmington: ISI Books, 1994) p.16.

³⁰⁷ Meyer, F., Freedom, Tradition, Conservatism. in F. Meyer, ed., 1964. *What Is Conservatism?* (New York: Holt, Rinehart & Wilson, 1964). pp. 8-20.

³⁰⁸ See Quinton, *The Politics of Imperfection*; O'Hara, K., *Conservatism* (London: Reaktion Books, 2011); Brennan and Hamlin *Practical Conservatism*; Heppell, T., and Hill, (2005) 'Ideological Typologies of Contemporary British Conservatism', *Political Studies Review*, 3.3, 335-55; Norton, P., Choosing a Leader: Margaret Thatcher and the Parliamentary Conservative Party 1989-1990, *Parliamentary Affairs*, 1990, 249-59; Baker, D., Fountain, I., Gamble, A., and Ludlam, S., (1995) Backbench Conservative Attitudes to European Integration, *The Political Quarterly*, 221-33.

contemporary British conservatism that have been employed by academics to assist in clarifying the nature of the ideological differences within the Conservative Party.³⁰⁹ There is, however, disagreement amongst the academics about the ideological typologies and how to categorise them. Vincent distinguishes between five types of conservatism. These are: traditionalist, romantic, paternalistic, liberal and New Right conservatives.³¹⁰ He suggests that they are closely related and overlapping. Greenleaf's classifies the ideological differences within the Conservative Party as 'collectivist' and 'libertarian' or 'substantive' or 'procedural'.³¹¹ Norton and Aughey based on a more historically accurate typology classifies the ideological differences as 'Tory' or 'Whig' and then outlines the multiple subsections within the two of them.³¹² There are also distinct traditions about the constitution within conservatism, such as the High Tory view, the New Right view, and the Traditional view to name merely three positions.³¹³ The above discussion demonstrates the problematic challenge of defining conservatism and therefore a conservative view of the British constitution.

Defining Conservatism: A Tricky Exercise

Definition of terms in scholarly writing is of fundamental importance and defining conservatism is not a straightforward task as it is difficult to pin down as according to Neill defining conservatism 'throws up difficult definitional and conceptual challenges'.³¹⁴ The terms conservative and conservatism in both academic and colloquial language have referred to a wide variety of subject-matter and individuals.³¹⁵ For example, in the 1980s the term was used as a label for free-market advocates in the both United Kingdom and United States and for the advocates of state control in the USSR.³¹⁶ Kendell and Carey suggest 'that conservatism and conservative have ceased to have any fixed meaning whatever, and should henceforth be used only "positivistically"; that is, to denote movements or parties that in fact call themselves conservative'.³¹⁷ Defining conservative thought by the actions of self-described conservative parties as Kendell and Carey suggest is problematic. For example, is conservatism whatever

³⁰⁹ Heppell and Hill, *Ideological Typologies of Contemporary British Conservatism*.

³¹⁰ Vincent, A., (1994) 'British Conservatism and the Problem of Ideology', *Political Studies*, 42.2, 204–27.

³¹¹ Greenleaf, *The British Political Tradition*.

³¹² Norton, P. and Aughey, A., *Conservatives and Conservatism* (London: Temple Smith, 1981). pp. 66–79.

³¹³ See Norton and Aughey *Conservatives and Conservatism*, chapter 2.

³¹⁴ Neill, E., *Conservatism*, (Cambridge: Polity Press, 2021), p. 2.

³¹⁵ Kendell and Carey, *Towards A Definition Of "Conservatism*, p. 406.

³¹⁶ Garnett, *Conservative Moments*, p. xiv

³¹⁷ Kendell and Carey, *Towards A Definition Of Conservatism*. pp 406–22.

the Conservative Party does whilst in Government? If that is the case, then is conservative thought the same when the party is in opposition? Or what happens if a conservative party takes two diametrically opposed positions under different leaders? Are they both conservative however contradictory? It is also problematic because some political parties who are not self-described conservative parties have adopted a conservative policy platforms. A case in point, is the British Labour Party in relation to the British constitution.³¹⁸ If a concept has become too elastic it therefore becomes meaningless. Consequently, it is the role of academics to ‘de-elasticfy’ the concept and to provide academic rigour to the subject rather than reducing thought to actions of self-described groups. Nevertheless, academics and politicians have not all subscribed to defining conservatism ‘positivistically’. It has been defined as an ideology, ‘a way of life’, a disposition, a political philosophy and a combination of all of these. The complexity of defining conservatism is starting to be illustrated as all of the above terms, such as ideology, disposition and ‘a way of life’ all require some discussion in relation to conservatism.

Disposition or Ideology: Theories of Conservatism

Conservatism has been defined as a disposition to maintain the *status quo*. Stuart Ball writes that ‘conservatism consists of broad attitudes rather than specific principles. It is a matter of temperament rather than ideology’.³¹⁹ An earlier example of conservatism being referred to as an *attitude* is Banks in 1929.³²⁰ Russell Kirk suggests that conservatism is a state of mind, a type of character, a way of looking at the civil social order. Moreover, Kirk also suggests that conservatism is not sustained by dogma but rather by a ‘body of sentiments’ that animate the conservative thinker,³²¹ as well as postulating six ‘canons’ of conservative thought. In a similar vein to Kirk, White writes that ‘Conservatism is less a political doctrine than a habit of mind, a mode of feeling, a way of living’.³²² As well as a ‘state’ or ‘habit’ of mind it has also been common to cite conservatism as ‘disposition’ of the mind. These could be coined ‘dispositional’ definitions of conservatism. Recent academic examples are Martin Beckstein’s *What does it take to be a true conservative?*,³²³ and Geoffrey Brennan and Alan Hamlin’s

³¹⁸ See Dorey, P., *The Labour Party and Constitutional Reform: A History of Constitutional Conservatism* (Basing-stoke: Palgrave Macmillan, 2008).

³¹⁹ Ball, S., *The Conservative Party and British Politics 1902-1951* (London: Routledge, 1995). p .25.

³²⁰ Banks, R. M. *The Conservative Outlook* (1929).

³²¹ Kirk, R., *The Portable Conservative Reader* (New York: Viking Adult, 1982). p .453.

³²² White R.J., (ed.), *The Conservative Tradition* (London: Nicholas Kaye, 1950). p. 1.

³²³ Beckstein M., *What does it take to be a true conservative?*

Analytic conservatism.³²⁴ In both papers they argue that conservatism is a natural disposition which embodies the historical tradition, customs and prejudices of a society. Consequently, conservatism cannot be articulated as an independent body of ideas and values. Robert Shuettinger has also defined conservatism as a disposition, writing that ‘Conservatism is not an ideology or a firm set of doctrines on man and the universe. We will be nearer the truth if we view conservatism as a disposition’.³²⁵ The seminal work defining conservatism as a disposition is, of course Oakeshott’s essay *On Being Conservative*, which was published in 1956. Conservatism is, according to Oakeshott, a disposition or a temperament, and not a creed or a doctrine.³²⁶ Generally, ‘dispositional’ definitions agree that conservatism is an orientation towards the familiar (*status quo*) rather to the unfamiliar. Taking this section of the definition in mind only, it is not so illogical the advocates of state control in the USSR were labelled ‘conservatives’ as they were defending the Communist *status quo*. Nevertheless, Oakeshottian ‘dispositional’ definitions of conservatism also emphasise the distinctions between types of reasoning, such as ‘theoretical’ and ‘practical’, which makes the case for labelling Communists who are defending the Communist *status quo* more problematic and less logical.

Lord Hugh Cecil’s book *Conservatism* published in 1912, distinguished between ‘natural’ or ‘pure’ conservatism, which is ‘a tendency of the human mind. It is a disposition averse to change and it springs partly from a distrust of the unknown and a corresponding reliance on experience rather than on theoretic reasoning’.³²⁷ This ‘natural’ conservatism was contrasted with ‘Political Conservatism’ which are the tenets of the Conservative Party.³²⁸ According to Cecil, these two types of conservatisms are not mutually exclusive. He wrote that the Conservatism of the Conservative Party is largely recruited from and dependent upon natural conservatism. Relatedly, other writes on conservatism such as Scruton and Hogg have also stated that political Conservatism cannot be simply reduced to a disposition, although it is a component part of political Conservatism. Thus, conservatives have argued that the concept of natural conservatism is embedded in life itself and its conception and as a consequence has profound impact on the policy positions of the Conservative Party. According to Norton,

³²⁴ Brennan and Hamlin, *Analytic conservatism*.

³²⁵ Schuettinger, R. L., (ed.) *The Conservative Tradition in European Thought: An Anthology* (New York: G. P. Putnam, 1976), p. 12.

³²⁶ See *On Being Conservative* in Oakeshott, *Rationalism*; also see Greenleaf, W. H. *Oakeshott’s Philosophical Politics* (London: Longmans, 1966); J., Kekes, *The Case for Conservatism* (Ithaca, NY: Cornell University Press, 1998).

³²⁷ Cecil, *Conservatism*, p. 9.

³²⁸ *Ibid*, p. 9.

Conservatives feel comfortable with such natural dispositions, and they feel little need to articulate these dispositions as they are viewed as personal and part of the way of the world.³²⁹

This non-ideological perception of conservatism is ubiquitous in the conservative literature and its influence over conservative thinkers and politicians is robust and durable. The eschewing of the term ideology in the conservative literature and the argument that conservatism is not an ideology has led some writers to state that conservatism is anti-ideological or anti-intellectual. Writers such as Lincoln Allison, Ted Honderich and Andrew Vincent have taken this view and conservatism has been labelled the ‘political anti-philosophy’.³³⁰ F. J. C. Hearnshaw’s remark that ‘it is commonly sufficient for practical purposes if conservatives, without saying anything, just sit and think, or even if they merely sit’³³¹ has been taken to demonstrate this tendency. Nevertheless, a diametrically opposed position has been also proved exceedingly popular among conservatism’s critics; that is, conservatism is an ideology.

The contrast between conservatism as ideology and conservatism as disposition has been discussed in the literature.³³² Interestingly, David McLellan in 1995 remarked that ‘ideology is the most elusive concept in the whole of social sciences.’³³³ As well as being an elusive concept it is also a ‘loaded’ term. In day-to-day political discourse it often takes on a pejorative nature as one group of politicians accuse another group of politicians of being ‘ideological’. Nevertheless, the term ‘ideology’ was coined by the French philosopher Destutt de Tracy (1754-1836) in 1795. For de Tracy it meant a general science of ideas and its role was to clarify, improve and uncover the origins of ideas in an objective fashion for the benefit of the public mind. Nevertheless, the term has developed in a variety of directions, and it has had different meanings within different schools of thought, such as in Marxism, liberalism and so on.³³⁴

³²⁹ Norton, *The Conservative Party*.

³³⁰ Allison, L., *Right Principles: A Conservative Philosophy of Politics* (Oxford: Blackwell, 1984); Honderich, T., *Conservatism* (Harmondsworth: Penguin, 1991). Vincent, *British Conservatism and the Problem of Ideology*.

³³¹ Hearnshaw, F. J. C., *The Social and Political Ideas of Some Representative Thinkers of the Revolutionary Era* (New York, 1950), p 8.

³³² See Quinton, A., ‘Conservatism’, in Goodin, R., and Pettit, P., (eds) *A Companion to Contemporary Political Philosophy* (Oxford: Blackwell, 1993), pp. 244–68. See also Huntington, S.P., ‘Conservatism as an Ideology’, *American Political Science Review*, 51 (1957), 454–73; O’Sullivan, N., *Conservatism* (New York: St. Martin’s Press, 1976); Scruton, R., *The Meaning of Conservatism* (London: Penguin, 1980); Honderich, T., *Conservatism*.

³³³ McLellan, D., *Ideology* (Buckingham: Open University Press, 1995), p. 1.

³³⁴ See O’Hara, *Conservatism*; Freedman, M. *Ideology: A Very Short Introduction* (Oxford: Oxford University Press: 2004); Popper, K. *The Open Society and Its Enemies* (London: Routledge & Kegan Paul, 1945). Arendt, H., *The Origins of Totalitarianism* (London: Allen & Unwin, 1951); Marx, K. and Engels, F. *The German Ideology*, London: Lawrence & Wishart, [1846] 1970).

Conservative political thinkers have often criticised their opponents as ‘ideologues’ and defined ideology as denoting a rigid, systematic and radical thinking.³³⁵ Moreover, in conservative school of thought, ideology has traditionally been viewed as elaborate, systematic, and a rational system of thought that is an all-embracing political doctrine. These political doctrines claim complete and universal applicability of humankind and its society. These claims are, according to Scruton and Oakeshott, based on a rationalist universal political programmes that derive from their own ideology rather than being anchored in historical or cultural contexts.³³⁶ Additionally, Oakeshott argued that if a political doctrine is possible at all, it is certainly not possible to be detached from particular circumstances of the day, and therefore cannot be an all-embracing and universal as ideologies aspire to be.³³⁷ Consequently, conservative thinkers have traditionally argued that conservatism is not an ideology, as conservative thought is not abstract and it is embedded in history and cultures and moreover it does not aspire to be universal. Nevertheless, the debate about conservatism including whether it is an ideology or not is wide ranging, complex and is a constant concern for academics. For example, recently there was a special issue published in the journal of *Global Discourse* called *Conservatism and Ideology* that was dedicated to the issue.³³⁸

Honderich believes that conservatism is an ideology of ‘organised selfishness’ and the rationale of conservative politics is selfishness itself. The reason Honderich provides for his claim is that ‘they [Conservatives] have no other rationale’ that unites conservatives other than ‘naked class interest’.³³⁹ A question that Honderich needs to address is: which class? Before one takes Honderich’s claim to be axiomatic, one could ask: has class interests changed overtime? For example, from the landed aristocratic interest to the middle-class bourgeois interest to the Brexit voting working class interest? In other words, is class interest static or dynamic?

Robert Eccleshall also claims that conservatism is an ideology but seems to differ with Honderich in relation to the rationale of conservatism. Eccleshall claims conservatism is the defence of inequality,³⁴⁰ writing that ‘conservatives have often been robust and unambiguous

³³⁵ See Gilmour, *Inside Right*, pp. 132-143.

³³⁶ See Scruton, *The Meaning of Conservatism*; Scruton, R., *Political Philosophy: Arguments for Conservatism* (London and New York: Continuum, 2007); also see Oakeshott, *Rationalism*.

³³⁷ Oakeshott, *Rationalism*.

³³⁸ See *Global Discourse*, (2015) *Conservatism and Ideology* (5)1, pp 1-176.

³³⁹ Honderich, T. *Conservatism: Burke, Nozick, Bush, Blair?* Revised edition. (London: Pluto Press, 2005). p. 302.

³⁴⁰ See Eccleshall, R., *English Conservatism as Ideology*; Eccleshall, R., Principles Galore. in R. Eccleshall (ed) *English Conservatism Since the Restoration: An Introduction and Anthology* (London:

in vindicating inequality'.³⁴¹ The defence of inequality according to Eccleshall is 'common to the varieties of conservatism has been an affirmation of the need for an orderly, disciplined and unequal society which benefits from appropriate leadership'.³⁴² Additionally, Peter Dorey in his book *British Conservatism: The Politics and Philosophy of Inequality* associated conservatism with one essential commitment – inequality.³⁴³

Samuel Huntington also accepted conservatism is an ideology but disagrees with Honderich that it is merely about defending a class interest and he argues that conservatism is not entwined with the interests of any specific social group. Huntington provided a taxonomy of ideology: the 'situational' and 'ideational'. According to Huntington 'situational' conservatism is 'that system of ideas employed to justify any established social order, no matter where or when it exists, against any fundamental challenge to its nature or being, no matter from what quarter'.³⁴⁴ According to this view, conservatism, therefore, lacks a 'substantive ideal' and is concerned only with the preservation of existing institutions, whatever they may be and consequently conservatism, does not recommend any particular set of institutions.³⁴⁵ Thus, conservatism can be defined by its propensity to conserve current institutions. Accordingly, 'institutional' definitions of conservatism are not defined by the content of its principles or disposition but by its function to enable preservation of existing institutions.

Other conservative thinkers, such as Anthony O'Hear are also willing to call conservatism an ideology, but he also suggests that conservatism is a philosophy.³⁴⁶ By contrast, F.A. Hayek in *Why I Am Not a Conservative* doubted 'whether there can be such a thing as a conservative political philosophy'.³⁴⁷ Nevertheless, according to Gee and Webber thinking of conservatism as a philosophy underscores its *idea* orientation towards concepts such as human nature, society, politics, law, government and so on.³⁴⁸

Unwin Hyman Ltd, 1990) pp. 1-20; Eccleshall, R., Conservatism. in Eccleshall, R., Geoghegan, V., Jay, R., Kenny, M., MacKenzie, I and Wilford, R., (eds) *Political Ideologies: An Introduction*. 2nd edition. (London: Routledge, 1994) pp. 60-90; Eccleshall, R., (2000) The Doing of Conservatism, *Journal of Political Ideologies*, 5(3) pp. 275–287.

³⁴¹ Eccleshall, *The Doing of Conservatism*, p. 278.

³⁴² *Ibid*, p. 277.

³⁴³ Dorey, *British Conservatism: The Politics and Philosophy of Inequality*.

³⁴⁴ Huntington, *Conservatism as an Ideology*, p. 455.

³⁴⁵ *Ibid*, p. 457.

³⁴⁶ See O'Hear, A., Conservatism in E. Craig, (ed). *Routledge Encyclopedia of Philosophy*. [Online] Available at <https://www.rep.routledge.com/articles/thematic/conservatism/v-1>

³⁴⁷ Hayek, F.A., *The Constitution of Liberty* (London: Routledge & Kegan Paul, 1960).

³⁴⁸ Gee and Webber, *A Conservative Disposition and Constitutional Change*.

Conservative writers have also argued that there are principles, tenets, and a conservative body of ideas. Lord Willetts writes that ‘Conservatives do have political principles and these have emerged from political practice and their ideas have been made flesh in particular historical figures and circumstances’.³⁴⁹ Willetts suggests that Conservative arguments are likely to turn on interpretations of history and people.³⁵⁰ Robert Nisbet argues in a similar vein to Willetts, in his book *Conservatism: Dream and Reality*. Nisbet who was sympathetic to conservatism did call it an ideology. Nisbet writes that:

An ideology is any reasonably coherent body of moral, economic, social and cultural ideas that has a solid and well-known reference to politics and political power; more specifically a power base to make possible a victory for a body of ideas. An ideology, in contrast to a mere passing configuration of opinion, remains alive for a considerable period of time, has major advocates, and spokesmen and a respectable degree of institutionalization. It is likely to have charismatic figures in its history—Burkes, Disraelis, Churchills, etc...³⁵¹

Nisbet is not utilising the traditional conservative definition of ideology rather it is more akin to Freedon’s definition,³⁵² and therefore it is understandable why both Nisbet and Freedon can view conservatism as an ideology. Nisbet also provided six ‘dogmas’ that he thought every conservative (to some extent) would accept as a demonstration that conservatism had a body of ideas.³⁵³

Principled Definitions of Conservatism

Conservatism has also been defined by a single fundamental principle or by a collection of principles. These principle-based definitions of conservatism have often included the disposition to conserve the *status quo* within them. Despite the agreement that conservatism ought to be defined based upon its principles, there are numerous different views about the number of those conservative principles and which ones should or should not be included but this view of conservatism purports that principles are core to conservatism. The principles have ranged from merely one principle to as many as twenty-one and almost every amount in between. For example, Dorey and O’Sullivan both have advocated one core principle, but they

³⁴⁹ Willetts, D., *Modern Conservatism* (London: Penguin, 1992). p.4.

³⁵⁰ Ibid.

³⁵¹ Nisbet, *Conservatism*, p. 15.

³⁵² Freedon, *Ideologies and Political Theory*.

³⁵³ Nisbet, *Conservatism*.

disagree on that principle. For Dorey, it is upholding inequality and for O’Sullivan it is the imperfection of human reasoning.³⁵⁴ For Garry and O’Hara there are two core principles.³⁵⁵ Gray has advocated for three principles.³⁵⁶ Kekes suggests that there are four.³⁵⁷ Wilson suggests five.³⁵⁸ Burch and Holliday state that there are six.³⁵⁹ Hearnshaw posits twelve,³⁶⁰ and Rossiter provides twenty-one.³⁶¹ Some theorists, such as O’Sullivan and Pilbeam have argued against enumeration of conservative principles at all on the grounds that it is not possible to compile a list of principles that all conservatives would subscribe to.³⁶²

As there is much disagreement within the literature about the principles of conservatism, it has been deemed necessary to posit and elucidate seven principles that provide a principled conservative view of the British constitution. Moreover, this is also necessary to provide the anchor or justification for the seven conservative constitutional goods that flow from these principles. The elucidation of these principles, furthermore, provides explanatory power, a common language and in conjunction with the conservative constitutional goods provides the theoretical framework to analyse the Conservative Party’s policies in relation to the constitution. Consequently, the subsequent principles create a coherent conservative view of the British constitution, but it also creates a contribution to the debate around the principled approach to conservatism although one that is embedded in conservative constitutional thought.

A Principled Conservative View of the British Constitution

According to Gee, there ‘is no explicit, comprehensive or authoritative statement of this tradition’, by which he meant the conservative political constitutionalist tradition. In this section a step towards an explicit, comprehensive and authoritative statement of the conservative political constitutionalist tradition is attempted.

³⁵⁴ See Dorey, *British conservatism* and O’Sullivan, *Conservatism*.

³⁵⁵ Garry, P., *Conservatism Redefined: A Creed for the Poor and Disadvantaged* (New York: Encounter Books, 2010) p. 32; O’Hara *Conservatism*; O’Hara, K., *Conservatism, Epistemology, and Value. The Monist*, 99(4), pp. 423-440. See Also O’Hara, K., *After Blair: Conservatism Beyond Thatcher* (Cambridge: Icon Books, 2005).

³⁵⁶ Gray, J., *The Undoing of Conservatism*, in Gray, J., *Enlightenment's Wake: Politics and Culture at the Close of the Modern Age* (Abingdon: Routledge, 2007) pp. 158-165.

³⁵⁷ Kekes, *What is Conservatism?; Kekes, A Case for Conservatism*.

³⁵⁸ Wilson, F., *The Case for Conservatism* (Seattle: University of Washington Press, 1951), p.12.

³⁵⁹ Burch and Holliday, *The Conservative Party and Constitutional Reform*. pp. 390-392.

³⁶⁰ Hearnshaw, F. J. C., *Conservatism in England: An Analytical, Historical and Political Survey* (London: MacMillan, 1933), pp. 22-33.

³⁶¹ Rossiter, *Conservatism in America*, pp. 60-62.

³⁶² O’Sullivan, *Conservatism*, pp. 13-14; Pilbeam B., *Conservatism in Crisis? Anglo-American Conservative Ideology after the Cold War* (Basingstoke: Palgrave MacMillan, 2003), p. 9.

Richard Rose wrote that ‘principles introduce a persisting “non-random” element into the decisions of a party of government’.³⁶³ Norton and Aughey built on Rose’s statement in relation to the Conservative Party that ‘they also introduce a persisting, non-random element into the discussions within the party, whether in office or out, about what it should stand for, what it should conserve’.³⁶⁴ The principles of a conservative view of the constitution require posing and elucidation to establish whether these principles have been driving the Conservative Party’s constitutional policies. The seven conservative constitutional goods that derive from these principles provides the theoretical underpinning to establish the elements of the constitution that should be conserved and doing so is ‘relatively rare’.³⁶⁵ The subsequent section shall draw from these relatively rare attempts. This is another reason why it is necessary to take a broad historical view of the Conservative Party’s policies and positions on the British constitution. To enable an investigation into whether these positions have been driven by principles and conservative constitutional goods. These principles and goods now require a substantive exposition.

The subsequent principles are interconnected and the combination of them create the conservative view of the constitution and the conservative constitutional goods that flow from them. The principles are: (1) the organic nature of society; (2) scepticism of humans reasoning powers; (3) suspicion of grand political blueprints; (4) an historical empirical approach to decision making; (5) a commitment to the past and future generations; (6) the wisdom of generations, tradition and custom; and (7) a trustee model of representation.

The Organic Nature of Society

The concept of the organic nature of society is a core principle of conservatism, as it underscores the special significance that conservatism ascribes to institutions in providing order, structure and continuity.³⁶⁶ Society is seen as a living organism, a living, breathing entity, rather than a machine with cogs and wheels that can be ‘tinkered with or redesigned’.³⁶⁷ The development of society is within the context of its inherited institutions. Therefore, the organism is difficult to fundamentally change because it is an historical product, which grows slowly, naturally and is therefore a living entity.³⁶⁸ David Clarke, a previous Joint Director of

³⁶³ Rose, R., *The Problem of Party Government* (London: Penguin, 1976), p. 287

³⁶⁴ Norton and Aughey, *Conservative Party and Conservatism*, p. 17.

³⁶⁵ Norton, *The Conservative Party*, p. 68.

³⁶⁶ See Norton, *The Constitution*, p. 93.

³⁶⁷ Ball, *The Conservative Party and British Politics*, p. 29.

³⁶⁸ Norton, *The Conservative Party*, p 41.

the Conservative Research Department,³⁶⁹ wrote that ‘society is an organic whole in which the atoms react in all their movements upon one another and the whole is moved this way and that by the motion of its several parts’.³⁷⁰ Attempting to define the spirit of British Conservatism, Hogg, in 1947, wrote that its adherents desire to foster ‘the kind of change which should take place in a healthy living organism’.³⁷¹ Moreover, society is made up of a variety of constituent parts, such as the family, churches, government and the nation. Each constituent part plays a vital role in ensuring stability and the well-being of society. An argument that has developed from this view, is that society is an organism and therefore its developments cannot be externally determined. Thus, the intricate nature of institutions cautions against precipitous changes to their interconnected parts.³⁷² The concept of the organic nature of society suggests that communities function in unpredictable ways and are modified by the complex interactions between individuals, families and organisations that comprise them. Conceptualising society as an organism has led to a certain type of change being advocated. Namely, organic, incremental change that is within the natural grain of the institution and in this case the constitution. Therefore, the change ought to strengthen rather than weaken the current constitution. According to Freeden, a commitment to fostering and preserving this form of change can be ‘regarded as a core concept within varieties of conservative thought’.³⁷³ Freeden believes this to be the case because ‘it both determines its adherents’ principal political objectives and organises the other beliefs and values that are present within conservative political thought’.³⁷⁴ It is also taken here to be a fundamental principle in the conservative view of the constitution.

Scepticism of Individual’s Reasoning Powers

Scepticism of the individual’s reasoning powers underpins a conservative view of the constitution. Human reason is conceptualised as a limited faculty that can, at best, construct

³⁶⁹For histories on the Conservative Research Department see Ramsden, J., *The Making of Conservative Party Policy: The Conservative Research Department Since 1929* (London: Longman, 1980); Lexden, A., (ed) *Tory Policy-making: The Conservative Research Department, 1929-2009* (London: Conservative Research Department, 2009).

³⁷⁰ Clarke, D., *The Conservative Faith in the Modern Age*. (London: Conservative Political Centre, 1947).

³⁷¹ Hogg, *The Case for Conservatism*, p. 29.

³⁷² See also Boyd-Carpenter J., *The Conservative Case* (London: Wingate, 1950) White, *The Conservative Tradition*; Lewis R., *Principles to Conserve* (London: Conservative Political Centre, 1968), p. 9; Gilmour, *Inside Right*, p. 129; Patten, C., *The Tory Case* (London: Longman. 1983), p. 7.

³⁷³ Freeden, *Theorizing About Conservative Ideology*, pp. 332–33.

³⁷⁴ *Ibid*, pp.332–33.

only a partial understanding of the world. This scepticism has led to view of human beings as not only being rational creatures but a combination of emotion, instinct, habit as well as thought.³⁷⁵ Any form of political activity that is predicated upon an optimistic conception of an individual reason has made conservative thinkers and politicians suspicious. In recent academic research, this idea has been termed ‘abstract epistemic arguments’. Meaning that conservatism typically claims that given the limits of human reason, society is better off accepting some particular social practice or institution rather than starting again entirely from the beginning. Pocock expresses this view by writing that:

the reason of the living, though it might clearly enough discern the disadvantages, might not fully perceive the advantages of the existing and ancient institutions; there is always more in laws and institutions than meets the eye of critical reason.³⁷⁶

A classic statement of ‘abstract epistemic arguments’ is found, of course, in Burke’s seminal work the *Reflections on the Revolution in France*. Burke states that:

we are afraid to put men to live and trade each on his own private stock of reason, because we suspect that this stock in each man is small, and that the individuals would do better to avail themselves of the general bank and capital of nations and of ages.³⁷⁷

This scepticism of the individual’s reasoning powers derives from an ontological position; that is, human beings are *imperfect*, and they will not become *perfect*. Therefore, trying to eradicate the imperfections within human beings themselves but also their institutions, such as constitutions, are futile and destructive.³⁷⁸ In other words, human beings are morally imperfect³⁷⁹ and human nature is not considered amenable. According to Burke, in his *Observations on a Late State of the Nation in 1769*, politics ought to be adjusted not to human *reasoning* but to human *nature*. As consequence, conservatives that have drawn from Burke’s thoughts have argued that constitutions should function within the grain of human nature rather

³⁷⁵ Norton, *The Conservative Party*, p.68.

³⁷⁶ Pocock, J., “Burke and the Ancient Constitution”, in *Politics, Language and Time: Essays on Political Thought and History* (Chicago: University of Chicago Press, 1971), pp. 202–232.

³⁷⁷ Burke, E., *Reflections on the Revolution in France*, J. G. A. Pocock (ed.) (Cambridge, MA: Hackett, 1987 [1790]) p. 182.

³⁷⁸ See Block, G., *About the Conservative Party* (London: Conservative Political Centre, 1965), p. 7; Goldman, P., *The Welfare State* (London: Conservative Political Centre, 1964), p. 13; Law, R., *Return from Utopia* (London: Faber, 1950) and Lewis, *Principles to Conserve*, p. 7.

³⁷⁹ This view of human nature has often been coined pessimism.

than attempt to change it. Another reading of this positions also prescribes that those constitutional changes should be conducted within the *nature* of the constitution.

Kekes suggests that Conservatism adopts a stance of scepticism between extremes of rationalism and fideism (belief based on faith) and steers a middle course of pessimism between claims of perfectibility and corruptibility.³⁸⁰ Oakeshott's seminal book *Rationalism in Politics* has constitutional implications related to this view.³⁸¹ Oakeshott highlighted the superiority of (what he referred to as) the English approach and pointed to the deficiencies of the Rationalist mentality, which underpins the modern or rationalist concepts of politics, government and constitutions.³⁸² The Rationalist, according to Oakeshott, is 'the enemy of authority, of prejudice, of the merely traditional, customary or habitual'.³⁸³ Oakeshott continues to argue that according to the Rationalist nothing is of value for merely existing. Consequently, there is no opinion, custom, or belief that is not to be measured by the power of the Rationalist's reason. Oakeshott believed that the error of Rationalism was that it discounted practical knowledge, acquired through usage and experience³⁸⁴ as the Rationalist believed only in scientific knowledge. In other words, knowledge that can be written down, taught, and learned. This knowledge can therefore be expressed in precise formulations. Britain's customary constitution is an anathema to the Rationalist way of thinking. Gee and Webber drew upon Oakeshott's critique of rationalism and utilised it in the sphere of public law and called 'for a renewed engagement with practical knowledge in the study of the constitution'.³⁸⁵

Scepticism, in this form, has argued that because the individual's reasoning powers are limited and society is complex,³⁸⁶ extensive or radical changes to the *basic structure* of society or institutions that support it are almost never justified. Consequently, within conservatism generally there is a substantial presupposition in favour of conserving existing institutions,

³⁸⁰ Kekes, *A Case for Conservatism*. pp.28-30

³⁸¹ For another critique of rationalism see Letwin, S.R. (1952) 'Rationalism, Principles and Politics', *Review of Politics* (14) 367.

³⁸² Oakeshott was in favour of nomocratic rule. For a discussion of Oakeshott's views of the functions and limits of government, See Hörcher, F., *Government as a British Conservative Understands It: Comments on Oakeshott's Views on Government* in Kos, E., (ed) *Michael Oakeshott on Authority, Governance, and the State* (London: Palgrave Macmillan, 2019).

³⁸³ Oakeshott, *Rationalism*.

³⁸⁴ For a discussion of Oakeshott's concept of practical knowledge, see Hörcher, F., *Two Concepts of Practical Knowledge in Politics* in (eds) Trepanier, L. and Callahan, E. *Tradition V. Rationalism Voegelin, Oakeshott, Hayek, and Others* (Washington: Rowman & Littlefield, 2018).

³⁸⁵ Gee, G., and Webber, G., (2013) 'Rationalism in Public Law', *Modern Law Review*, 76.4, 708–34.

³⁸⁶ O'Hara, *Conservatism*, pp. 49-51.

customs and traditions,³⁸⁷ and within constitutional conservatism particularly. According to Johnson ‘the intention expressed in Conservative constitutional argument is generally not radically to change or redesign the constitution but to seek its restoration or reinvigoration’.³⁸⁸ Johnson claims that the Conservative reformers should see himself or herself as ‘repairing the defences or plugging the dykes’.³⁸⁹ The reason for this is conservative thinkers believe extensive or radical changes are exceedingly dangerous, as its effects are unlikely to be fully understood before the changes occurs. Subsequently, any proposed changes to the structure or framework of a country’s constitution risks negative unforeseen consequences. Therefore, the burden of proof, that any proposed constitutional change will not be detrimental to the overall framework and will have a *positive* effects, is on the innovator and not on the defender of the *status quo*.

In a similar but slightly differing view, Oakeshott believed that the conservative view of reform in relation to institutions should be based on a politics of *repair* rather than *destruction and creation*.³⁹⁰ Hogg argued that organic forms of change emerged from the complex and spontaneous interplay of an infinite number of human impulses, not externally designed schemes and that ‘the good life is something which cannot be comprehended in some phrase or formula about any political or social order’.³⁹¹ This scepticism does not exclude change *per se*, rather it excludes certain *types* of change; that is, change that would undermine the constitution or would be a radical departure from the Westminster system of government. Indeed, Scruton argues that the constitution may change and develop overtime, however, these changes should be in accordance with its own inner logic.³⁹² Thus, the conservative politician’s role is to guard the *essence* of the constitution as it goes through its stages rather than resist

³⁸⁷ See Brennan G., and Hamlin, A., (2004) ‘Analytic Conservatism’, *British Journal of Political Science*, 51.1957, 675–91.

Brennan and Hamlin, ‘Practical Conservatism’.; Brennan G., and Hamlin, A., ‘Conservative Value’, *The Monist*, 2016, 352–371 ; Burke *Reflections*; Marquez, X., 2016 ‘An Epistemic Argument for Conservatism’, *Res Publica*, (22)4, 405–22.; O’Hara, *Conservatism*, pp. 86-87; O’Hara, *Conservatism, Epistemology, and Value*; O’Sullivan, *Conservatism*, 9-31; Rescher, N., (2015) The Case for Cautious Conservatism. *Independent Review*, 19(3), pp. 435-442; D. Stove (1993). *Conservatism: A Defense. Inquiry*, 36(3), pp. 329-334; Minogue, K., *The Servile Mind: How Democracy Erodes the Moral Life* (New York: Encounter Books, 2012). pp. 274-275.

³⁸⁸ Johnson, *Constitutional Reform*, p.129.

³⁸⁹ *Ibid*, p. 129.

³⁹⁰ Oakeshott, *Rationalism*. p.26.

³⁹¹ Hogg, *The Case for Conservatism*, pp. 28–9.

³⁹² Scruton, *The Meaning of Conservatism*.

changes altogether. Therefore, constitutional reform *should* be conducted within the grain and nature of the constitution and this reform can indeed strengthen the constitution.

A Suspicion of Grand Political Blueprints

The view of society as natural and the limits of the individual's reasoning powers have led conservatives, according to Ball, O'Sullivan and Scruton, to eschew rationalism that informs grand intellectual projects or 'rationalist blueprints',³⁹³ based on *abstract* principles. Johnson, suggests that this:

criticism of the appeal to abstract principles is consistent with the emphasis given in conservative thought to the dominant influence of social behaviour and relationships in the complex processes through which political institutions and practices evolve.³⁹⁴

Johnson then stated that conservatives believe that 'political institutions should not be constructed on abstract principles'.³⁹⁵ This statement is not new within conservative thought. Burke contended that the British constitution, had been sustained by a distrust of abstract principles. Burke suggests that political institutions, are too complex to be governed according to abstract principles and that a good constitution is one adorned with 'pleasing illusions' to 'make power gentle' and 'obedience liberal'. Consequently, Burke argued, that reducing constitution-making to a rationalist plan would remove these adornments.

It is vital to observe the adjective 'abstract' in both Johnson and Burke's work. Burke, for instance, is not rejecting principles *per se*, he is rejecting 'abstract' principles. Those principles that take no account of time, place, or circumstance. For example, Burke contrasted between 'abstraction' and 'principle'. 'Principles', according to Burke, are rooted in custom and tradition. They are as distinct from the 'dry aberrant' 'abstractions' of metaphysical reason. Put another way, there are principles that are embedded in a time, tradition and place that are therefore usual and necessary. By contrast, there are principles that are guided by abstract metaphysical reason that are not situated in context and these are likely to mislead and as a consequence be dangerous. Therefore, Burke was not arguing against principles in politics but against abstractions of metaphysical reason or abstract principles.

³⁹³ See also Ball, S. 'The Principles of British Conservatism from Balfour to Heath, c.1910–75', in Carr R., and Hart B. W. (eds), *The Foundations of the British Conservative Party* (London: Bloomsbury, 2013), p. 16; O'Sullivan, *Conservatism*, pp. 9-31; Scruton, *The Meaning of Conservatism*.

³⁹⁴ Johnson, *Constitutional Reform*, p.127.

³⁹⁵ *Ibid*, p.127.

Burke thought that if the mystique of government and constitutions were stripped away (and this would be the case, if guided by abstract principles) this would remove the *behavioural constraints* that make the exercise of the governing power benign. Burke also thought that if the sacred was removed from the constitution ‘the whole chain and continuity of the commonwealth’ would be broken.³⁹⁶ Oakeshott also argued that if traditions of behaviour were removed, in its place would come ideologies. Oakeshott believed that this process was already happening or had already happened. Burke’s argument, however, was not to undermine all reason in politics, but rather to suggest that politics should not be determined by abstract theories and nor should the British constitution. The reason for this was, Burke thought, that treating the state as a *mechanism* that can be made and re-made in accordance with some grand theory or according to the theoretical fashions and fads of the day, the state and the constitution would lose the very basis of its political authority. Burke, according to Hörcher, was ‘in favour of a more realistic understanding of politics, as he thought that radical changes are not possible without even more radical risks’.³⁹⁷ Burke cited the French revolutionaries’ rationalism as the cause of the evils which resulted from the Revolution.³⁹⁸

Quinton in his influential account of Conservatism outlined his scepticism of grand theories and argued that:

political wisdom...is not to be found in the theoretical speculations of isolated thinkers but in the historically accumulated social experience of the community and especially in traditional customs and institutions and especially with people with extensive practical experience of politics.³⁹⁹

Lord Hailsham pithily summed up this type of thinking in his remark that ‘an ounce of practice being worth a ton of theory’.⁴⁰⁰ This could be taken as an expression of the conservative temperament; that is, being averse to abstract argument, theorising, and opposition to the ‘rationalist blueprints’ and to top-down planning of a constitution. Accordingly, conservatives have not expected the British constitution to *fit* into a comprehensive rational constitutional theory with perfect symmetry and distinct boundaries. Consequently, the conservative view of

³⁹⁶ Burke, *Reflections*, p.95.

³⁹⁷ Hörcher F., Burke on Rationalism, Prudence and Reason of State. In: Callahan G., McIntyre K.B. (eds) *Critics of Enlightenment Rationalism*. Palgrave Studies in Classical Liberalism. (London: Palgrave Macmillan, 2020). pp 15–31. p. 16.

³⁹⁸ Scruton, R., *Conservatism. Ideas in Profile* (London: Profile Books, 2017), pp. 45-47.

³⁹⁹ Quinton, *The Politics of Imperfection*. pp.16–17.

⁴⁰⁰ Hailsham, *The Case for Conservatism*, p. 7.

the constitution accepts, at least tacitly, constitutional ambiguity or ‘constitutional abeyances’.⁴⁰¹ Constitutional government, according to conservatives, works not because of the symmetry of some formal design but through the gradual emergence of customary ways of conduct. This conduct channels the exercise of power through certain ceremonies and forms. This does not mean that conservatives do not believe in the improvement of the functioning of government. They can, however, draw upon Walter Bagehot’s taxonomy of the two parts of a constitution that were postulated in *The English Constitution*. These are: the dignified and efficient.⁴⁰² Both the dignified and efficient elements of the constitution can be legitimised through ceremonies and forms but to try and make the dignified elements more efficient based on rational blueprints and metaphysical reason would be a mistake. On how to make the government more efficient the conservative will turn to history and experience to guide the decision-making process.

An Historical Empirical Approach to Decision Making

Giovanni Sartori identified two approaches for problem solving. These are: (1) the empirical and (2) the rational.⁴⁰³ British conservatives have adopted the empirical approach.⁴⁰⁴ Conservatives have agreed with Dahl’s statement, which is:

while the empirical approach takes the attitude that if a program does not work in practice there must be something wrong about the theory, the rationalist will retort that what is true in theory must also be true in practice - that it is the practice, not the theory, that is wrong.⁴⁰⁵

Moreover, according to Kekes, conservatives have seen history as the best guide to understanding the present and planning for the future.⁴⁰⁶ O’Hear suggests that conservatism is an approach to human affairs which mistrusts both *a priori* reasoning and *revolution*, preferring to put its trust in experience and in the gradual improvement of the tried and tested arrangements.⁴⁰⁷ Kekes also argues that conservatism, with its defining scepticism and opposition to rationalism in politics rejects *a priori* value-commitments.⁴⁰⁸ Burke also rejected

⁴⁰¹ Foley M., *The Silence of Constitutions* (London: Routledge, 1989), p.10.

⁴⁰² Bagehot, B., *The English Constitution*.

⁴⁰³ Sartori, G., as cited in Dahl, R.A., *Political Opposition in Western Democracies*. (Hartford, CT: Yale University Press, 1966), p. 353.

⁴⁰⁴ *Ibid.*, p. 353.

⁴⁰⁵ Dahl, *Political Opposition in Western Democracies*, p. 355.

⁴⁰⁶ Kekes, *Conservatism*, p.352.

⁴⁰⁷ O’Hear, *Conservatism*.

⁴⁰⁸ Kekes, *Conservatism*, p. 368.

a priori reasoning in politics, notably the claims to abstract natural rights, manifested most dramatically in the French Jacobin dream of destroying and rebuilding society. In relation to the constitution, British Conservatives have focused on questions on what *can* be done rather than what *should* be done.⁴⁰⁹ For Burke, the task of maintaining the constitution requires a most delicate skill and it requires a grasp of human nature and human necessities, together with knowledge of what facilitates or obstructs the various ends pursued by the governing institutions.⁴¹⁰ Quinton argues that ‘true political knowledge is to be acquired only through experience, indeed by a long and directly practical experience, of the actual workings of a political system’.⁴¹¹ This, Quinton argues, constitutes an ‘empirically sceptical theory of political knowledge’ on which the abstract, theoretical plans for change which have been devised *a priori* are to be regarded with suspicion.⁴¹² Instead, the collected wisdom of the community as embodied in traditions should be trusted.⁴¹³ According to Burke:

The science of constructing a commonwealth, or renovating it [...] is not to be taught *a priori*. Nor is it a short experience that can instruct us in that practical science; because the real effects of moral causes are not always immediate; but that which in the first instance is prejudicial may be excellent in its remoter operation; and its excellence may arise even from the ill effects it produces in the beginning.⁴¹⁴

Moreover, Scruton argued that:

Burke was explicitly contrasting the form of reasoning that emerges through custom, free exchange and ‘prejudice’ with the *a priori* principles of the revolutionaries, which they attributed to the abstract reason which is supposedly everyone’s inheritance.⁴¹⁵

The historical empiricist approach to decision making entails a sceptical standpoint towards abstract, universal systems, therefore conservatives do not desire to reason towards a constitution that will be right for every country across all time and all cultures. Consequently, British Conservatives are in the realm of arguing for a constitution that is right for the United Kingdom and not a universal blueprint based on reason, because constitutions have to be bound into the social and cultural norms of the specific country. Thus, conservatives see the authority

⁴⁰⁹ Norton, *The Conservative Party*, p. 69.

⁴¹⁰ Burke, *Reflections*.

⁴¹¹ Quinton, *The Politics of Imperfection*, p. 60.

⁴¹² Ibid, p. 60.

⁴¹³ Ibid, p. 59-61.

⁴¹⁴ Burke, *Reflections*, p.158.

⁴¹⁵ Scruton, *Conservatism. Ideas in Profile*, p. 45.

of government deriving from constitutional traditions known through the long historical experience of a given nation. Conservatives focus on the constitution that is most suited to their country and to the reform that are required to that constitution. Reforming a constitution is a practical art that draws on historical experience, precedent and lessons should be learnt from the experience of one's country's constitutional history. This will enable the reformer to understand what necessary changes and adjustments are required to be made to the current constitution in the circumstances of the day. Relatedly, constitutional traditions are refined through trial and error over many centuries, with repairs and improvements being introduced where necessary, while seeking to maintain the integrity of the inherited constitution.

A Commitment to Past and Future Generations

The principle of the commitment to past and future generations will now be focused upon. Benjamin Disraeli,⁴¹⁶ in 1835, wrote that Tories 'looked upon the nation as a family, and upon the country as a landed inheritance' and that 'generation after generation were to succeed to it'.⁴¹⁷ This view has been called the 'idea of the inherited principle' and it has also been applied to the constitution. For example, according to Burke, a constitution, is 'an entailed inheritance' that is bequeathed to the current generation by 'our forefathers' and transmitted to posterity.⁴¹⁸ In more recent times, Scruton agreeing with Burke, suggests that the constitution should be viewed through the inherited principle.⁴¹⁹ According to Disraeli, this means inheriting the positives as well as, to use Disraeli's word, the 'incumbrances'. In other words, inheriting the positives and the negatives. A question ought to be asked and it could be this: what should be done with the negatives? According to Willcox:

The radical would destroy where the Tory would transform. Destruction is revolution, which sweeps away the present mixture of good and bad on the chance that the future will be better. Transformation is slower; it retains the good in the mixture and changes the bad, changes it with infinite care and caution, guided by the experience of the past. This experience the Tory values as tradition, and out of it he builds a political program

⁴¹⁶ Prime Minister in 1867 and 1870-74.

⁴¹⁷ Disraeli, B., *Vindication of the English Constitution in a Letter to a Noble and Learned Lord* (London, 1835). p. 24.

⁴¹⁸ Burke, *Reflections*. p. 119.

⁴¹⁹ Scruton, *The Meaning of Conservatism*.

adapted to the needs of his day. Thus, conservatives shall endeavour to reform the bad based on proven grievances but only through prudent and incremental reform.⁴²⁰

This way we can according to Disraeli ‘bind up the constitution of our country with our dearest domestic ties, and adopt our fundamental laws into the bosom of our family affections.’⁴²¹ Therefore, the answer of the questions would be to transform the negative but keep the good that our ancestors have bequeathed, which implies a continuation from one generation to the next. According to Burke, the social order is a partnership across generations. This concept of the social order provides the foundation for the ‘inherited principle’. It is important to quote Burke at some length here:

Society is indeed a contract [...] It is a partnership in all science; a partnership in all art; a partnership in every virtue, and in all perfection. As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born.⁴²²

Burke argued that to formulate the contract to incorporate the living members only, is to offer no rights to one’s ancestors or descendants and to situate the authority of the state in the present time-slice only.⁴²³ It would also violate the principle of equality as they are all equal partners in this partnership. Therefore, the authority of the state is not based on a ‘contract’ that is agreed upon by the current membership only; that is, those of us who are currently alive. It is a partnership rather more akin to a trusteeship, and consequently authority is transcendent, meaning the partnership (and the authority that accompanies it) spans across generations. Therefore, according to Burke, to treat the social contract as if it is amongst the living only will jeopardise the inheritance of the country of which the living are temporary trustees only.⁴²⁴ Current generations, therefore, possess duties and responsibilities. According to Kekes, tradition represents, for conservatives, this continuum and it enmeshes the individual and society together.⁴²⁵ Consequently, the current living members are not free to remake the social structures, including the constitution, as they fancy, because according to Burke, changing ‘the

⁴²⁰ Willcox, W.B., (1941) The Tory Tradition, *The American Historical Review*, (48)4, pp. 707–721. p. 720.

⁴²¹ Disraeli, *Vindication of the English Constitution*.

⁴²² Burke, *Reflections*, p. 146-147.

⁴²³ Ibid.

⁴²⁴ Ibid.

⁴²⁵ Kekes, *Conservatism*, p. 365.

state as often as there are floating fancies' will mean that 'no one generation could link with the other'.⁴²⁶ The consequence of which, according to Burke, will be that individuals will become 'flies of a summer'.⁴²⁷ Meaning, according to Burke, that if 'ancient opinions and rules of life are taken away', individuals will no longer have a compass to govern themselves and individuals will not know in which direction to steer, and society, including the constitution, will fall into ceaseless change.⁴²⁸

British Conservatives have often utilised the example of the French Constitution as an example of this ceaseless and unnecessary change that should not be emulated or admired. This is because conservatives are attached to organic change and do not desire ceaseless change in constitutional arrangements. As the respect and legitimacy that underpin the constitutions should be established over time and ceaseless radical change would not provide this basis as the customs and traditions will not be able to be established and the link between generations will be broken. Therefore, constitutions ought to be improved incrementally and seek to retain the integrity of the inherited constitution. Moreover, conservatives have argued that to make sweeping changes is to step into the unknown, which may have unintended consequences or as Burke wrote in *Reflections* that the 'very plausible schemes, with very pleasing commencements, have often shameful and lamentable conclusions'.⁴²⁹ Conservatives have been using Burke's arguments ever since he made them.

Moreover, 'balance, after all, cannot be attained in a generation; there is no mechanical secret which will give it; it is the product of time and nothing but time'.⁴³⁰ Therefore, conservatives have argued that a constitution cannot be 'made' by one generation and then be 'remade' by another. This is because the constitution is not only a set of institutional arrangements, but also a cultural artefact that develops from the national spirit. Constitutions, according to this view, express a country's culture, its customs, and its values *as well as* being a system of government. Therefore, a constitution is not a just body of rules, but these rules must be interpreted, and this interpretation should align with custom, habit, convention, and precedent. These interpretations are the background which illustrates certain 'style' of constitutional practice which is undertaken in a particular country.⁴³¹ Social life, according to conservatives, can be seen in the

⁴²⁶ Burke, *Reflections*, p.191.

⁴²⁷ Ibid, p. 191.

⁴²⁸ Ibid, p. 191.

⁴²⁹ Ibid, p. 35.

⁴³⁰ Jones, A., *The Pendulum of Politics* (London: Faber, 1946), pp.160-161.

⁴³¹ Scruton, *The Meaning of Conservatism*. p.30.

customs, traditions and conventions of a country and also in the country's constitutional practices, rituals and buildings.⁴³² Consequently, conservatives believe that social habits and manners must and ought to determine the course of constitutional change and that social life and constitutional forms should exist in harmony and that the constitution evolves overtime, and this should express how the people of a country view themselves as a society. Mawhinney captured these arguments in a pamphlet for the *Conservative Political Centre* writing that:

Conservative opposition to radical constitutional reform is not an arcane attachment to the archaic. It is recognition that the experience of generations, the accumulation of wisdom and practice over centuries, provide a better and safer way of safeguarding liberty than the trendy theories and instant modern solutions of lawyers, academics or even, dare I say it, politicians. Our constitution has continued to evolve as the nation has developed.⁴³³

Wisdom of Generations: Tradition and Custom

Burke argued that that there is a practical wisdom in institutions that is mostly not articulable theoretically, and certainly not in advance, but is passed down in culture and tradition. Hazony argued that written documents can express and consolidate the constitutional traditions of a country, but they can neither capture nor define the political tradition in its entirety.⁴³⁴ Kirk, writing about the United States of America, in *Rights and Duties: Reflections on Our Conservative Constitution* captured this idea when he wrote that:

no matter how admirable a constitution may look upon paper, it will be ineffectual unless the unwritten constitution, the web of custom and convention, affirms an enduring moral order of obligation and personal responsibility.⁴³⁵

Kirk adds that there is a 'complex interplay between written and unwritten norms'.⁴³⁶ Burke thought that the infinitely greater part of a constitution must depend upon the exercise of the powers that are left out of written documents and left to the prudence and uprightness of the

⁴³² For a work that puts a strong emphasis on tradition see Hörcher, F., *A Political Philosophy of Conservatism: Prudence, Moderation and Tradition* (London: Bloomsbury Academic, 2020).

⁴³³ Mawhinney, B., *Safeguarding our Constitution* (London: Conservative Political Centre, 1996), p.5.

⁴³⁴ Hazony, Y. (2019) 'Conservative Democracy', *First Things*. Available at: <https://www.firstthings.com/article/2019/01/conservative-democracy>

⁴³⁵ Kirk, R., *Rights and Duties: Reflections on Our Conservative Constitution* (Spence Publishing Company, 1997), p. 260.

⁴³⁶ *Ibid.* p. 260.

ministers of state.⁴³⁷ Furthermore, he argued without ‘this temper, without these habits and customs, the commonwealth is no better than a scheme upon paper; and not a living, active, effective constitution’.⁴³⁸ This idea is reiterated in Margaret Thatcher’s book *Statecraft: Strategies for a Changing World*, when she wrote that ‘Constitutions have to be written on hearts, not just paper’.⁴³⁹ Lord Salisbury believed that a ‘constitution depends upon the character of the people.’⁴⁴⁰ Thus, the view that a constitution must and should take into account the customs and traditions of a particular society. Moreover, only by working within the grain of social and political development can the constitution become a living reality. This living reality is acquired through traditions handed down over many generations. The institution of Monarchy can and has played such a role, which is steeped in the traditions and customs of the country. Nevertheless, finding the appropriate ‘customs and conventions’ that guide constitutional decision making, however, is not an easy task, particularly for a conservative theorist, whose thinking is particularly contingent upon them. This is because conservatives put great stock in tradition and see it as a store of knowledge and a link between the generations. Oakeshott suggested that existing traditions of behaviour are themselves a principal index of concrete behavioural values which are a product of wisdom and experience.⁴⁴¹ Numerous authors have argued that traditions transmit practical knowledge or wisdom.⁴⁴² Kirk argued that conservatism proceeds via the tried and tested, relying not on pure reason, but on what Burke called the ‘latent wisdom’ of prejudice (meaning prejudgement), instinct and custom, which accumulates across generations.⁴⁴³ Burke wrote about prejudices that:

We are generally men of untaught feelings [...] instead of casting away all our old prejudices, we cherish them to a very considerable degree, and to take more shame to

⁴³⁷ Burke, *Reflections*.

⁴³⁸ *Ibid.* p.74.

⁴³⁹ Thatcher, M., *Statecraft: Strategies for a Changing World* (London: HarperCollins, 2002). p. 12.

⁴⁴⁰ Speech in the Free Trade Hall, Manchester (16 April 1884), quoted in *The Times* (17 April 1884), p. 6.

⁴⁴¹ Oakeshott, *Rationalism*.

⁴⁴² See: Burke *Reflections*; Garry, *Conservatism Redefined*, pp. 35-39; Nisbet, *Conservatism: Dream and Reality*, pp. 29-34; O’Hara, *Conservatism*, pp. 25-28; Quinton, *Politics of Imperfection*, pp. 56-61; Hayek, F.A., *The Fatal Conceit: The Errors of Socialism*, W.W. Bartley III (ed)

The Collected Works of F. A. Hayek: Volume I. (Chicago: University of Chicago Press, 1988); Hayek, F.A., *Law, Legislation and Liberty: A Statement of the Liberal Principles of Justice and Political Economy* (Routledge Classics. London and New York, 2013). pp. 488-490; Nyíri, J. C., Tradition and Practical Knowledge. In J. C. Nyíri & B. Smith, eds., 1988. *Practical Knowledge: Outlines of a Theory of Tradition and Skills* (London: Croom Helm, 1988) pp. 17-52; Oakeshott, *Rationalism*, pp. 12-17; O’Hear, *Conservatism*, pp.109-111; Scruton, R., *How to be a Conservative* (London: Bloomsbury, 2014), pp. 21-22; Viereck, P., *Conservatism Revisited* (New York: The Free Press, 1962) pp. 31-37.

⁴⁴³ Kirk, *The Conservative Mind*.

ourselves, we cherish them because they are prejudices; and the longer they have lasted, and the more generally they have prevailed, the more we cherish them.⁴⁴⁴

For Kirk ‘prejudice is not bigotry or superstition’, though it may degenerate into these, however, it is pre-judgment based on the knowledge of tradition and custom.⁴⁴⁵ Tradition, according to Kirk, along with intuition and ‘ancestral consensus of opinion’ supplies the individual with an answer when that individual lacks either time or knowledge to arrive at a decision predicated upon pure reason.⁴⁴⁶ Indeed, tradition ‘engages the mind in a steady course of wisdom and virtue’, and does not leave the individual ‘sceptical, puzzled and unresolved’.⁴⁴⁷ Quinton argued that:

political knowledge [...] is collective and historical, to be found, above all, in institutions which have survived for a long time, modified to fit the changing circumstances of those who live under them by innumerable concrete and detailed adjustments.⁴⁴⁸

This type of knowledge is required for the ‘successful management of human affairs’ is to be found ‘in the historically accumulated experience of the community as a whole. Because it is embodied in the deposit of traditional customs and institutions that have survived and become established,⁴⁴⁹ as they incorporate ‘the accumulated practical wisdom of the community’.⁴⁵⁰ Relatedly, Scruton argues that traditions are ‘answers that have been discovered to enduring questions’ and these answers are not explicit but are ‘tacit, shared, embodied in social practices and inarticulate expectations’.⁴⁵¹ A powerful expression of the Conservative reverence for tradition was made by Disraeli in a *Vindication of the English Constitution*. Disraeli demonstrated how respect for convention, precedent and prescription informed the conservative view of British constitution including the attachment to the English common law.⁴⁵² According to Pocock, the English common law notion of precedent, developed by Edward Coke (1552–1634), is a clear influence of self-conscious Conservatism.⁴⁵³ This is

⁴⁴⁴ Burke, *Reflections*, p.183.

⁴⁴⁵ Kirk, *The Conservative Mind*, p.34.

⁴⁴⁶ *Ibid*, p.54.

⁴⁴⁷ Burke, *Reflections*, p.183.

⁴⁴⁸ Quinton, *Politics of Imperfection*, p. 60.

⁴⁴⁹ *Ibid*, pp. 16-17.

⁴⁵⁰ *Ibid*, p. 16.

⁴⁵¹ Scruton, *Conservative Ideas in Profile*. p. 28.

⁴⁵² Disraeli, B., *A Vindication of the English Constitution* (1835), pp. 45-9.

⁴⁵³ Pocock, *Burke and the Ancient Constitution*.

because the English common law provides the sense of promoting gradual organic change over time in accordance with the past via precedents. According to Pocock, conservatives view custom as immemorial but not thereby static. Custom is not static because its ‘constantly being subjected to the test of experience’⁴⁵⁴ and constitutions can be reformed in line with this new experience. This means that conservatives have not viewed constitutions as static entities, they have instead seen them as a culmination of knowledge that has been built-up over generations of precedents, such as in case law, statute law and conventions. According to Scruton, Blackstone in his *Commentaries on the Laws of England* set out the traditional conservative defence of the English common law and the British constitution.⁴⁵⁵ He argued that the British constitution is a solution, which has been tested by time, to the problems of social conflict and the needs for orderly government.⁴⁵⁶

Trustee Model of Representation

Democracy has been conceptualised in different ways. For example, direct, deliberative, epistemic, and representative and within these conceptualisations have differing views on representation and the role of politicians. Hanna Pitkin offers one of the most comprehensive discussions of the concept of political representation in her work *The Concept of Representation*.⁴⁵⁷ In a previous section of this chapter the term ‘trusteeship’ was mentioned. Conservatives view their political representatives as someone who is in ‘trust’. The trustee model of representation is frequently contrasted with the delegate model of representation. Burke in 1774 made a distinction between representation and delegation thus: ‘a delegate merely mirrors and records the views of his constituents, whereas a representative is elected to judge according to his own conscience’.⁴⁵⁸ Burke’s view of representation, was that leaders were elected to lead, having regard to the needs of future generations, as well as those that have gone before, and not simply the demands of a transient majority. A passage from Burke’s renowned 1774 speech is worth quoting here:

...his unbiased opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living. ... Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if

⁴⁵⁴ Pocock, *Burke and the Ancient Constitution*, p. 213.

⁴⁵⁵ Scruton, *The Meaning of Conservatism*.

⁴⁵⁶ Blackstone, *Commentaries*.

⁴⁵⁷ Pitkin, H., *The Concept of Representation* (Los Angeles: University of Press, 1967).

⁴⁵⁸ As cited in Scruton, R., *Palgrave Macmillan dictionary of political thought. 3rd Edition* (London: Palgrave Macmillan, 2007), p.591.

he sacrifices it to your opinion’...You choose a member, indeed; but when you have chosen him, he is not member of Bristol, but he is a member of Parliament.⁴⁵⁹

The trustee model of representation is, therefore, usually the model that Conservatives have argued for and how they understand their role as political representatives. In this trustee model the constituents elect their representatives as trustees for their constituency. These trustees should have sufficient autonomy to deliberate, think and act in favour of the greater and common good and the national interest as the representative sees it, even if this means going against the short-term interests of their own constituencies.⁴⁶⁰ Nevertheless, this may be rather difficult in practice as modern politicians desire to be re-elected and going against the desire of the majority of their constituents may lead to the politician not being re-elected. Yet, conservatives still hold the trusteeship model as the standard to follow. Essentially, a conservative view is the ‘trustees’ (the politicians) consider an issue and, after hearing all sides of the debate, exercises their own judgment in making that decision about what should be done. In other words, politicians or trustees should take counsel or advise but the decision is theirs to take as well as the consequences of the decision. Subsequently, conservatives have been sceptical of *direct* democracy as well as other forms of democracy.⁴⁶¹ Devices of direct democracy, such as referendums, may mean passing the decision making to individuals who may not have the knowledge or time to make an informed decision that may affect the whole of the political community. Relatedly, the decisions could be made by individuals who ‘are almost wholly lacking in the virtues of statesmanship’,⁴⁶² which is seen as problematic.

Feiling in his book *Toryism: a Political Dialogue* articulates this view through his main protagonists Edward Franklin and Lord John Ellingham MP. Ellingham says, ‘there are good men, I believe, who think that the Referendum might give us stability’.⁴⁶³ Franklin responds to Ellingham with a characteristically conservative response:

perhaps I am a bad man, but I cannot share their belief, partly because it is impossible to draw up a list of subjects on which it is proper to consult the people, but mainly

⁴⁵⁹ As cited in p.224 Stanlis, P., *Edmund Burke, Essential Works and Speeches* (London: Taylor & Francis, 2017).

⁴⁶⁰ In a conversation with Edwina Curry, she quoted this passage to the author when discussing her role in the egg production and salmonella debacle in the late 1980s.

⁴⁶¹ Douglas Carswell is a prime example where this is not the case as he is a supporter of direct democracy.

⁴⁶² Garnett, *Conservatism*, in *Political Ideologies*, p. 72.

⁴⁶³ Feiling, K., *Toryism: A Political Dialogue* (London: Forgotten Books, 2018), pp. 56-62.

because the Referendum seems to me a cheap way of shirking the responsibilities of government: it makes what should be an act of government an opinion of the electorate'.⁴⁶⁴

Moreover, according to Feiling, conservatives believe that political questions are *complex* and the referendum as a tool is too *simplistic*. Once again returning to the dialogue between Franklin and Ellingham, 'the electors are asked to say yes or no on a particular subject, when probably neither yes nor no, but something between the two, is right'.⁴⁶⁵ Consequently, conservatives have argued that Parliament has the ability to deal with *multifaced* and *complex* questions rather than boiling a question down into a binary choice. Relatedly, democratic choice, it has been argued, must take place in the context of institutions and procedures, and these must provide a voice for absent generations. These institutions and procedures should urge upon the representatives an attitude of trusteeship whereby the immediate demands of the present generations are moderated or redirected towards the interests of the long-term future of society.⁴⁶⁶ Consequently, these decisions should go through parliamentary institutions and deliberation, whereby the interests of the governed are represented to those who govern them.

The Conservative Mind in Practice

Conservatism of the mind leads to a conservatism in practice. The aforementioned principles of constitutional conservatism can provide a loose intellectual framework to aid the policy maker or politician.⁴⁶⁷ It is not a Google Map; that is, once you type in your destination and your location it automatically pinpointed you then on the right track e.g., turn right onto Beaconsfield Street and walk straight for half a mile and then turn left onto Stanley Road and on your right is a perfect conservative constitution. Rather, it is more of a lightly sketched territorial map with *some* of the rivers, bogs, pathways, and bridges located upon it. The proprietor of this 'territorial map' will have to make decisions about the best way forward and when and how to reform. These decisions will have to be embedded in the particulars of the day and considerations of the constitutional weather. For example, the rivers are liable to flood, and the bogs will change with the season. The conservative reformer will need to know when to avoid constitutional bogs and when new bridges will need to be built or old bridges require

⁴⁶⁴ Ibid, pp. 56-62.

⁴⁶⁵ Ibid, pp. 56-62.

⁴⁶⁶ Scruton, *The Meaning of Conservatism*.

⁴⁶⁷ For an interesting book on conservative thinking see Buck, P.W., *How Conservatives Think* (Harmondsworth: Penguin Books, 1975).

fixing. In other words, the conservative mind will have to think. This will require prudence as this brings to light latent tensions and dilemmas. Amery thought that the Conservative approach to the British constitution required a balance between both authority and consent.⁴⁶⁸ Andrew Gamble argued that Conservative politics is essentially the art of balancing the politics of support with the politics of power.⁴⁶⁹ Any balancing act can lead to tensions and getting bogged down into the detail of one fashionable constitutional reform that can mean that the bigger constitutional picture is overlooked and the impact of the reform on differing parts of the constitution can be neglected.

From the principles articulated and elucidated above it is proposed that a compass can be created from them. This could provide the constitutional conservative with a device to assist them in constitutional reform. Moreover, it will answer what Disraeli in his book *Coningsby* posited as ‘the awkward question’; that is, ‘what will you conserve?’. The answer to the question is the seven conservative constitutional goods. As I have argued, the aforementioned philosophical principles can lead to conservative constitutional ‘goods’. In other words, these are goods that conservatives in the context of the United Kingdom would like to conserve and enhance but also to repair if that is required. The proposed seven conservative constitutional goods are:

- (1) Strengthening and deepening of the Westminster system
- (2) Increasing efficiency and conserving the dignified elements
- (3) Change conducted within the grain of the constitution
- (4) Upholding the rule of law
- (5) Strengthening the Union
- (6) Conserving the uncodified nature of constitution
- (7) Defending the checks and balances within the bicameral nature of Parliament

These seven conservative constitutional goods will be utilised to analyse the Conservative Party’s constitutional policies and positions and therefore answering the research questions that were set out in the methods section in the previous chapter. However, before moving onto the analysis a brief justification of the conservative constitutional goods is required. These goods

⁴⁶⁸ Amery, *Thoughts on the Constitution*.

⁴⁶⁹ Gamble, A., *The Conservative Nation* (London: Routledge & Kegan Paul, 1974).

are reinforcing. For example, ‘change conducted within the grain of the constitution’ will reinforce the ‘strengthening and deepening the Westminster system’ as radical changes away from the Westminster system would alter the substantial character of the British constitutional balance and thus change would not be within the grain of the constitution. Each good shall now be briefly justified in turn.

Strengthening and Deepening the Westminster System

The Westminster system is ‘at centre of the UK’s stable constitutional polity’.⁴⁷⁰ The 1997 Conservative Party Manifesto argued that radical change ‘could unravel what generations of our predecessors have created’,⁴⁷¹ change is process of evolution, not revolution. This means that the British constitution should be stable but not static. What matters is to preserve the coherence of the whole (Westminster system), not to solidify it in any one permanent shape. Therefore, changes should take place within that framework and these conservative constitutional goods both embrace consistency and adaptation. That is, adaptation that is borne out by practice that strengthens the Westminster system rather than weakens it.

Increasing Efficiency and Conserving the Dignified Elements

Dr Johnson thought that a Tory was a person who had an instinctive reverence for what was established, a respect for government and the Crown, a loyalty towards the Church of England, a prejudice in favour of the landed interest.⁴⁷² British Conservatives have historically argued for some form of intertwining of church and state⁴⁷³ and for conservation of the Church of England’s (CofE) Archbishops and Bishops in the House of Lords. Bagehot, in *The English Constitution* suggested that a constitution requires two parts that is the ‘dignified’ and the ‘efficient’.⁴⁷⁴ The ‘dignified’ is to ‘excite and preserve the reverence of the population’ and the ‘efficient’ to ‘employ that homage in the work of government’.⁴⁷⁵ The Monarchy is also part of dignified elements of the constitution and ought to be conserved. According to Sir Arthur

⁴⁷⁰ Norton, P., (2012) Speaking for the People: A Conservative Narrative of Democracy, *Policy Studies* (33)2, pp. 121-132, p.125.

⁴⁷¹ Conservative Party, *You can only be sure with the Conservatives* (London: Conservative Party, 2005).

⁴⁷² Clark, J.C.D., *Samuel Johnson: Literature, Religion and English Cultural Politics from the Restoration to Romanticism* (Cambridge: Cambridge University Press, 1994).

⁴⁷³ For two famous examples, see Benjamin Disraeli’s speech in Manchester 3rd of April 1872, which provides the most detailed statement of his view of the Anglican Church; also see Keibel (ed.) *Speeches of the Earl of Beaconsfield* (2vols 1882) pp 502-5; and Coleridge, S.T., (1830) *On the Constitution of Church and State*, (ed) Colmer, J. (Princeton: Princeton University Press, 1976).

⁴⁷⁴ Bagehot, *The English Constitution*. p.5.

⁴⁷⁵ *Ibid.*, p.5.

Bryant people ‘earnestly desire’ continuity, a ‘rallying point’ and a figure head for loyalty and the Monarch provides these.⁴⁷⁶ The Monarchy and CofE emanate continuity and because of this continuity traditions have wrapped themselves around them. Thus, these dignified elements of the constitution in relation to reform ought to be treated differently in terms of efficiency rather than, for example, the reform of the committee stage in the House of Commons or the efficiency of the cabinet. Efficiency in this case means productive efficiency in relation to turning inputs via throughputs into outputs. In other words, the two parts of the constitution ought to be treated differently conceptually in relation to reform according to the conservative view of the constitution.

Change Conducted within the Grain of the Constitution

Another conservative constitutional good that is proposed is change conducted within the grain of the constitution. Sidney Low states in relation to the constitution ‘We are not concerned with a solid building, to which a room may be added here, or a wing there; but with a living organism, in a condition of perpetual growth and change, of development and decay’.⁴⁷⁷ Gee and Webber state that ‘conservatism—and especially a conservative disposition—is poorly understood within constitutional thought’.⁴⁷⁸ Gee and Webber, nevertheless, do not agree with Johnson’s argument about Burkean Conservatives (they use the term ‘conservative disposition’) cannot cope with constitutional change and they argue that ‘it is difficult to craft an account of deliberate change this is not to refute a conservative disposition, but to affirm its central arguments’.⁴⁷⁹ Further noting that ‘only limited guidance can ever be offered about when change is justified’ and ‘sound assessments of the case for change must instead be concrete and corrective’.⁴⁸⁰ Munce and Flinders both draw heavily on Johnson’s claim that Burkean Conservatives are not in the position to be a protagonist for constitutional change. Nevertheless, I argue that Burkean Conservatives, of course, could claim that Johnson, Munce and Flinders are mistaken. They could argue Burkean Conservatives can indeed be in favour of change. For example, the first principle would be to keep an eye on maintaining the tradition itself, which means change must be based on the materials within the tradition, that is based on trial and error. They could argue that if parts of the constitution do not work, one could correct this. This could mean that ‘change’ is restoration or fixing. The corrective should preserve the

⁴⁷⁶ Bryant, A., *The Spirit of Conservatism* (London: Methuen & Co. 1929), pp 66-69.

⁴⁷⁷ Low, *The Governance of England*, p.2.

⁴⁷⁸ Gee and Webber, *A Conservative Disposition and Constitutional Change*, p.527.

⁴⁷⁹ *Ibid.*, p.541.

⁴⁸⁰ *Ibid.*, p.541.

constitution as a whole and therefore preserving its identity whilst simultaneously honouring one's predecessors. Thus, Burkean Conservatives would argue that this is the basis for maintaining the constitution through time. In practice this would mean the tradition would be to maintain the Westminster system of government and the overall framework itself. The reform would be, therefore, to keep this going. The reforms, such as joining the EC/EU, it could be argued, was a trial and has been found to be an error and as a consequence Brexit. The Westminster system, it could be argued, worked before 1972 and therefore leaving the EU is a restoration of this system or a corrective. In other words, Burkean conservatism can accommodate change. Moreover, an indispensable contribution of this Burkean conservatism to the constitutional thought is that any purportedly discrete proposal for change should be considered in light of its implications for wider constitutional arrangements and these discrete changes may have knock-on consequences that cannot be predicted with confidence. However, in the previous section, it was made explicit that there is no abstract or *a priori* prescription that can be typed into Google Maps due to the nature of conservative thought. Nevertheless, conservative thought does lead to a type of change in practice. In the 1979 Conservative Party's manifesto, this type of change was clearly and succinctly stated: 'we want to work with the grain of human nature'.⁴⁸¹ The changes ought to be piecemeal and within the grain of the constitution and based on *proven* grievances, which are based on individual cases. In other words, based on actual proven deficiencies within the *practice* of the constitution rather than *theoretical* ones. It should not be surprising, therefore, that there is a difference of *emphasis* during different eras as the grievances and deficiencies shall be different in each era. This is also because Conservatives have argued that principles must be applied to current issues and when this is done it reveals a notable degree of diversity. Nevertheless, the *emphasis* may change with time but according to the conservative constitutional goods the substantive elements of policy principles ought not to change.

Upholding the rule of law

Various conservative thinkers or associated thinkers, such as in the classical liberal tradition have noted the importance of the rule of law.⁴⁸² As was previously articulated, Conservatives

⁴⁸¹ Conservative Party (1979) Conservative Party General Election Manifesto. [Online]. [Accessed 25 November 2021]. Available from: <http://www.conservativemanifesto.com/1979/1979-conservative-manifesto.shtml>

⁴⁸² See Livingston, D.W., (1995) On Hume's Conservatism, *Hume Studies*, (2)12, pp. 151-164; Scruton, *Meaning of Conservatism* especially the chapter Law and Liberty; On Oakeshott's understandings of the rule of law and authority, see Reynolds, N.B. 'Grounding the Rule of Law' (1989) *1 Ratio Juris* 2 and Friedman, R., 'Oakeshott on the Authority of Law' (1989) *1 Ratio Juris* 27.

have seen the English common law as embedding authority through its precedents and thus connecting the past, present and future generations as well as being adaptable to concrete circumstances. This provides an organic and natural underpinning to the constitution and ensures that it is not static. It progresses with society and the country at large and each generation adds to what has gone before through legal decisions. The established mode of government and its constitution has developed over many years and is grounded in an awareness of past precedents and decisions, according to the principled conservative view of the constitution this provides legitimacy. As Burke wrote:

The very idea of the fabrication of a new government, is enough to fill us with disgust and horror. We...wish, to derive all we possess as an inheritance from our forefathers...All the reformations we have hitherto made, have proceeded upon the principle of reference to antiquity; and I hope...that all those which possibly may be made hereafter, will be carefully formed upon analogical precedent, authority and example.⁴⁸³

Moreover, the rule of law provides a bulwark against an over-mighty state. In relation to the principle of scepticism this means that conservatives look to institutions with *epistemic authority*⁴⁸⁴ and *epistemic power*. These means that institutions overtime come to the right answer to the challenges it was established to solve, and conservatives have seen the law as having these qualities. For instance, Hayek argued for the common law utilising an epistemic perspective.⁴⁸⁵ Loughlin in *Public Law and Political Theory*, refers to ‘conservative normativism’, it is associated with ‘such ideas as sovereignty, the universal rule of law, and a conception of the rule of law which places the judiciary beyond reproach’.⁴⁸⁶ Not upholding the rule of law, according to conservatives, has the potential to harm future generations.

Strengthening the Union

The strengthening of the Union is a conservative constitutional good and should remain constant but it can be argued that *how* this is done may change when it is couched in terms of contemporary political decision making and policy formation (more on this dilemma in chapter four). Despite this there ought to be constituted continuity in a conservative constitutional good.

⁴⁸³ Burke, *Reflections*, p.117.

⁴⁸⁴ For a discussion on epistemic authority and an epistemic view of Conservatism see Marquez, *An Epistemic Argument for Conservatism*.

⁴⁸⁵ Hayek, *The Constitution of Liberty*.

⁴⁸⁶ Loughlin, M., *Public Law and Political Theory* (Oxford: Clarendon Press, 1992), pp. 184-190.

According to Grant, there are two means of securing continuity. One, is tradition, which is informal and spontaneous. The other is the State, which is formal and artificial.⁴⁸⁷ Grant argues that ‘Conservatives think of the State (or at least of any state deserving of allegiance) as the guardian of culture, society and all the “natural” affections and allegiances of which those are composed’.⁴⁸⁸ Additionally, the guardianship of the constitution should be added to Grant’s list.

Conserving the Uncodified Nature of Constitution

Britain is distinctive but not unique in having an uncodified constitution.⁴⁸⁹ The conservative sees this as a *strength* of Britain’s constitution, and it ought to be conserved and reinforced rather than viewed as a weakness to be addressed. Conserving the uncodified nature of the constitution also has a reinforcing relationship with change being conducted within the grain of the constitution. For instance, if a system of government including its constitution has worked for a long time, there is, according to the conservative constitutional goods, a presumption in favour of that system or constitution against any other. Put another way and in a form of a question: if it is not broken why try and fix it? Consequently, a codified constitution for the United Kingdom would run contrary to the one of the conservative constitutional goods. According to the outlined conservative principles and the goods that flow from them, a codified constitution would be seen as too restrictive with a lack of movement and flexibility. Codifying the constitution also has the danger of losing the knowledge and experience that has been woven into it over time. Consequently, conservatives believe, as a result of this type of thinking, that they should reject ‘mechanical secrets’ such as codified constitutions⁴⁹⁰ as they do not derive from artificial or time-bound contraptions.

Defending the Checks and Balances within the Bicameral Nature of Parliament

According to Norton, conservatives think that there needs to be ‘some checks and balances in the system not only to limit an overly powerful government but also to constrain an overly powerful majority’.⁴⁹¹ This is due to the recognition ‘that no one body can exercise total control’.⁴⁹² This, of course, does not mean that checks are impediments to government getting

⁴⁸⁷ Grant, R. (1992) The Politics of Equilibrium, *Inquiry*, 35.3–4, pp 423–46.

⁴⁸⁸ *Ibid.* pp. 439-440.

⁴⁸⁹ Norton, *The Constitution in Flux*.

⁴⁹⁰ Norton, *Speaking for the people*, p.125.

⁴⁹¹ *Ibid.*, p. 122.

⁴⁹² *Ibid.*, p. 122.

its business done. According, to Norton, conservatives follow the ‘dictum that the Queen’s government must be carried on’,⁴⁹³ but also there is a requirement for the complex vectors and interests⁴⁹⁴ within society to be articulated within parliament. Parliaments should have checks and balances to mitigate what Mill referred to as the ‘tyranny of the majority’.⁴⁹⁵ Burkean conservatives would expand the definition of ‘minority’ to also include the dead, the living and the unborn as G.K. Chesterton noted:

Tradition means giving votes to the most obscure of all classes, our ancestors. It is the democracy of the dead. Tradition refuses to submit to the small and arrogant oligarchy of those who merely happen to be walking about.⁴⁹⁶

In the next chapters of this thesis, the policies and positions of the Conservative Party in relation to the Union, the European Question and Human Rights and the Courts will be analysed utilising the Hollowing-out of the State thesis as an organising framework for the chapters.

⁴⁹³ Ibid., p. 124.

⁴⁹⁴ Scruton, *The Meaning of Conservatism*, p. 53.

⁴⁹⁵ Mill, J.S., *On Liberty, Utilitarianism and Other Essays* (Oxford: Oxford University Press, 2015), p.58.

⁴⁹⁶ Chesterton, G.K., *Orthodoxy* (London: Sanage Publishing House, 2021), p.43.

Steppingstone to Separation: Devolution and the Precious Union

‘[C]ollective faith in our democratic institutions and our justice system has declined in the past two decades. It is the purpose of this Conservative Party, in responding to the historic vote on our membership of the European Union, to re-establish faith in our democracy, and in our democratic and legal institutions.’⁴⁹⁷

Gamble in 1995 identified the Union as one of the four core pillars of Conservative Party’s hegemony in the twentieth century.⁴⁹⁸ The other three pillars that Gamble identified were the British Empire, property and the constitution. Of course, the Union is a constitutional issue, and the British Empire has constitutional implications too. For example, the relationship between the colonies and the UK Parliament and the Crown and the Act of Statute of Westminster in 1931, is a good example of this.⁴⁹⁹ Moreover, Gamble argued that the defence of the Union has been a key feature of the Conservative Party’s identity and electoral appeal. Nevertheless, according to Gamble by 1995 conservatism was in ‘crisis’ because these core pillars had been undermined.⁵⁰⁰ The focus of the next three chapters shall be on three core constitutional areas that relate to the Union. These are: (1) devolution/home rule, (2) Britain’s constitutional relationship with the European Union (EU); and (3) the role of the courts and human rights. To tie these together into a logical bundle the next few chapters will be structured around the ‘hollowing out’ of the state thesis.⁵⁰¹ This thesis argues that the power in the British State has become more dispersed and diffused and as a consequence the State has been ‘hollowed’ out. This hollowing out process has not been in one direction or in one particular form. The process has had three key prongs and has taken place in three differing directions. These are: ‘upwards’, ‘downwards’ and ‘sideways’. The ‘upwards’ direction was towards the European Union and other international bodies, such as United Nations. The ‘downwards’ direction is through devolution (Home Rule)⁵⁰² within the United Kingdom, such as Northern Ireland, Scotland, Wales and to *certain* city regions within England. Moreover, the British State, according to this thesis, has also been hollowed out ‘sideways’. In other words, policy

⁴⁹⁷ Conservative Party, *Forward Together: Our Plan for a Stronger Britain and a Prosperous Future* (London: Conservative Party, 2017), p. 42.

⁴⁹⁸ Gamble, A. (1995) The Crisis of Conservatism, *New Left Review*, 214: 3-25. pp. 13-16.

⁴⁹⁹ Statute of Westminster 1931. (c4.). London

⁵⁰⁰ Gamble, *Crisis of Conservatism*, p.13.

⁵⁰¹ See Rhodes, R. A. W. 1994 ‘The hollowing out of the state’. *Political Quarterly* 65: 138–151; Rhodes, R. A. W., *Understanding Governance* (Maidenhead: Open University Press, 1997), pp. 17-18; and Rhodes, R. A. W., ‘Understanding Governance: Ten Years On’, *Organization Studies*, 28.8 (2007), 1243–64.

⁵⁰² In the past Home Rule was the term utilised, especially in relation to Ireland but not exclusively.

making has shifted from political institutions to the courts. The courts, therefore, have become an important part of British political life. According to Norton, the court is an important actor within the political sphere as they can determine whether UK law is in conflict or not with the European Convention on Human Rights.⁵⁰³ Accordingly, the policy-making power that was concentrated in the core executive at the centre of a unitary United Kingdom has been diminished as the policy-making power is now dispersed between national, sub-national and supranational bodies. Arguably, the hollowing out of the State provides a challenge to the Westminster system of government. *Prima Facie* the hollowing out of that State is a threat to the Westminster system of government (strengthen and deepening this system is one of the seven conservative constitutional goods,) the Conservative Party should have had a policy platform to either prevent the introduction of such policies or reverse the process. The aim of the next three chapters is to investigate the Conservative Party's policies and positions in relation to these hollowing out trends. This chapter shall investigate the downwards trend; that is, Home Rule and devolution, and the next chapter shall be on the European Question (upwards) and the subsequent chapter shall focus on the role of the courts and Human Rights (sideways).

The Precious Union

Sir John Major in his speech for the *Ditchley Annual Lecture* in 2011 noted his opposition to devolution as he believed it would be a 'stepping stone to Separation'.⁵⁰⁴ He believed that the 'danger still exists' and he opposed devolution because he is a Unionist. His immediate predecessor Margaret Thatcher also had grave concerns about the impact of devolution in the United Kingdom and how it could undermine the Union.⁵⁰⁵ David Cameron in a speech in Edinburgh called *Stronger Together* stated that the Conservatives are 'a party of the Union and as long as I lead it that is how it will stay'.⁵⁰⁶ Moreover, he declared that it was his duty 'to nurture and support the Union' and this was despite the Conservatives 'standing in any of the Union's constituent parts'.⁵⁰⁷ Indeed, Cameron's manifesto was very clear stating that 'Our

⁵⁰³ Norton, P. (2018) The Prime Minister and the Cabinet in (eds) Jones, B., Norton, P. and Daddow, O. *UK Politics*, Ninth Edition (Abington: Routledge.), p. 455.

⁵⁰⁴ Major, J. (2011) *Sir John Major's Ditchley Annual Lecture speech*. 9 July, Ditchley Park, Oxfordshire.

⁵⁰⁵ See the Conservative Political Centre report from the National Policy Group on the Constitution called *Strengthen the United Kingdom* for their view. Conservative Party Archive: PUB 183/39.

⁵⁰⁶ Cameron, D., 2007 *Stronger Together*, [Online] 10 December, Edinburgh [11 November 2020]. Available from: <https://conservativehome.com/2007/12/10/highlights-of-d-3/>

⁵⁰⁷ Ibid.

commitment to the Union means we want to strengthen it.’⁵⁰⁸ Nevertheless, The 2017 Conservative Party manifesto noted that ‘The settlement governing these islands has changed profoundly in the last twenty years.’⁵⁰⁹ David Willetts wrote that the conservative commitment to the ‘integrity of the United Kingdom’ will recognise ‘that ultimately the issues involved here are far more than economic’.⁵¹⁰ Danny Kruger said that ‘devolution is extremely inadequate’ and ‘none of the four countries of the UK have a very satisfactory relationship with the UK state’.⁵¹¹ Moreover, he thought that we ‘are in a constitutional crisis, whether we like it or not, and we’ve got to come up with a vision or at least the process.’⁵¹² An ex-Conservative MP and Cabinet Minister said, in an interview with the author, ‘that 30 to 40 years ago, scant few individuals, and not even myself, picked up on the forces that have led to devolutionary fracture in Scotland and to a lesser extent in Wales’.⁵¹³ The 7th Marquess of Salisbury remarked that nobody is happy with the current devolution settlement including the ‘minimalist’ or the ‘federalists’.⁵¹⁴ The constituent parts of the Union will now be analysed in relation to the party’s policies on them.

Home Rule: Ireland and Northern Ireland

In this section, I argue that the Conservative Party operated within the ‘opposition to Home Rule in Ireland’ paradigm until there was an official shift in Bonar Law’s manifesto in 1922 (which was foreshadowed in 1918 joint manifesto) when the new paradigm became the *defence of Northern Ireland with the Union* one. Additionally, within this ‘Bonar Law’ paradigm was the principle of consent of Northern Ireland’s *parliament*, I argue that from 1983 there was a shift in emphasis within the paradigm; that is, consent of the *people*⁵¹⁵ rather than the *Parliament* was required, and this has been in place ever since. Consequently, there has been a continuation of rhetoric and policy position on Ireland and when the reality changed to

⁵⁰⁸ Conservative Party, *Strong Leadership. A Clear Economic Plan. A Brighter, More Secure Future*. (London: Conservative Party, 2015). p.69.

⁵⁰⁹ Conservative Party, *Forward Together*. The core constitutional policies were presented in the manifesto called Home of Democracy and The Rule of Law as seen in Table 10. pp 42-45.

⁵¹⁰ Willetts, D. The Free Market and Civic Conservatism, in K. Minogue (ed.) *Conservative Realism: New Essays in Conservatism* (London: HarperCollins, 1996) pp. 80-97. p. 83.

⁵¹¹ Danny Kruger interview with the author.

⁵¹² Ibid.

⁵¹³ In an interview with the author.

⁵¹⁴ Lord Salisbury interview with the author.

⁵¹⁵ See Aughey, A., The Character of Ulster Unionism, in, Shirlow, P, and McGovern, M. (eds.), ‘Who are the People?’: *Unionism, Protestantism and Loyalism in Northern Ireland* (London: Pluto Press for analysis of the people, 1997).

Northern Ireland, there was a constitution rhetoric and policy position, and this had been in place for nearly a 100 years.

Ireland was to be, according to the Union with Ireland Act 1800, ‘united into one Kingdom, by the name of the United Kingdom of Great Britain and Ireland.’⁵¹⁶ The first thirty-one years of this Act are beyond the scope of this research and, according to Evans, before ‘1885 the sanctity of the legislative link between Britain and Ireland was not a matter of political debate.’⁵¹⁷ It became a subject of party-political debate between the Liberals and Conservatives when William Gladstone’s son announce that his father had converted to the cause of Irish Home Rule.⁵¹⁸

Since then, Home Rule for Ireland and then Northern Ireland has been a persistent constitutional question that the Conservative Party has had to address. Therefore, 1885 will be the main starting point for this section, but of course there was the Irish Question before 1885. Disraeli on Friday 16 February 1844 in the House of Commons wanted someone to come forward and say what the Irish Question was but then went onto described it thus:

One said it was a physical question; another, a spiritual. Now, it was the absence of the aristocracy; then the absence of railroads. It was the Pope one day; potatoes the next. Let them consider Ireland as they would any other country similarly situated, in their closets. Then they would see a teeming population, which with reference to the cultivated soil, was denser to the square mile than that of China; created solely by agriculture, with none of those sources of wealth which are developed with civilization; and sustained consequently upon the lowest conceivable diet, so that in case of failure they had no other means of subsistence upon which they could fall back. That dense population in extreme distress inhabited an island where there was an established church which was not their church; and a territorial aristocracy, the richest of whom lived in distant capitals. Thus they had a starving population, an absentee aristocracy, and an alien Church, and, in addition, the weakest executive in the world. That was the Irish question.⁵¹⁹

⁵¹⁶ Union with Ireland Act 1800. (c.67) London.

⁵¹⁷ Evans, S. (1998) The Conservatives and the Redefinition of Unionism, 1912–21, *Twentieth Century British History*, 9(1) 1–27. p.2.

⁵¹⁸ The announcement was made on the 17th of December 1885 by Herbert Gladstone. For analysis see Loughlin, J., *Gladstone, Home Rule and the Ulster Question: 1882-1893* (Dublin: Gill and Macmillan, 1986).

⁵¹⁹ HC Deb 16 February 1844, vol 72 c 1016.

Disraeli,⁵²⁰ when he was Prime Minister, was required to handle the Conservative Party's policy position on the Irish Question of Home Rule at the 1880 General Election.⁵²¹ Of course, there were other Irish related issues during 1885 and before. For Example, Robert Peel's⁵²² Maynooth grant (1845) and his defeat over Irish coercion in 1846. Ten years later, the Conservative Party gained a majority of seats in Ireland at the 1859 general election, when the Earl of Derby⁵²³ was leader, but this did not equate to a major in the whole country. The disestablishment of the Anglican Church of Ireland was the Liberals Party's 'prime rallying-cry at the 1868 election',⁵²⁴ and Gladstone, two years earlier in 1866, saw disestablishment of the Church in Ireland as 'a sovereign method for reuniting the fractured forces of Liberalism',⁵²⁵ which of course, the Conservative Party had to respond to. Relatedly, the Conservative Party saw the issue of the Anglican Church of Ireland in the context of the Union and argued that disestablishment not only threatened the Church of England, but perhaps the monarchy and the constitution as a constitution. An illustrative example of this position can be gleaned from Sir Richard Glass' election address as published in the *Berrow's Worcester Journal*. He wrote, the 'attempt to disestablish the Irish Branch of the Established Church as an inroad upon our Constitution...and as dangerous to the State'.⁵²⁶ Fellow Conservative candidate Walter Spencer Stanhope also makes the argument in his election address.⁵²⁷

Disraeli in his 1868 election address does mention constitutional issues. These are the Irish Church⁵²⁸ and the Second Reform Act (the Reform Acts are dealt with in chapter 7). In his 1874 election address, Disraeli mentions the Church of England and the extension of the Franchise. He also wrote enigmatically but referring to Ireland that 'while there are those who would relieve Parliament altogether from any share in the government of one portion of the United Kingdom'.⁵²⁹ In his 1880 letter (election address) he implicitly mentioned constitutional issues,

⁵²⁰ Conservative Party Leader from February 1868 to April 1881. See Shannon, R. *The Age of Disraeli 1868-1881* (London: Longman, 1992) and for a shorter version see Shannon, R., *Disraeli and Salisbury* (Conservative Political Centre, 1996). No. 867.

⁵²¹ See Hennessy, J.P., 'Lord Beaconsfield's Irish Policy' in *The Nineteenth Century*, October 1884, who wrote about Benjamin Disraeli's Irish policies.

⁵²² Sir Robert Peel was the Leader of the Conservatives from December 1834 to July 1846.

⁵²³ 14th Earl of Derby was the Leader of the Conservative Party from July 1846 to February 1868.

⁵²⁴ Parry, J. P. *The Rise and Fall of Liberal Government in Victorian Britain*, (London: Yale University Press, 1993). p.225.

⁵²⁵ Hoppen, T., *The Mid-Victorian Generation, 1846-1886*, (Oxford, Oxford University Press, 1998), p. 219.

⁵²⁶ Sir Richard Glass Election address, published in *Berrow's Worcester Journal*, 31 October 1868.

⁵²⁷ Walter Spencer Stanhope' election address, published in *Leeds Mercury*, 5 November 1868.

⁵²⁸ See Blake, *Conservative Party*, pp.110-111 for Disraeli's actions on this issue.

⁵²⁹ Benjamin Disraeli's election address published in *Daily News*, 26 January 1874.

but they were set in the wider Irish affairs. Disraeli did this by mentioning the Irish movement who were in favour of Home Rule. He wrote that ‘they perhaps now recognise in the disintegration of the United Kingdom a mode which will not only accomplish, but precipitate, their purpose.’⁵³⁰ The situation in 1880 was complicated as Disraeli had now been elevated to the House of Lords and the constitutional convention at the time met that he should only address the electorate indirectly. Therefore, his letter to the Lord Lieutenant of Ireland was taken as his election address and seen as the Conservative Party’s election manifesto. Relatedly, Sir Stafford Northcote’s, the Chancellor of the Exchequer and leader of the Conservative Party in House of Commons, election address was seen as a second official manifesto for the party. According to Warren, Disraeli in his letter ‘tried to place the question of “who governs Ireland” at centre stage’ in the election of 1880.⁵³¹ Moreover, Warren argues that Disraeli did outline a new Conservative politics for Ireland based on ‘the defence of the propertied basis of the constitution and the maintenance of the Union.’⁵³² The Conservatives’ position going into the 1880 general election was that of resistance to Home Rule.⁵³³

Moreover, Lord Salisbury⁵³⁴ had to deal with Home Rule for Ireland as Leader of the Opposition on the 8th of April 1886 the Liberal Government introduced a Home Rule bill which was the first of three by the Liberal Party. The first Home Rule Bill was defeated in the Commons by 343 votes to 313. This caused a split in the Liberal ranks as the Anti-Home Rule Liberals broke away and in 1912, they merged with the Conservatives to form the Conservative and Unionist Party. During this time ‘the Unionists’ was the nomenclature utilised.⁵³⁵ In February 1893, Gladstone introduced his second Home Rule Bill and this time it was rejected in the Lords.

Salisbury’s ‘khaki election’ (1900) ‘manifesto’ had no constitutional policies or positions and made no statements on constitutional issues. The focus was on providing the Unionist Government with a strong House of Commons majority as this would provide the Government

⁵³⁰ Letter from Lord Beaconsfield (Benjamin Disraeli) to the Duke of Marlborough, the Lord Lieutenant of Ireland, published in the *Bury Post*, 8 March 1880.

⁵³¹ Warren, A. (1999), Disraeli, the Conservatives, and the Government of Ireland: Part 1, 1837–1868. *Parliamentary History*, 18: 45-64. p. 45.

⁵³² Warren, Disraeli, *the Conservatives, and the Government of Ireland*, p.46.

⁵³³ Coleman, B. *Conservatism and the Conservative Party in the Nineteenth-Century Britain* (London, Edward Arnold, 1988).

⁵³⁴ 3rd Marquess of Salisbury, leader of the Conservative Party from June 1881 to July 1902. He shared the leadership of the party from 1881 to 1885 with Sir Stafford Northcote.

⁵³⁵ See Shannon, *Disraeli and Salisbury* and Shannon, R. *The Age of Salisbury 1881-1902: Unionism and Empire* (London: Longman, 1995) for works on Salisbury time as leader.

with the authority and the ability to deal with the ‘gravest questions’,⁵³⁶ which were not constitutional but were all foreign and imperial policy related. There were ‘The Imperial Power over the territories of the two South African Republics’, which according to Salisbury were ‘unwisely relinquished’, and the other was the ‘questions of Chinese policy.’⁵³⁷ Salisbury was not in favour of Home Rule, and he also believed the party would not accept it. During Salisbury’s leadership, especially after 1885, the party was explicitly and self-consciously the party of the Union. Salisbury electorally and ideologically placed the party as the one and only true Unionists. Perhaps to utilise a recent term the party adopted a ‘muscular’ Unionism. A prime example of ‘muscular’ Unionism was Lord Randolph Churchill. He remarked that ‘If the GOM [Gladstone] went for Home Rule, the Orange card would be the one to play.’⁵³⁸ Moreover, in a public letter, Churchill wrote that ‘Ulster will fight and Ulster will be right’.⁵³⁹ A sentiment that was echoed by Andrew Bonar Law some years later. Home Rule, according to the Conservatives, at his time was a recipe for damage. Not only to damage to the Union but also to the UK’s prestige and its ability to defend itself. In other words, it would damage Britain’s national interest and those in favour of Home Rule were cast as unpatriotic by the party. There was a prevailing fear of Home Rule in the Conservative Party during this period. According to Coleman, the Conservatives were ‘a professedly constitutional party’.⁵⁴⁰

In Arthur Balfour’s⁵⁴¹ 1906 Election Address, he emotively mentions some constitutional issues such as Home Rule, but these were very brief and were linked to other issues, it is worth quoting them here:

There are many things still obscure in the long catalogue of revolutionary changes advocated by the new Ministers, but some things are plain enough - Home Rule, disestablishment, the destruction of voluntary schools, and the spoliation of the license-holder have lost none of their ancient charm in the eyes of Radical law-makers, and to the troupe of old acquaintances is now added a procession of shadowy suggestions

⁵³⁶ Dale, I. (ed.) *Conservative Party General Election Manifestos, 1900-1997*, (London: Routledge, 2013). p.8.

⁵³⁷ *Ibid*, p.8.

⁵³⁸ See de Nie, M. (2008) “Ulster Will Fight? The British Press and Ulster, 1885–1886.” *New Hibernia Review / Iris Éireannach Nua*, (12) 3, pp. 18–38, see also Jennings, L (ed) *Speeches of the Right Honourable Lord Randolph Churchill, MP. 1880-1888, vol. II* (London: Longmans, Green and Co., 1889).

⁵³⁹ See Churchill, W. *Lord Randolph Churchill* (London: Odhams, 1952), pp. 221–24; and also see Foster, R. F. *Lord Randolph Churchill: A Political Life* (Oxford: Oxford University Press, 1981).

⁵⁴⁰ Coleman, *Conservatism and the Conservative Party*, p 203.

⁵⁴¹ Arthur Balfour was the Leader of the Conservative Party from July 1902 to November 1911.

respecting which we hardly yet know enough to say whether they are dangerous or merely useless.⁵⁴²

Moreover, Balfour also wrote that:

On one subject only does change, nay, even to hint of change, seem to them abhorrent. With a light heart the Radical leaders are prepared to destroy the Union, to uproot an ancient Church, to banish denominational religion, or even all religion, from the elementary schools.⁵⁴³

As can be seen, these are packaged with other policies and are not in depth or logically argued for and is therefore in line with the statement of principles or intent paradigm. Balfour's main priority, if returned to Government, is the 'reform of our fiscal system' not the constitutional issues.

Both of Balfour's election addresses in 1910 are more focused on constitutional issues and the January 1910 election addresses is *dominated* by constitutional issues. The main focus is on the House of Lords (which will be discussed in the chapter 7). The December 1910 election address was again much reduced. One interesting remark, and the only one on Home Rule in that election address by Balfour, was that: 'Behind the Single Chamber conspiracy lurk Socialism and Home Rule.' It was most certainly the case that if the Parliament Bill passed a Home Rule Bill would also be more likely to Receive Royal Assent and become law, which indeed was the case. H.H Asquith on the 11th of April 1912 introduced his Home Rule Bill which was the Liberal Party's Third Home Rule Bill. The Conservatives had a clear position throughout this period; that was opposition to Home Rule. The position taken aligns clearly with the fifth conservative constitutional good; that is, strengthening the Union or at the very least not weakening it. The Conservative Party's official position was in, what I have coined the 'opposition to Home Rule Ireland' paradigm.

Despite it being a joint manifesto between Lloyd George and Bonar Law it was explicit on its red lines in relation to Home Rule in Ireland. These were that Ireland should remain within the British Empire and Ulster should not be forced against its will to be government by a Home Rule Parliament.⁵⁴⁴ It had become clear by the 1922 manifesto, under the leadership of Bonar

⁵⁴² Dale, *Conservative Manifestos*. p.9.

⁵⁴³ Ibid, p.9.

⁵⁴⁴ See Stubbs J., (1990), 'The Unionists and Ireland 1914-1918', *The Historical Journal*, (33) 4 867-93 for an analysis of this time period.

Law that the Conservatives official position had shifted to the defence of Northern Ireland within the Union. This was a clear paradigm shift out of the ‘opposition to Home Rule Ireland’ paradigm to the ‘defend Northern Ireland within the Union’ paradigm or the ‘Bonar Law’ paradigm. As Bonar Law wrote:

Our first task, if returned to power, will be the ratification of the Irish Treaty. We are prepared to take our part in making good that Treaty, both in the letter and in the spirit, and to co-operate with the Irish Government in the new relationship within the Empire which the Treaty will have created. We are equally pledged to safeguard the freedom of choice and the security of the Parliament and Government of Northern Ireland.

Between these manifestos the Government of Ireland Act 1920 had passed, and the Act partitioned the island of Ireland.⁵⁴⁵ Home Rule was not mentioned in any of Stanley Baldwin’s election addresses.⁵⁴⁶ It was not until Winston Churchill’s second manifesto in 1950 called *This is the Road* that Northern Ireland was mentioned again; that is, 28 years later after Bonar Law’s manifesto paradigm shift to keeping Northern Ireland’s place within the Union rather than the whole of Ireland. Churchill’s 1951 manifesto does not mention Northern Ireland in relation to constitutional terms, but Anthony Eden’s 1955 manifesto called *United for Peace and Progress* is word for word the same as Churchill’s 1950 manifesto (this can be seen in Table 4) but it added, before going into the word for word section, that ‘We renew the pledge of faith to Northern Ireland’. Thus, reiterating the current policy position and embedding the paradigm shift.

Alec Douglas-Home’s 1964 manifesto restates what was called the ‘cardinal principle’ of the Conservative Party’s policy on Northern Ireland; that is, it ‘shall remain unchanged so long as that is the wish of the Parliament at Stormont’.⁵⁴⁷ Edward Heath manifesto in 1970 was also in line with these positions and statements marking 48 years of continuation of official policy statement; that is, that the choice of Parliament in Northern Ireland. Relatedly, the wording had changed very little to express the policy. For example, in the 1970 manifesto it was concisely put as ‘We reaffirm that no change will be made in the constitutional status of Northern Ireland without the free consent of the Parliament of Northern Ireland.’⁵⁴⁸ The formulation of words in

⁵⁴⁵ See Evans, *The Conservatives and the Redefinition of Unionism, 1912–1921*, for a discussion about Conservative Unionism in this period.

⁵⁴⁶ See Matthews, K., (2000) Stanley Baldwin’s “Irish Question”, *HJ*, (xliii) 1027–1049 for a discussion of Baldwin and Ireland.

⁵⁴⁷ Dale, *Conservative Manifestos*, p.160.

⁵⁴⁸ *Ibid*, p. 193.

the manifestos from 1922 to 1970 were based on the same principle of consent without the free consent or choice. This choice was one for Northern Ireland's *parliament*. Nevertheless, from the February 1974 manifesto the position became more complex. Preceding the publication of the 1974 manifesto there was a collapse in the relationship between the Conservative Party and the Ulster Unionists, who opposed the Sunningdale Agreement, which was signed in 1973.

Margaret Thatcher's 1979 manifesto stated that 'The public has rightly grown anxious about many constitutional matters'⁵⁴⁹ and its focus in terms of in Northern Ireland was establishing regional councils in the absence of devolved government. It is notable that Thatcher's manifesto in 1983 reverted to a simpler form of words to the manifestos from 1922 to 1970 stating that:

There will be no change in Northern Ireland's constitutional position in the United Kingdom without the consent of the majority of people there, and no devolution of powers without widespread support throughout the community,⁵⁵⁰

Despite the similarity of the wording there was a shift in emphasis; that is, it is now the *people* of Northern Ireland's consent rather than the *Parliament*, which rhetorically shifts the tool to a referendum rather than an election. Moreover, devolution was now conditioned on widespread support. There was also a statement about participation in local democracy and political progress through the Assembly, thus tying in the statement in Thatcher's 1979 manifesto. The Anglo-Irish Agreement (1985)⁵⁵¹ was cited positively in *The Next Move Forward* (1987) and stated that 'The British people have shown their commitment to the people of Northern Ireland in the common fight against terrorism'⁵⁵² and that '[w]e are determined that terrorism will not succeed; that the vital principles of democracy will be upheld.'⁵⁵³ The 1987 manifesto stated three times in a short section called *Northern Ireland* that the 'people' would determine its constitutional position within the United Kingdom and that the UK Government 'will continue to work within the Province for a devolved government in which both communities can have

⁵⁴⁹ Ibid, p. 276.

⁵⁵⁰ Conservative Party, *1983 Conservative Party General Election Manifesto* (London: Conservative Party, 1983).

⁵⁵¹ See Aughey, A., 'Unionism, Conservatism and the Anglo-Irish Agreement', in, Boyce, D. G. and O' Day, A. (eds.), *Defenders of the Union: A survey of British and Irish unionism since 1801*. London: Routledge, 2001). pp.295-315.

⁵⁵² See Hennessey, T., *Hunger Strike: Margaret Thatcher's Battle with the IRA 1980-1981*. (Glasgow: Bell & Bain Ltd, 2004) for the 'fight against terrorism'

⁵⁵³ Ibid.

confidence and will feel able to participate'.⁵⁵⁴ It also stated clearly that '[t]here will be no change in the present status of Northern Ireland as part of the United Kingdom unless the people of Northern Ireland so wish it'.⁵⁵⁵

According to Gamble 'under both Thatcher and Major the Conservatives have pursued a strategy of disengaging Britain from Northern Ireland'.⁵⁵⁶ In terms of the official position presented in the party's manifesto, under both Thatcher and Major, this is not born out. Again in 1992, this time in John Major's first manifesto as the Conservative Party leader it states the party's commitment to Northern Ireland remaining 'an integral part of the United Kingdom'⁵⁵⁷ based on the 'democratically expressed wishes of the majority of the people who live there' and that the 'Conservative candidates are standing in our name and in that cause'. The manifesto also states the aim 'to seek to re-establish stable institutions of Government in Northern Ireland.'⁵⁵⁸

Before Major's second manifesto, *You can only be sure with the Conservatives*, there was *The Downing Street Declaration*, in December 1993, the manifesto again states 'that the constitutional position of Northern Ireland cannot and will not be changed without the broad consent of the people of Northern Ireland.'⁵⁵⁹ In Opposition under the leadership of William Hague, David Lidington who was Hague's PPS believed that 'Northern Ireland was genuinely pretty bipartisan in William's time and afterwards.'⁵⁶⁰ The manifesto *Time for Common Sense* utilised very similar wording as to the other manifestos that:

The next Conservative Government will resolutely maintain Northern Ireland's position within the United Kingdom, in accordance with the democratically expressed wishes of the greater number of its people.⁵⁶¹

The Conservative Party's manifesto in 2005, under the leadership of Michael Howard, again stated the party position clearly; that is, 'supporting Northern Ireland's position within the United Kingdom' and it referred to the consent principle.⁵⁶² This was a new way of stating the

⁵⁵⁴ Dale, *Conservative Manifestos*, p.193.

⁵⁵⁵ Ibid, p.193.

⁵⁵⁶ Gamble, *The Crisis of Conservatism*, p. 15.

⁵⁵⁷ Dale, *Conservative Manifestos*, p.416.

⁵⁵⁸ Ibid, p. 416.

⁵⁵⁹ Ibid, p. 459.

⁵⁶⁰ David Lidington interview conducted on the 6th of April 2020.

⁵⁶¹ Conservatives, *Time for Common Sense*. p.46.

⁵⁶² Conservative Party, *Are You Thinking What We're Thinking?*, p.22.

position that been in the Conservatives manifestos since Bonar Law's 1922 manifesto. It was also expressed in the 1918 joint manifesto and the term *consent* was first used in Churchill's second manifesto in 1950, rather than 'against their will' or the 'freedom of choice'. Howard's manifesto committed the party to 'work for a comprehensive political settlement, based on the principles of the Belfast Agreement' and '[i]n the absence of devolved government, we will make direct rule more accountable'.⁵⁶³ Lidington, who was Shadow Secretary of State for Northern Ireland under the leadership of Howard and then Cameron, said:

Frist of all, when I was shadowing Northern Ireland devolution was in abeyance. We'd had the collapse of Stormont and I moved on just about or just after the St Andrews Agreement was put in place. So, what we had was all Stormont legislation coming through Westminster in the form of Orders in Council to be debated as SIs on the floor of the House in committee. I was aware of my approach to the responsibilities, I had a responsibility to while seeking to promote reconciliation and restart devolution but also to hold the Union's corner.⁵⁶⁴

It was stated in Cameron's 2010 manifesto that in 'Northern Ireland, we strongly support the political institutions established over the past decade and we are committed to making devolution work',⁵⁶⁵ and 'we will stop the practice of 'double-jobbing', whereby elected representatives sit in both Westminster and Stormont.'⁵⁶⁶ It did not explicitly mention the consent principle but in the 2015 manifesto it was back in the same formulation as had been hand down from one manifesto to the next. Theresa May's 2017 manifesto reiterated the 'essential principle' that Northern Ireland's future should be based on 'democracy and consent'. On devolution it stated:

Significant decision-making has been devolved to the parliament in Scotland and assemblies in Wales and Northern Ireland. Devolved administrations in Edinburgh, Cardiff and Belfast exercise greater powers than equivalent governments elsewhere in the democratic world. In England, we have given considerable powers to city mayors and combined authorities, while local councils now have greater control of the taxes they collect. This positive evolution of our constitution has given a voice to people who

⁵⁶³ Ibid., p.22.

⁵⁶⁴ David Lidington interview

⁵⁶⁵ Conservative Party, *Invitation to Join the Government of Britain* (London: Conservative Party, 2010). p.83.

⁵⁶⁶ Ibid. p.84.

felt distant from the centre of power, and responsibility to people for their own part of our great country. We will continue to work in partnership with the Scottish and Welsh governments and the Northern Ireland Executive, in a relationship underpinned by pooling and sharing resources through the Barnett Formula. We will respect the devolution settlements: no decision-making that has been devolved will be taken back to Westminster. Indeed, we envisage that the powers of the devolved administrations will increase as we leave the EU. However, we can still do more for the people of Scotland, Wales and Northern Ireland.’⁵⁶⁷

The *Get Brexit Done* manifesto also committed the party to ‘the principle of consent or the three-stranded approach’.⁵⁶⁸ It also stated that the Conservative Party ‘will never be neutral on the Union’ and it will work with others to ‘re-establish the Northern Ireland Executive and Assembly’, so that the ‘full advantages of devolved government’ can be enjoyed.

Kenny and Sheldon argued that between 2010 and 2019 there were two distinct modes of thought on Northern Ireland. These are a ‘place apart’ or an integral part of the Union. It can be seen from the statements above that the Conservative Party manifestos have since 1922 to 2019 stated that Northern Ireland is integral part of the Union in line with the conservative constitutional goods. There has been a continuation of rhetoric and policy position on Ireland and when the reality changed to Northern Ireland, and this had been in place for nearly a 100 years.

Devolution: Scotland and Wales

The debate about devolution or Home Rule in Scotland and Wales could be traced back to when the post of Secretary for Scotland was created in 1885 or perhaps before. Nevertheless, Churchill’s manifesto of 1950, was the first time that Scotland and Wales are mentioned in terms of ‘devolution’. Consequently, this will be the starting point for this section of the chapter. The manifesto pledged a ‘new Minister of State for Scotland, with Cabinet rank’ enhanced powers for the heads of United Kingdom Departments in Scotland and Scottish Bills for those matters that require differing legislation from England and Wales.’⁵⁶⁹ In a draft version of the 1950 manifesto Churchill underlines the section ‘to strike away the fetters of centralisation’⁵⁷⁰ in the part about is removing the Labour Government and then Scotland can

⁵⁶⁷Conservatives, *Forward Together*. p.31.

⁵⁶⁸ Conservatives, *Get Brexit Done*, p.44.

⁵⁶⁹ Dale, *Conservative Manifestos*, p, 84.

⁵⁷⁰ Churchill Archive Centre CHUR 2/89

‘be free to develop their own way of life.’ In terms of Wales the manifesto stated that a Cabinet member should have special responsibility for Wales. In Churchill’s third manifesto, in 1951, this policy for Wales was reiterated and the Scottish policy had moved by a few degrees by stating that provisions shall be made for ‘effective Scottish control of Scottish affairs.’⁵⁷¹ How this would be practically implemented was not elaborated on. Indeed, it was a key shift from offering differing bills to effective Scottish control. Eden’s manifesto of 1957 continued along the same line of reasoning as Churchill’s 1950 manifesto not ’51 one and stated that in line with the Royal Commission on Scottish Affairs (which was proposed in the 1950 manifesto), the Secretary of State will take over on certain issues. Consequently, rowing back from Churchill’s ’51 policy of effective Scottish control. Eden’s manifesto did state that this was not the end of the process as if other ‘measures of this kind are shown to be in the best interests of Scotland’, the Conservatives would not ‘hesitate to adopt them’.⁵⁷² Thus, there was now a plan for devolution centred on an empirical approach to decision making and based on the interests of Scotland within the Union and the Westminster system. Eden’s manifesto stated the party’s credentials in relation to devolution in Wales, stating that a steady policy of ‘administrative devolution has been followed’ in Wales.⁵⁷³ Moreover, this policy should continue and ‘if possible, go further’.⁵⁷⁴ *The Next Five Years* manifesto of Macmillan’s was short and to the point, which was that the policy towards Wales and Scotland shall be maintained with the focus on transferring administrative work away from London. Sir Alec Douglas-Home’s *Prosperity With A Purpose* manifesto did not include constitutional matters in relation to either Wales or Scotland. Heath’s 1966 manifesto concentrated on local government in both Scotland and Wales (local government policy shall be analysed in the in a proceeding chapter) and the policy to ‘Maintain a Secretary for Wales in the Cabinet’,⁵⁷⁵ which had been the Conservatives policy since Churchill was the leader in his 1950 manifesto, was restated.

According to Gamble, Heath declared at Perth in 1968 that the Conservative Party supported the creation of a Scottish assembly.⁵⁷⁶ Heath’s vision for constitutional reform included

⁵⁷¹ See also *What the Conservatives Will Do*, which was a shortened version of the manifesto for the General Election of 1951, it also reiterated this position via Churchill Archive Centre.

⁵⁷² Dale, *Conservative Manifestos*, p.123.

⁵⁷³ *Ibid*, p.124.

⁵⁷⁴ *Ibid*, p.124.

⁵⁷⁵ *Ibid*, p.172.

⁵⁷⁶ See Gamble, *the Constitution Revolution in the United Kingdom*.

devolution in both Scotland and Wales as well as new regional English authorities.⁵⁷⁷ Heath used two core arguments for his proposed reforms: modernisation and alignment with the systems utilised on the European continent both of these arguments were not constitutionally based but economic. Heath said these were ‘necessary to modernize the country and bring it more into line with some of its European neighbours.’⁵⁷⁸

Heath’s *A Better Tomorrow* manifesto (1970) stated that ‘The Report of the Committee set up under Sir Alec Douglas-Home offers a new chance for the Scottish people to have a greater say in their own affairs.’⁵⁷⁹ It was also stated that in the report there was a ‘proposal for a Scottish Convention sitting in Edinburgh’.⁵⁸⁰ There were no constitutional policies in relation to Wales, but it was mentioned that the Conservatives were publishing a separate manifesto for Wales. Heath’s first manifesto in 1974, *Firm Action for a Fair Britain*, was non-committal in relation to the Report of the Kilbrandon Commission⁵⁸¹ as the manifesto stated that it was being studied. As in 1974 separate manifestos were published for Wales and Scotland and no constitutional policies were in the UK wide manifesto. Heath’s second manifesto of 1974 and his fourth overall called *Putting Britain First* committed the Conservatives to setting ‘up a Scottish Assembly’ as well as providing the Secretary of State for Scotland ‘the power to decide how to spend Scotland’s share of the UK budget’ and this would be in accordance with ‘the Scottish Assembly.’⁵⁸² As a consequence, there was a clear new development in the Conservatives’ policy in relation to devolution in Scotland under Heath, but in relation to Wales, to use the phrase from Eden manifesto, the policy was to ‘go further’ down the same policy route.

⁵⁷⁷ See Bogdanor, *Devolution* for and outline the Conservative Party’s position on Scottish devolution from the mid-1960s to 1979 including during Heath’s leadership and also Thatcher’s position on Scottish devolution in relation to the Referendums in 1979. See also Burch and Holliday, *The Conservative Party and Constitutional Reform* p.386, who also address the issue of devolution and especially its Scottish dimension during 1967 to 1979. The authors believed, writing in 1992, that this was the last time the Conservative Party had major debate of constitutional reform. See also Convery in his 2014 article has a similar empathise to Bogdanor, and Burch and Holliday; that is, on the Conservative Party and Scottish devolution but he has also broadened the scope of his article to include Wales. See also Torrance, D. (ed) *Ruth Davidson’s Conservatives: The Scottish Tory Party 2011-2019* (Edinburgh: Edinburgh University Press, 2020).

⁵⁷⁸ See Gamble, *the Constitution Revolution in the United Kingdom*. p.26.

⁵⁷⁹ Dale, *Conservative Manifestos*, p. 193.

⁵⁸⁰ *Ibid.*, p. 193.

⁵⁸¹ A Royal Commission on the Constitution from 1969-1973 was published in November 1973 and a Memorandum of Dissent was also published by two members of the Commission. See also Mackintosh, J. (1974) The Report of the Royal Commission on the Constitution 1969–1973, *Political Quarterly*, (45), 1, pp 115-123.

⁵⁸² *Ibid.*, p. 255.

There were also other Conservative voices on the topic. Enoch Powell defended the unitary state principle and the sovereignty of the Westminster Parliament arguing that the House of Commons brooks no competition within the country.⁵⁸³ Powell's position was to have a committee concentrating on Scottish Affairs under the authority of the House of Commons.⁵⁸⁴ The Shadow Scottish Secretary, Alick Buchanan-Smith was in favour of Scottish Devolution but John Biffen rejected the case for federation and he believed that a referendum would solve nothing as the Labour Government was offering a halfway house. In 1976, he said 'for over a generation British public life has not been disturbed by major domestic constitutional conflicts.'⁵⁸⁵ In May 1975 in Perth, Thatcher made a speech in favour of devolution and *The Right Approach* (1976) contained a commitment to devolution. Thatcher did, however, begin to oppose devolution as her leadership progressed.

By the time the next general election came around in 1979 the Conservative's had a new leader and two referendums, (referendums will be further discussed in chapter 7) one in Wales and one Scotland, had taken place on 1 March 1979. Scotland voted in favour of devolution by a small majority 52 per cent to 48 per cent, nevertheless, only 32.9 per cent of the whole electorate had voted for it and therefore it did not meet the 40 per cent threshold. Moreover, in Wales the vote was against devolution, by a very large margin; that is, 80 per cent to 20 per cent. Thatcher's manifesto was non-committal only stating that the party was 'committed to discussions about the future government of Scotland' and in relation to Wales, the manifesto stated that the party had 'proposals for improved parliamentary control of administration in Wales'.⁵⁸⁶ *The Challenge of Our Times* manifesto in 1983 did not have any constitutional policies in relation to Wales or Scotland. This is not surprising in that Thatcher on Saturday 19 June 1982 approved the setting up of policy groups to analyse tasks for a Conservative Government that would go into the manifesto. The group on constitutional reform was never set up as Thatcher 'felt that there was really nothing of note to say on that subject.'⁵⁸⁷ Again, in *The Next Moves Forward* (1987) these subjects were not mentioned.

⁵⁸³ Cited in Heffer, S. *Like the Roman* (London: Weidenfeld & Nicolson, 1998).

⁵⁸⁴ Hickson, K. *Britain's Conservative Right Since 1945* (London: Palgrave Macmillan, 2020) p.106.

⁵⁸⁵ *Ibid.*, p.5.

⁵⁸⁶ Dale, *Conservative Manifestos*, p. 276.

⁵⁸⁷ Thatcher, M, *The Downing Street Years* (London: Harper Press, 1993), p. 282.

According to Hickson, Thatcher was ‘committed to upholding the established constitution’⁵⁸⁸ and Moore writes that Thatcher was instinctively a Unionist,⁵⁸⁹ and that ‘Although she was an instinctive Unionist, it did not engage her passionate interest.’⁵⁹⁰ Hickson writes that devolution ‘For her the issues was one of pragmatism rather than principle’.⁵⁹¹ According to Conservatives such as Powell, Taylor and Biffen opposed to devolution was a matter of firm constitutional principle.⁵⁹² For Teddy Taylor the Conservatives should focus on ‘bread and Butter’ issues, such as a strong approach to law and order rather than devolution or constitutional .⁵⁹³

Norton argues that Major was the ‘last Conservative Party leader to address, on any systematic and reflective basis, the UK constitution as a constitution and to pursue policies designed to preserve that constitution.’⁵⁹⁴ Moreover, according to the Norton, Major was at the heart of the Conservative’s policies on the constitution and the driving force, and that Major had ‘a clear objective and that was to defend the integrity of the extant constitution’ and this objective and his philosophy was articulated in both the 1992 and 1997 Conservative Manifestos.⁵⁹⁵ ‘Major emphasised that the opposition was not to change, but to proposals that would undermine the existing constitution’.⁵⁹⁶ He wanted to strengthen the ‘citizen within the existing framework.’⁵⁹⁷ Major was against devolution arguing that it would: (1) lead inexorably to the breakup of the United Kingdom; (2) generate resentment in England fuelled by the West Lothian Question; and (3) fuel nationalism rather than stop it. Major in a speech in 1992 argued against untying the UK, saying that ‘the bonds that generation after generation our enemies have sort and failed to break.’ Major argued that the breaking of the bonds would leave the constituent parts of the UK, ‘solitary’, ‘divorced’, ‘marginalised’ and ‘diminished’.⁵⁹⁸ In relation to a new tax-raising Parliament, Major argued that it would not be a ‘simple bolt-on’ to the constitution.⁵⁹⁹ Labour’s devolution plans were dangerous ‘as they might feed any such

⁵⁸⁸ Hickson, *Britain’s Conservative Right*, p.93.

⁵⁸⁹ Moore, C., *Margaret Thatcher: The Authorized Biography, Volume One: Not For Turning* (London, Penguin 2014), p. 375.

⁵⁹⁰ *Ibid.*, p. 375.

⁵⁹¹ Hickson, *Britain’s Conservative Right*, p.108.

⁵⁹² Hickson, *Britain’s Conservative Right*, p.108.

⁵⁹³ Taylor T., *Boy Blue* (Glasgow: Kennedy & Boyd, 2008) for Thatcher’s view of Taylor see Moore’s, *Not For Turning*, p. 376.

⁵⁹⁴ Norton, *The Constitution in John Major: An Unsuccessful Prime Minister?* p.62.

⁵⁹⁵ *Ibid.*, p.62.

⁵⁹⁶ *Ibid.*, p.64.

⁵⁹⁷ *Ibid.*, p.64.

⁵⁹⁸ Major, J. *Scotland in the United Kingdom* (London: Conservative Political Centre, 1992), p.10.

⁵⁹⁹ *Ibid.*, p 11.

grievance, not dispel them.⁶⁰⁰ Major chose to utilise a metaphor that with this policy Labour had ‘chosen to ride a tiger’ and it needed to be caged as it ‘could consume the Union itself.’⁶⁰¹ Major’s *The Best Future for Britain* manifesto was pro-Union and against devolution and set out the economic advantages of the Union for both Wales and Scotland. According to McLean and McMillan:

Scotland continued to pose a credible threat to the Union, which any SNP resurgence would bring back to life. Conservative governments were particularly sensitive to this threat. Their Secretaries of State continued to protect Scotland from the full rigour of the Barnett formula until 1997. Secretaries of State Lang and (especially) Forsyth boasted about the spending differential in order to warn Scots that devolution would threaten it.⁶⁰²

Lord Lang, writing in his memoir in 2002 the *Blue Remembered Years*, noted that ‘If devolution had to happen,’ ‘as sooner or later it probably did, it could not credibly come from us: better to stand on principle and conviction and, if necessary, lose’.⁶⁰³ Lang was writing here to utilise Gamble’s phrase that the Conservatives were willing to forego both politics of support and politics of power⁶⁰⁴ to defend one of the conservative constitutional goods. A Conservative MP who was also a previous Cabinet Minister said in the interview with the author that:

the 1992 election was a pivotal one because that was when we were going to be wiped out by the Nationalists. The opinion polls were running very hard against us. So we decided to fight the campaign exclusively on the constitution. We turned the whole thing around. In previous elections, we tried not to talk about the Union and the constitution but this one we put it front and centre in Scotland, which was very unusual.⁶⁰⁵

John Biffen argued that it would be better for the Conservatives to offer a clearer alternative on social and economic policies rather than reforming the constitution.⁶⁰⁶ Moreover, he argued

⁶⁰⁰ Ibid., p 11.

⁶⁰¹ Ibid., p 11.

⁶⁰² McLean, I., and McMillan, A., (2003) ‘The Distribution of Public Spending across the UK Regions’, *Fiscal Studies*, 24(1): 45-71. p.54.

⁶⁰³ Lang, I. *Blue Remembered Years: A Political Memoir* (London: Politicos Pub, 2002), p 176.

⁶⁰⁴ Gamble, *The Conservative Nation*.

⁶⁰⁵ An Interview by the author with an ex-Conservative Cabinet Minister.

⁶⁰⁶ See Biffen, J., *In A Nation in Doubt* (London: Conservative Political Centre, 1996), see also Biffen, J., *Political Office or Political Power* (London: Centre for Policy Studies, 1977) for other works of criticism of devolution.

that constitutional reform was not the answer. A Conservative government needed to address three main issues: (1) the restoration of sovereignty at Westminster against calls for devolution and the powers of Brussels; (2) restore control over trade unions; (3) restrict immigration.⁶⁰⁷

Major's second manifesto, *You can only be sure with the Conservatives* (1997), was staunchly against devolution. It stated that the:

development of new assemblies in Scotland and Wales would create strains which could well pull apart the Union. That would create a new layer of government which would be hungry for power. It would risk rivalry and conflict between these parliaments or assemblies and the parliament at Westminster. And it would raise serious questions about the representation of Scottish and Welsh MPs at Westminster.⁶⁰⁸

Moreover, 'We owe much of that to the strength and stability of our constitution – the institutions, laws and traditions that bind us together as a nation' and that the Union between Scotland, Wales, Northern Ireland and England underpins our nation's stability.⁶⁰⁹ Major campaigned against Labour's devolution proposals and warned that there was just '72 hours to save the Union'.⁶¹⁰ It was reported in *the Daily Telegraph* in April 1997, that Major said that Labour's proposals would be the 'break-up of the United Kingdom as we know it'.⁶¹¹ This was not a new line of attack on Labour's devolution proposals for Major as he also warned of the dangerous consequences of devolution at the previous General Election of 1992. Enoch Powell said that the 1997 General Election result was a vote to break up the United Kingdom.⁶¹²

After the election, referendums were held in both Wales and Scotland. Wales voted for devolution by a very small margin of 50.3 per cent to 49.7 percent and Scotland also voted for devolution, and this was by a big majority of 74.2 per cent to 25.7 per cent. An Assembly and a Parliament came into being in 1999, by the Scotland Act 1998 and the Government of Wales Act 1998. The Conservatives now under the leadership of William Hague campaigned against devolution in the referendum campaigns in both Scotland and Wales. Hague thought that devolution in Wales and Scotland would inevitably spark the process of the disintegration of the Union. Lidington said of this time that 'We could see the that Scottish government was

⁶⁰⁷ Biffen, *A Nation in Doubt*, p.18.

⁶⁰⁸ Dale, *Conservative Manifestos*, p. 459.

⁶⁰⁹ *Ibid.*, p., 457.

⁶¹⁰ Jones, G. (1997) '72 hours to save Union, says Major', *Daily Telegraph*. 29 April 1997

⁶¹¹ *Ibid.*

⁶¹² Heffer, *Like the Rome*. p 950.

going to happen in terms of devolution, in effect it would be a given, but we didn't really like the way that Blair approached it'.⁶¹³

In a core speech called *Change and Tradition: Thinking Creatively about the Constitution*, to Centre for Policy Studies, on the 24 February 1998, Hague asked a profound and important question for conservative thought on the constitution; that is, 'What happens to the defenders of the status quo when the status quo itself disappears?'⁶¹⁴ This was the challenge now faced by the Conservatives and it had to face it in a diminished stature. As Lidington said:

...the first thing to remember is that the Conservative Party after the 1997 election was in a state of severe shock, basically every subset within the party in Parliament had been halved in strength, cabinet, former ministers, every dining club, half the membership on everything was gone. We were...hundred sixty-two MPs. It was pretty challenging to get an opposition to function with being such a small minority, there were eleven Tory MPs who had been in opposition before...⁶¹⁵

It was according to Hague, 'bewildering for many Conservatives', not least because 'the public is at best bemused and at worst uninterested'⁶¹⁶ in the constitution and devolution.⁶¹⁷ The status quo had disappeared and the reality of the Union and devolution within in it had changed. As Lidington puts it:

I think that what has changed is the reality that whatever view the Conservative Party took on Scottish devolution before. The majority in the referendum in Scotland in 1997 was so decisive that that it basically set in place a dynamic that it's not going to be changed, while the Welsh result, of course, was much, much closer and indeed, you know to some extent contested in debate if not on the count, but the Welsh Conservatives were more reluctant to concede the point of principle...⁶¹⁸

Lord Howard in an interview with the author said on the topic of devolution in Wales was not settled by 2005 'it wasn't because the vote in Wales had been extremely narrow, I mean, wafer-

⁶¹³ David Lidington interview.

⁶¹⁴ Hague, W. (1998) '*Change and Tradition: Thinking Creatively about the Constitution*', Speech to the Centre for Policy Studies, 24 February 1998.

⁶¹⁵ For an analysis of this period see Garnett, M and Lynch, P. (ed.). *The Conservatives in Crisis: The Tories after 1997* (Manchester: Manchester University Press, 2003).

⁶¹⁶ Hague, *Change and Tradition*.

⁶¹⁷ See also Hague, W. (1999) *Strengthening the Union After Devolution*, Speech to the Centre for Policy Studies, 15 July 1999.

⁶¹⁸ David Lidington interview.

thin majority for devolution and it still was, I think, a live issue in Wales'.⁶¹⁹ Howard added that 'I don't think it is anymore, but it was then.'⁶²⁰ An interesting remark by David Melding was that 'what happens in Scotland has an impact in Wales but in Northern Ireland there is no effect at all'.⁶²¹

The circumstances had fundamentally changed in Scotland, and this was clear from the *Time for Common Sense* (2001) manifesto as it pledged to 'work to ensure devolution is a success' despite viewing Labour's constitutional changes as 'vandalised' our democracy.⁶²² Howard's, *Are You Thinking What We're Thinking? It's Time for Action*, manifesto (2005) noted that 'we remain strongly committed to making a success of devolution in Scotland, so that it delivers for the Scottish people.'⁶²³ The paradigm shift was complete. The paradigm shift was not complete in terms of Wales in either 2005 or 2010. Howard's manifesto stated that 'In Wales we will work with the Assembly and give the Welsh people a referendum on whether to keep the Assembly in its current form, increase its powers or abolish it'.⁶²⁴ Meaning that there were three potential outcomes including rolling back to the *status quo ante*. The 2005 manifesto also stated that 'devolution has brought problems of accountability at Westminster.'⁶²⁵

In Cameron's first manifesto as party leader, it stated that the party 'will not stand in the way of the referendum on further legislative powers requested by the Welsh assembly' and that the 'Conservatives will have a free vote' on the issue.⁶²⁶ Thus, another demonstration that the Conservatives had not yet had a paradigm shift on devolution in Wales as there was not to be a whipped vote with a clear policy position if a paradigm shift had occurred. Major's argument that devolution would increase separatism and nationalism was echoed by Cameron's 2010 manifesto stating the 'unbalanced devolution settlement has caused separatism to gather momentum in Scotland, and separatists have propped up a weakened Labour Party in Wales.'⁶²⁷ Of course, the manifesto states the *unbalanced* devolution settlement rather than devolution *per se*. The party, nevertheless, was still using the term 'constitutional vandalism' in 2010,

⁶¹⁹ Lord Howard in an interview with the author.

⁶²⁰ Ibid.

⁶²¹ Interview with David Melding.

⁶²² Conservatives, *Time for Common Sense*, p. 45.

⁶²³ Conservatives, *Are You Thinking What We're Thinking?*, p.21.

⁶²⁴ Ibid., p.21.

⁶²⁵ Ibid., p.21.

⁶²⁶ Conservatives, *Invitation to Join the Government of Britain*, p.83. For analysis of the referendum see Wyn Jones, R. and Scully, R. *Wales Says Yes: Devolution and the 2011 Welsh Referendum* (Cardiff: University of Wales Press, 2012).

⁶²⁷ Conservatives, *Invitation to Join the Government of Britain*, p.83.

which was first used by Hague in the 2001 manifesto, to refer to Labour's constitutional changes.⁶²⁸ Nevertheless, the paradigm shift or an 'ideological snapping' (a position rupture) following the injection of 'previously alien ideas'⁶²⁹ was complete by Cameron's 2015 manifesto as it stated that the party was committed to the continuing devolution for Scotland and *Wales*. Moreover, it was stated that the creation of Scottish Parliament and Welsh Assembly were 'right'.⁶³⁰ This is, of course, dynamically opposed to Major's two manifestos, and it was the first manifesto to state explicitly that the Welsh Assembly was the right thing to do and was the party's official policy position. In relation to the Scottish Parliament and Welsh Assembly the manifesto stated that devolution 'was not finished'.⁶³¹ The main unfinished business was around making them more financially responsible and accountable. In terms of Wales the party was committed to implementing recommendations of the second Silk Report especially where there was all-party support 'as set out in the St David's Day Agreement' and in Scotland to 'implement the recommendations of the Smith Commission'.⁶³² There were also pledges to introduce a new Scotland Bill and a Wales Bill. Lord Dunlop said that he:

would argue that the devolution that was undertaken during the Cameron years was a partial – I'm not going to say a complete but a partial attempt to rectify some of the inadequacies of the original devolution settlements, which I think had very perverse results as it gave to the devolved legislators huge powers to spend money, but very little responsibility for raising or finding the money to spend. And that almost institutionalised a way that devolved governments can blame the UK government for everything that goes wrong, whilst claiming the credit for everything that goes right.⁶³³

Echoing Dunlop, Murdo Fraser raised that 'another issue with devolution was, it always seemed to me from the outset that to create an institution that had the power to spend money, but not have the power to raise money was an anomaly.'⁶³⁴ Fraser added:

I argued from very early, I think, I wrote the first pamphlet on this, in 1988, before the parliament was actually set up. I argued for a long time, the Scottish Parliament, should have some degree of tax powers. And eventually, of course, these were delivered

⁶²⁸ Ibid., p.83.

⁶²⁹ Dommett, K. (2013) 'A Miserable Little Compromise? Exploring Liberal Democrat Fortunes in the UK Coalition', *Political Quarterly*, 84, 218–227. p. 222.

⁶³⁰ Conservatives, *Strong Leadership. A Clear Economic Plan. A Brighter, More Secure Future*. p .69.

⁶³¹ Ibid., p.69.

⁶³² Ibid., p.70.

⁶³³ The Lord Dunlop interview with the author.

⁶³⁴ The Murdo Fraser interview.

through the two Scotland acts in 2012. and 2016.⁶³⁵ I think the second one has a reasonable degree of fiscal power. So that changed.⁶³⁶

Fraser also addressed that:

the other thing that changed over the period was the independence referendum in 2014, which put the whole Scottish national debate in a different context. And it became very much an issue of devolution versus independence, as opposed to the union versus devolution, which recast Scottish politics and rebuilt a support base for the Scottish Conservatives that was not previously been there, because we were able to coalesce the pro-union vote better than the Labour Party.

Now under the leadership of Theresa May, (Brexit⁶³⁷ in relation to devolution will be discussed in chapter 5) the manifesto called *Forward Together* boasted that the Conservatives had a ‘a proud record supporting devolution in Wales.’⁶³⁸ As this research has demonstrated that this history was only two years long in terms of full commitment in terms of official party policy stated in the manifesto in its current form, but the party had supported administrative devolution since the 1950s. Nevertheless, the party has been ambivalent towards it, since Hague’s manifesto in 2001. May’s manifesto hailed the passing of Wales Act 2017, according to the manifesto the Act ‘transfers significant new powers to the National Assembly for Wales and the Welsh Government.’⁶³⁹

In terms of Scotland, May’s manifesto positively stated that the Scottish Parliament has ‘become the most powerful parliament of its kind in the world’ and stated again positively that the party had ‘delivered the Scotland Acts 2012 and 2016’.⁶⁴⁰ This represented another shift in tone, at least towards devolution, that that the positives rather than the negatives were being stressed and the Conservatives role in delivering it. Despite this change in emphasis the Conservatives still had problems adapting to the *new normal* of two Governments in both Wales and Scotland. According to Lidington:

⁶³⁵ See the Smith Commission and the Scotland Acts 2012 and 2016.

⁶³⁶ Murdo Fraser in an interview with the author.

⁶³⁷ Cetrà, D., and Swan, C.B., (2021) Speaking for ‘our precious Union’: unionist claims in the time of Brexit, 2016–20, *Territory, Politics, Governance*, 646-660.

⁶³⁸ Conservatives, *Forward Together*, p.33.

⁶³⁹ Ibid, p.33.

⁶⁴⁰ Ibid., p.32.

Part of the problem, I think, is the party collectively, particularly when it's been in government has sometimes struggled, but it varies from department to department... there are quite a few Ministers running departments who either because of the department or from their own nervousness actually seem very shy of getting stuck into Scotland and Wales. ⁶⁴¹

This seems to be a generational problem. For example, according to Lidington, younger Scottish MPs, understand that 'there are two elected governments in Scotland that make up that jurisdiction, and they are both legitimate.'⁶⁴² Lidington also noted that some Cabinet Ministers are 'afraid of anything beyond the photo-call' in Scotland.⁶⁴³

The Conservative manifesto in 2019 as well as in 2017 stated that the party had 'a proud history of upholding and strengthening the devolution settlements' in Scotland, Wales and Northern Ireland.⁶⁴⁴ Not for the first time England was not mentioned as part of that history. Since the discussion of devolution in Wales and Scotland was first put into Churchill's 1950 manifesto, there has not been a theoretical or ideological blueprint to follow, which is in line with the conservative view of the constitution. Nevertheless, it is difficult to have a *coherent* constitutionally conservative position on reform of devolution in Wales and Scotland if the reform is not seen through a constitutional lens. Devolution in these two parts of the Union was increasingly seen through economic and financial prisms rather than a constitutional one. This has brought difficulties as what may be desirable from an economic or financial perspective may not be constitutionally desirable. For example, devolution via 'deals', such as the Cardiff Capital region, Swansea Bay City region and North Wales Growth Deal, ⁶⁴⁵ were seen to increase economic growth and attractive Foreign Direct Investment rather than for any constitutional purpose.

Devolution from 1950 to 2019 was also seen through a Scottish and Welsh perspective and in the earlier years, England was not mentioned (the analyse of England is in the next section of this chapter). Ireland and then Northern Ireland are also discussed separately. This has begot a devolution policy that was not joined-up or thought from a Union perspective holistically but rather seen as a special policy problem that required a particular policy remedy. Nevertheless,

⁶⁴¹ David Lidington interview.

⁶⁴² Ibid.

⁶⁴³ Ibid.

⁶⁴⁴ Conservatives, *Get Brexit Done*, p.44 and Conservatives, *Forward Together*, p.32

⁶⁴⁵ Conservative Party, *Forward Together*. p.33.

this does chime with the suspicion of grand political blueprints as the Conservative Party, across this period, did not have a grand plan for devolution for Wales and Scotland. The party, from across the time period analysed, had a continuation of its policy platform that Wales and Scotland should stay part of the Union. In relation to devolution there was a paradigm shift to the *pro-legislative devolution paradigm* under the leadership of Heath towards legislative as well as administrative devolution and the creation of a Scottish assembly. Nevertheless, under both Thatcher and Major the policy position reverted back to the party the *anti-devolution paradigm*. Moreover, once devolution was introduced there was again a paradigm shift, first in relation to Scotland and then Wales to an *acquiescence legislative devolution paradigm*.

Additionally, May and Johnson's manifestos set a positive tone in relation to devolution and has shifted back to the *pro-legislative devolution paradigm*. However, this is still an uneasy place for the party as the reported comments of Boris Johnson saying that devolution was not working in Scotland. In the manifestos of Hague, Howard and Cameron's in 2010 there was still the negative tone. Devolution had to be dealt with rather than embraced, thus they were working from within the *acquiescence legislative devolution paradigm*.

England and the West Lothian Question

Hayton analysed the events and explored the possible consequences of David Cameron's announcement after the 2014 Scottish independence referendum that the fulfilment of the promise of further devolution to Scotland must be accompanied by an answer to the West Lothian Question at Westminster.⁶⁴⁶ Thatcher, writing in 1997 for the Scotsman, raised the West Lothian question and England's place in a post devolution Union, as well as the situation of Scottish Westminster MPs.

It has been cited in the academic literature that Hague believed a detailed policy discussion straight after the big election defeat in 1997 would exacerbate the party's divisions further.⁶⁴⁷ Nevertheless, in a speech in 1998, Hague put forward four options in relation to England and the West Lothian Question. These were (1) the creation of an English parliament; (2) English

⁶⁴⁶ Hayton, *The Coalition and the Politics of the English Question*, Hayton argued that a reform of parliamentary procedures along the lines outlined in the report of the McKay Commission looks increasingly likely, but that this will not mark a resolution of the broader English Question, and the future of the Union remains in doubt. Moreover, it was suggested to 'secure the long-term future of the Union a new settlement, probably along federal lines, is required'.

⁶⁴⁷ See Peele, G. (1998) 'Towards New Conservatives'? Organisational Reform and the Conservative Party', *The Political Quarterly*, 69(2), pp. 141-147; see also Hayton and Heppell, *The Quiet Man of British Politics*.

votes for English laws; (3) a major cut in the number of Scottish MPs; and (4) substantial devolution of power in England to local councils.⁶⁴⁸ In 1997 three Conservative MPs, Teresa Gorman, David Davis and Eric Forth, introduced a Private Member's Bill into the House of Commons proposing a referendum on the creation of an English parliament. Gamble notes that Hague floated the idea of establishing an English parliament,⁶⁴⁹ as can be seen in Hague's speech, that this was one option among four.

Hague rejected Labour's proposal of English regional government, as Hague believed that 'such assemblies assume that strong regional identities exist in England, which they do not' and it would add 'an extra layer of politicians.'⁶⁵⁰ Moreover, these assemblies would 'lack legitimacy in the eyes of the voters and would simply confuse accountability still further.'⁶⁵¹ Returning to the topic in 1999 Hague said:

I believe answering the English Question is vital to the future stability of the United Kingdom. Giving the voters of England a fair say is the way to strengthen the Union after devolution.⁶⁵²

English Votes for English Laws (EVEL) was *the option* that made it into Hague's manifesto and was also in Howard's in 2005 and in both of the 2010 and 2015 manifestos under Cameron's leadership. It was introduced in October 2015, and it changed the Standing Orders of the House of Commons. English Votes for English Laws was not mentioned in either May or Johnson's manifestos. Despite the policy being in four manifestos across 14 years there was very little detailed elaboration. For example, the 2005 manifesto just stated 'We will act to ensure that English laws are decided by English votes.'⁶⁵³ Iain Stewart MP raised, in the interview, the difficulty of the size of England compared to the other parts of the Union and the problem of having 'four units of Scotland, Wales, Northern Ireland and England within the devolutional structure'.⁶⁵⁴ Devolution within England and local government devolution will be analysed in chapter 8.

⁶⁴⁸ Hague, *Change and Tradition*. pp 13-14.

⁶⁴⁹ Gamble, *The Constitutional Revolution in the United Kingdom*.

⁶⁵⁰ Hague, *Change and Tradition*. pp 13-14; In 1996, Clarke made similar points. See Clarke, J. *Devolution in Historical Perspective* (London: Conservative Political Centre, 1996), p.6. Conservative Party Archive PUB 184/3.

⁶⁵¹ Hague, *Change and Tradition*, p 13.

⁶⁵² Hague, *Strengthening the Union After Devolution*, p. 6.

⁶⁵³ Conservative Party, *Are You Thinking What We're Thinking?*, p.22.

⁶⁵⁴ Iain Stewart interview with the author.

The traditional Tory view is a Unionist position, which is also one of the conservative constitutional goods, essentially a unitary government position. For example, Major in his manifestos and leading up to 1997, argued against devolution as well as previous Conservative Party leaders dating back to Disraeli, had argued against Home Rule, because they believed that it would undermine the Union. The recent position or in other words the post-devolution position has seen a paradigm shift and the Conservative Party during time has become more in favour of devolution. This, however, has brought dilemmas, tensions and ambiguities.

The tension of being a Unionist party who has previously argued against devolution and Home Rule then shifts its position in favour of devolution, especially within Cameron (2015 manifesto), May and Johnson's manifesto. Within this manifesto the shift to making devolution into a positive rather than negative that the party under Hague, Howard and Cameron (2010 manifesto) had to bear and cope with into a subject the Conservatives could push forward themselves. The core to this paradigm shift at official manifesto level (which of course, some within the Conservative Party have not shifted to) is in interpreting one of the core conservative constitutional goods; that is, strengthening the Union. What I have term the *steppingstone perspective* argues that devolution is weakening the Union and further devolution is a steppingstone to the break-up of the Union. This perspective was the core official policy position from 1885 to 1997 with the caveat that certain type of administrative functions could be conducted in Wales and Scotland but as long as the Westminster system was strengthened (a conservative constitutional good). The position on Northern Ireland changed in 1922. The other competing perspective that I have termed is *devolution or no Union perspective*. It argues that the *status quo* has changed and if the Conservative tried to repeal devolution, this would lead to the break-up of the Union. Consequently, according to the argument devolution strengthens the Union. Of course, this leaves the question open to what type of devolution strengthens the Union? 'Steppingstone' Conservatives could argue that the current type of devolution does not strengthen the Union. Nevertheless, *devolution or no Union perspective* has been the official policy of the Conservatives since 1997 to 2019. It was reluctantly held from 1997 to 2010 and then embraced from 2015 to 2019. This research has found that there is an increasing element within the party that believes federalism is the way to strengthen the Union.⁶⁵⁵ I have termed this *federalism to save the Union perspective*.

⁶⁵⁵ In the Interview with Nick Timothy, Lord Salisbury, and Iain Stewart MP these views were expressed. For federalism within the empire during Home Rule see Kendle, J., "The Round Table Movement and 'Home Rule All Round'", *The Historical Journal*, (11)2, (1968), 332-53.

Support for the Union within the Conservative Party has been put to the test as it was found that a majority of the Conservative Party members would have sacrificed the Union to withdraw from the EU. Nevertheless, Theresa May as Lidington, who was her *de-facto* Deputy Prime Minister said:

‘a very clear support for the Union although again, I think, that it has been tested and is obviously being tested at the moment over the European settlement and it was one of the most striking things was working with Theresa May, in her last year in particular, you saw the extent to which that holding the Union together that was actually driving her European policy.’⁶⁵⁶

In terms of Ireland there was a clear policy paradigm of no Home Rule until there was a discernible policy innovation and consequently a paradigm shift in 1922 under the leadership of Bonar Law. This policy innovation did not emanate from the *opposition to Home Rule in Ireland* paradigm but from the *defence of Northern Ireland within the Union* paradigm. In Thatcher’s 1983 manifesto there was a shift in emphasis within this new paradigm. The shift of emphasis within the *defence of Northern Ireland within the Union* paradigm was that of consent of the *people* of Northern Ireland rather than of their *Parliament*. Thus, an implicit indication of the use of the referendum as the required constitutional tool. Therefore, in relation to Ireland within the Union, there was a policy rupture in 1922 and a new paradigm was formed. This paradigm is still in place, but there has been an innovation within the policy in terms of *who* provides the consent.

There has also been a continuation of policy in relation to Wales and Scotland staying within the Union. In relation to devolution there was a clear continuation of policy and then there was a policy oscillation.⁶⁵⁷ There was a paradigm shift to a *pro-legislative devolution* paradigm under the leadership of Heath, however, both Thatcher’s three and Major’s two manifestos reverted to the *anti-devolution* paradigm. The manifestos under Hague, Howard and Cameron’s in 2010 were embedded within the *acquiescence legislative devolution* paradigm. May and Johnson’s manifestos operated again from the *pro-legislative devolution* paradigm, thus,

⁶⁵⁶ David Lidington interview.

⁶⁵⁷ For and analysis of Conservative oscillation on welfare see Pitt, D., *Conservative Welfare Policies: Ideational Oscillation in the Age of Brexit* in Beech, M., and Lee, S., *Conservative Governments in the Age of Brexit, 2015-2020* (London: Palgrave Macmillan, 2023), pp 171–194.

representing a policy rupture and innovation and then an oscillation between the competing paradigms. This also represents a flux in the Conservatives policy in relation to devolution for Wales and Scotland, but it also demonstrated a direction of travel towards the pro-legislative devolution paradigm, in which the party currently operates. There is a strong case that since 1997 the Union policies have not been in line with the ‘goods’. I have identified three core perspective on this. These are (1) *steppingstone* perspective; (2) *devolution or no Union* perspective; and (3) *federalism to save the Union* perspective. *Steppingstone* perspective was the core official policy position from 1885 to 1997 and the *devolution or no Union perspective* has been the official policy since 1997 to 2019. Devolution in Wales, Scotland and Northern Ireland have not had a theoretical or ideological blueprint to follow, which is in line with the conservative view of the constitution. Relatedly, there has not been a coherent constitutionally conservative position on reform of devolution in Wales or Scotland and England has been largely missing from the policy suite or discussed separately. Reform of devolution has not been viewed through a constitutional prism since 2001 and the Union has been increasingly seen through economic and financial prisms and this has brought constitutional difficulties.

Hollowing-out of The State: Banging on About Europe and Constitutional Silence

‘Brexit will define us: our place in the world, our economic security and our future prosperity’.⁶⁵⁸

Jacob Rees-Mogg believed that the most pressing constitutional issues was ‘European question’ which, he believes ‘has not been answered’ because ‘the structures of our constitution went into flux in 1972.’⁶⁵⁹ There have been two major changes to the constitution that has challenged the British constitution.⁶⁶⁰ These are (1) membership of the EU and (2) incorporating the European Convention on Human Rights into British law.⁶⁶¹ The European Question and therefore European integration has been a challenging question to address for the Conservative Party since the post-World War period.⁶⁶² I argue in this chapter that the Conservatives have not seen the Question as a *constitutional* question. Rather it has been seen through many different perspectives such as a question of leadership on the world stage, an economic question, a foreign policy issues or a political one to name a few. The Conservative Party position on the European Question during the leadership of Hague, Duncan Smith and at the start of Howard’s leadership (1997 and 2005) has been characterised as becoming ‘harder but quieter’.⁶⁶³ In this chapter, it is argued that ‘banging on about Europe and constitutional silence’ is a good way of expressing the Conservative Party’s position from 1945 until 1997, when Major’s second manifesto broke the constitutional silence on the membership of the European Union but the silence returned again in 2005 and the constitutional issues were a ‘non-issue’ within the manifestos until 1974. Since then, they were viewed as very minor side issues that were not addressed by detailed policy provisions. In short constitutional policy

⁶⁵⁸ Conservative Party, *Forward Together*, p. 1.

⁶⁵⁹ Jacob Rees-Mogg Interview.

⁶⁶⁰ For a chronology of events in relation to Britain’s Relationship with Europe see chapter 18 in Butler, D., and Butler, G. *British Political Facts 1900 - 1985* Sixth Edition (Basingstoke: MacMillan Press, 1987).

⁶⁶¹ Some indicative European Treaties and Acts: The European Community Act 1972; European Communities (Amendment) Act 1986; European Union Treaty 1992 (Maastricht Treaty); Amsterdam Treaty 1999; Nice Treaty 2003; Lisbon Treaty 2009.

⁶⁶² See Forster A., *Eurocepticism in Contemporary British Politics: Opposition to Europe in the British Conservative and Labour Parties since 1945* (London, Routledge, 2002) an analysis of Eurocepticism; see also Forster, A. (2002) 'Anti-Europeans, Anti-Marketeers and Euroceptics: The Evolution and Influence of Labour and Conservative Opposition to Europe', *The Political Quarterly*, (73)3 299-308.

⁶⁶³ Bale, T. (2006) 'Between a Soft and a Hard Place? The Conservative Party, Valence Politics and the Need for a New "Eurorealism"', *Parliamentary Affairs*, 59(3), pp 388-391; see also Baker, D., (2001) 'Britain and Europe: The Argument Continues', *Parliamentary Affairs*, (54)2,276-88.

silence. The standout manifestos in terms of addressing constitutional issues were 1997, 2001 and 2010 but the prime *modus operandi* was to view Britain's constitutional relationship with 'Europe' from a non-constitutional perspective and state official positions and policies within the foreign policy sections within manifestos. Below is a typology of Conservative Positions on the European Question in relation to the aspect they have prioritised Britain's relationship with the EU.

In Churchill's manifestos of 1950 and 51, Britain's relationship with the Europe and other parts of the world is discussed throughout the foreign policy parts of the manifesto. Britain's relationship with Europe is not explicitly stated or any firm policies articulated either. The *This is the Road* (1950) manifesto states that 'Britain must continue in ever closer association with Western Europe and the United States' [emphasis added].⁶⁶⁴ In addition, it states that that working with France and other countries the Conservatives 'shall pursue the aim of closer unity in Europe'⁶⁶⁵ and the 1951 manifesto stated that a Conservative Government under Churchill's leadership will 'continue to labour for a United Europe'.⁶⁶⁶ The constitutional implications or the exact relationship or Britain's place with a 'United Europe' is not stated. Relatedly, Europe came third in the priorities within the manifesto and it explicitly stated the Britain should 'put first the safety, progress and cohesion of the British Empire and Commonwealth of Nations' including in 'Defence and Trade' and 'Imperial Preference' and next in the hierarchy is the 'unity of the English-speaking peoples...'.⁶⁶⁷ All of which is viewed through the perspective of foreign policy and preserving the peace not through constitutional lens.

Relatedly, Eden's *United for Peace and Progress* manifesto was in the same line of thought as Churchill's, in the sense that it saw the European Question as a question of *peace* and therefore required a foreign policy answer. Eden's manifesto noted, in the section of the manifesto called *Peace Through Strength*, that 'Britain too by her initiative has helped to create Western European Union' and that the 'initiative' was down to British diplomacy.⁶⁶⁸ Although not explicit in *United for Peace and Progress*, the section on the Western European Union was written from the perspective of a third party rather than a union that Britain wished to join. As

⁶⁶⁴ Dale, *Conservative manifestos*, p.87.

⁶⁶⁵ Ibid, p.88.

⁶⁶⁶ Ibid, p.97.

⁶⁶⁷ Ibid, p. 97.

⁶⁶⁸ Ibid, p. 107.

in Churchill's manifesto the *modus operandi* was clear no policies from a constitutional perspective.

There was a paradigm shift from Eden's *United for Peace and Progress* manifesto to Macmillan's *The Next Five Years* manifesto as the intention to join the Union was clear. Macmillan believed that 'Europe' could offer a new role for the Conservative Party⁶⁶⁹ and to use Gamble's term could be a new or replacement pillar for the Empire. Macmillan in his *The Next Five Years* manifesto explicitly framed joining the 'Europe' as a trade and economic question and was placed within the manifesto under the subsection called *Trade Opportunities*. Joining the bloc was discussed alongside other trade opportunities such as with the USA and Russia, stating that '[w]e are about to join an economic association of Seven European countries; our aim remains an industrial free market embracing all Western Europe'.⁶⁷⁰ The constitutional ramifications are not discussed within the manifesto. The policy was described in one sentence, despite the significance of the position and it was also framed as imminent but it was not.

Douglas-Home's *Prosperity With A Purpose* (1964) manifesto made clear that Britain's '[e]ntry into the European Economic Community is not open to us in existing circumstances, and no question of fresh negotiations can arise at present'.⁶⁷¹ Nevertheless, the focus on trade and the economy was again clear stating that the Conservatives 'shall work, with our EFTA partners, through the Council of Europe, and through Western European Union, for the closest possible relations with the Six consistent with our Commonwealth ties'.⁶⁷² The foreign policy perspective was also again present, as this position statement was located within the *Working for Peace* section of the manifesto. Home, in his autobiography, made the case for British entry into the EC through an economic perspective and wrote that 'it seemed to me therefore that membership of the European Community, with its 200 million consumers, was a market on our doorstep which we could not ignore'.⁶⁷³ The constitutional implications are not discussed and there were not constitutional policies in relation to 'Europe'.

⁶⁶⁹ George, S. and Sowemimo, M., Conservative Foreign Policy towards the European Union, S. Ludlam and M. J. Smith (eds.) *Contemporary British Conservatism* (Basingstoke: Macmillan, 1996). p. 244

⁶⁷⁰ Dale, *Conservative manifestos*, p. 131.

⁶⁷¹ *Ibid*, p. 145.

⁶⁷² *Ibid*, p. 145.

⁶⁷³ Home, A. *The Way The Winds Blows* (London: Fontana), p.174.

Heath in his 1966 manifesto *Action Not Words: The New Conservative Programme* was explicit in his forward that he wanted, in the future, to see Britain ‘taking its place in the European Economic Community’ and he state that doing so was one of the ‘things we must achieve’ and one of Heath’s five priorities within the manifesto.⁶⁷⁴ It was stated that at least three times within the manifesto. These were (1) in the *Forward*, (2) *The Conservative Way Ahead* and (3) *To Get into Europe* sections. The arguments for entry were based on both influence in the world and trade and the economy. For example, the manifesto states that that Britain must join to be able to ‘exert her full influence in the world’ and that ‘British industry must have far bigger markets’ to be an able to scale up. Relatedly the European Economic Community ought to be ‘enlarged’.⁶⁷⁵ There was complete constitutional silence. Heath’s 1970 Manifesto *A Better Tomorrow*, also argued for membership of the European Economic Community from an economic perspective and stating that the ‘opportunities are immense’ and that ‘economic growth and a higher standard of living would result from having a larger market’.⁶⁷⁶ A key argument was that Britain’s living standards have been behind that of America and Western Europe’s and that ‘International experts are predicting that if these trends are allowed to continue Britain will soon be the poorest major country in the West’.⁶⁷⁷ It was argued that internal reforms (economic) were required so that in the negotiation with the European Community, Britain can be ‘confident in the knowledge that we can stand on our own if the price is too high’ for membership. It was explicitly stated that ‘[t]here would be short-term disadvantages in Britain going into the European Economic Community’ and ‘there is a price we would not be prepared to pay’⁶⁷⁸. What the ‘price’ or the short-term ‘disadvantages’ would be were not made explicit nor were the constitutional ramifications. A foreign policy perspective was utilised, and the statements were made in the *A Stronger Britain in The World* part of the manifesto that dealt with Britain’s foreign policy and its international standing.

Before Heath’s February 1974 manifesto, *Firm Action for a Fair Britain*, in 1972, his Conservative Government, signed the Treaty of Accession to the European Community (EC) and the UK became a member on the 1st of January 1973⁶⁷⁹. According to Norton, the ‘1972 Act provided the “legal nuts and bolts” necessary for membership, giving - under section 1(2)

⁶⁷⁴ Dale, *Conservative Manifesto*, p.163.

⁶⁷⁵ *Ibid.*, p.166.

⁶⁷⁶ *Ibid.*, p.196.

⁶⁷⁷ *Ibid.*, p.178

⁶⁷⁸ *Ibid.*, p.196.

⁶⁷⁹ Alan, Lord Haselhurst said in an interview with the author that his vote to join what became the EU was the most important vote cast in the House of Commons.

- the force of law to existing and future legislation emanating from the EC'.⁶⁸⁰ There was the question of supremacy of UK versus EC law. According to Norton:

[i]n the event of conflict between EC and municipal (i.e. domestic) law, precedence was to be given to the former. And any dispute as to the interpretation, effect or validity of EC treaties was to be treated as a matter of law, cases reaching the House of Lords to be referred to the European Court of Justice for a definitive ruling.⁶⁸¹

As a consequence of the European Communities 1972 Act,⁶⁸² the United Kingdom became a member of a supra-national body. Membership of the EC had at least three major constitutional ramifications: (1) the acceptance of the authority of the EC to make laws that had binding applicability in the UK without the assent of parliament; (2) the acceptance of the subordination of UK law to EC law; and (3) membership provided the courts with the power to determine disputes. These three constitutional ramifications and the hollowing-out of the State both upwards and sideways, essentially challenged the core constitutional doctrine of parliamentary sovereignty. Thus, joining the EC constituted a key constitutional deviation from the traditional Westminster model. One of the posited conservative constitutional goods is the strengthening and deepening this model, which joining the EC did not conform to. According to Norton, this key constitutional deviation from the traditional Westminster model was contested one.⁶⁸³ Nevertheless, membership also added a juridical dimension to the constitution that was unparalleled since before the Glorious Revolution of 1688.⁶⁸⁴ The juridical dimension element does not sit well with another conservative constitutional good; that is, change should be conducted within the grain of the constitution. This is because the juridical dimension changed the constitution in a way that goes against the grain of the constitution, for example its core constitutional principle of parliamentary sovereignty (as discussed in chapter 2). The Human Rights Act 1998, which shall be discussed in the next chapter, and the devolution Acts in 1998 (which were discussed in the previous chapter) further entrenched the juridical dimension of the constitution.

⁶⁸⁰ Norton, *The Changing Constitution*, p.11.

⁶⁸¹ *Ibid*, p.11.

⁶⁸² For intra-party dissent on the issues see Norton, P. *Conservative Dissidents: Dissent within the Parliamentary Conservative Party 1970-74* (London: Temple Smith, 1978), especially chapter 3.

⁶⁸³ Norton, P., (2011) *Divided Loyalties: The European Communities 1972 Act*, *Parliamentary History*, (30)1, 53-64.

⁶⁸⁴ See Norton, *The changing constitution-part 2* and Norton, *The Glorious Revolution of 1688 Its Continuing Relevance*.

In *Firm Action for a Fair Britain* entry into the European Community was stated as an achievement of ‘a major national objective’ that had ‘eluded successive British Governments of both Parties for more than a decade’.⁶⁸⁵ In line with the previous manifestos, membership was discussed in the foreign policy section of the manifesto, this time called *Britain, Europe and the World*. The main focus of membership was on the economic advantages and where reforms would be required to ensure ‘full benefits of the larger market are to be reaped’.⁶⁸⁶ The importance of membership of the European Community from the perspective of the Conservative Party for foreign and defence policy was again stated: ‘membership has been of major importance for our foreign and defence policy as a whole’.⁶⁸⁷ For the first time a constitutional ramification were referred too. It was stated that the requirement to ‘ensure that Parliament at Westminster can play a full and effective part in the consideration of Community proposals in their formative stage’ implicitly acknowledging that Parliament was not currently doing so and thus falling foul on the seventh conservative constitutional good, which is defending the checks and balances within the bicameral nature of Parliament as it was being bypassed. Moreover, *how* this would be done in practice was not forthcoming. Relatedly the requirements to make the Community's institutions ‘more responsive’ and for the requirement to ‘reinforce democratic control’⁶⁸⁸ were stated but no constitutional policy provisions were outlined.

Heath’s *Putting Britain First* manifesto was the first time that a statement of position on Europe was discussed in a constitutional section of the manifesto. It was in the section called *People and the law* under the subheading of *Speaker's Conference on Electoral Reform*. It stated that the party wanted the Speaker's Conference to ‘examine the question of representation in the European Parliament’ and then stating rather enigmatically that ‘many people think should be decided by direct election’.⁶⁸⁹ Therefore, in *Putting Britain First* the position was not clear but the implication was there. Nevertheless, the foreign policy perspectives and the economic advantages were still at the forefront. The manifesto made the case for staying in the EC by having a section called *The Dangers of Withdrawal* and the dangers, according to the manifesto, were a weakened economy through loss of jobs and the reduction of ‘power and influence in the world’ no constitutional ramifications were mentioned. A core passage in the

⁶⁸⁵ Dale, *Conservative Manifesto*, p. 223.

⁶⁸⁶ Ibid, p.224.

⁶⁸⁷ Ibid, p.224.

⁶⁸⁸ Ibid, p. 224

⁶⁸⁹ Ibid, p. 250.

Putting Britain First was Britain's entry into the European Community was stated as the most 'historic achievement of the last Conservative government'.⁶⁹⁰ The foreign policy perspective was again dominate the statement was in the section called *Conservative Achievements in Foreign Policy* and it is worth citing it in full here:

Membership of the EEC brings us great economic advantages, but the European Community is not a matter of accountancy. There are two basic ideas behind the formation of the Common Market; first, that having nearly destroyed themselves by two great European civil wars, the European nations should make a similar war impossible in future; and, secondly, that only through unity could the Western European nations recover control over their destiny - a control which they had lost after two wars, the division of Europe and the rise of the United States and the Soviet Union.⁶⁹¹

The aim of making 'Europe more democratic' was again restated in the October 1974 manifesto but as in line with the February manifesto no constitutional policy positions were subscribed to. The main arguments for membership were political, economic⁶⁹² but also international. EC membership was also viewed as the 'key to Britain's modernisation'.⁶⁹³ The last two sentences are very revealing in Heath's *Putting Britain First* manifesto. These are: 'Europe gives us the opportunity to reverse our political and economic decline. It may be our last'. Constitutional issues were a 'non-issue' within the manifesto until 1974 and in two manifestos in 74 they were a very minor side issue that were not addressed by any detailed policy provisions. In short, there was constitutional silence.

In 1979,⁶⁹⁴ Thatcher's manifesto stated that one of the five key tasks for next Conservative Government was to 'uphold Parliament and the rule of law'⁶⁹⁵ and therefore conforms to the fourth conservative constitutional good nevertheless, this was not in relation to 'Europe'. In terms of 'Europe' the arguments for being in the Community were similar to Heath's such as the economy and influence in the world. The main discussion of the EC was again in the foreign

⁶⁹⁰ Ibid, p. 260.

⁶⁹¹ Ibid, p. 260.

⁶⁹² Norton, *The Prime Minister and the Cabinet*.

⁶⁹³ See Lynch, P. (1999) *The Politics of Nationhood: Sovereignty, Britishness and Conservative Politics*, (Basingstoke: Macmillan) p.28; See also Crowson, N. J. *The Conservative Party and European Integration since 1945: At the heart of Europe?* (London: Routledge, 2007).

⁶⁹⁴ For an analysis of statecraft from 1979 to 1997 see Buller, J. *National Statecraft and European Integration: The Conservative Government and the European Union 1979-1997* (London: Pinter, 2000).

⁶⁹⁵ Dale, *Conservative Manifesto*, p. 266.

and defence section of the manifesto called *A strong Britain in a free world*. The manifesto did state that the Conservatives under Thatcher desired to ‘discuss with all parties’ the relationship between Members of the European Parliament and Westminster’ in *The Supremacy of Parliament* section. This again was a side mention and not one of the two key issues in relation to the Supremacy of Parliament according to the manifesto. These were: (1) strikes and trade unions, and (2) the growth of the Executive (this will be discussed in chapters 7 and 8). There was constitutional silence on the impact of EC membership on the Supremacy of Parliament or any other constitutional issues. In Thatcher’s second manifesto, *The Challenge of Our Times*, to ‘uphold Parliamentary democracy and strengthen the rule of law’ was as in the 1979 manifesto a key task for the Government.⁶⁹⁶ Yet again, the main position statements were in the foreign policy section and also dotted around in other economic sections. The benefits of membership were couched in arguments around trade, investment and jobs. There was complete constitutional silence on the issue of EC membership. Thatcher’s third and final manifesto, *The Next Moves Forward* is also completely silent on EC constitutional issues and *modus operandi* was apparent in line with the other manifestos that the focus was on economic issues and establishing a ‘genuine common market’.⁶⁹⁷

The major constitutional Act during Thatcher’s Premiership (1979-1990), the 1986 European Communities (Amendment) Act as so known as the Single Market Act 1986 is not mentioned in *The Next Moves Forward* at all. This was the first Act to amend the European Communities Act 1972 after thirteen years of membership of the European Community. Lord Strathclyde⁶⁹⁸ when discussing the Single European Act said:

It was being discussed. People did not see the enormity of it as much as it turned out. I’m told and I’ve no reason to disbelieve it that Margaret Thatcher, the Prime Minister, was very suspicious of it but was persuaded by Lord Hailsham who was then Lord Chancellor that it was perfectly okay. Of course, all of this was crossed in the 1972 European Communities or whatever it was called, the European Union. So, and also, at that stage, we were all rather in favour of single markets and enterprise and all of that, so it was a big constitutional change, but it was not uppermost in people’s minds as being something to oppose.⁶⁹⁹

⁶⁹⁶ Ibid., p.287.

⁶⁹⁷ Ibid., p. 349.

⁶⁹⁸ Who entered the House of Lords in 1986.

⁶⁹⁹ In an interview with the author.

Lord Strathclyde added that the SEA was ‘not a political measure but an economic measure and something that would be beneficial.’⁷⁰⁰ Relatedly, Lord Tebbit said of the SEA ‘I think people were looking at the economic benefits which came from a single market and there’s no doubt that a single market brings lots of benefits rather than constitutional’⁷⁰¹ Tebbit added ‘what wasn’t seen very well was those who were pushing the agenda in Brussels who took the view that the nation state has had its day and that national parliaments should be reduced to provincial councils really.’⁷⁰²

Indeed, the constitutional effects of the 1986 Act were far-reaching.⁷⁰³ The Act embodies the UK’s assent to the Single European Act (SEA) but the Act was not seen through a constitutional lens, there was constitutional silence, rather an economic perspective was utilised in favour of European integration for economic benefit of a competitive single market.⁷⁰⁴ Thatcher saw, for example the Qualified Majority Voting (QMV) as a means to this economic end.⁷⁰⁵ Thus demonstrating that constitutional ramifications were not of primary salience despite the major constitutional consequences and changes. The primary changes were: (1) the enlargement of weighted majority voting in the Council of Ministers; and (2) the introduction of the ‘co-operation procedure’, thus providing the European Parliament powers of amendment and rejection over certain Commission proposals. There were two core constitutional ramifications: (1) the Act changed the distribution of powers within the European Community institutions themselves; and (2) it changed fundamentally the relationship between the European Community institutions and the member states institutions in relation to collective decisions. The 1987, *The Next Moves Forward*, manifesto was silent on these constitutional ramifications. Nevertheless, the Bruges speech in 1988 by Thatcher was a critical juncture on the European Question in which Thatcher set out her vision of ‘willing and active cooperation between independent sovereign states.’⁷⁰⁶

In Major’s 1992, manifesto, *The Best Future for Britain*, the European Community was discussed in the *Taking Responsibility for Britain*, which was a section of the manifesto that

⁷⁰⁰ Ibid.

⁷⁰¹ Lord Tebbit interview with the author.

⁷⁰² Ibid.

⁷⁰³ See Norton, *The changing constitution-part 2* see also Norton, *The Glorious Revolution of 1688 Its Continuing Relevance*.

⁷⁰⁴ Marks, G. and Wilson, C., (2000) The Past in the Present: A Cleavage Theory of Party Response to European Integration, *British Journal of Political Science*, 30: 433-459.

⁷⁰⁵ Gamble, A. (2003) *Between Europe and America: The Future of British Politics*. (Basingstoke: Palgrave Macmillan), p.176.

⁷⁰⁶ Thatcher, M. (1988) ‘Speech to the College of Europe (“The Bruges Speech)’, 20th September.

focused on foreign policy related subjects and not in the other section of the manifesto dealing with constitutional issues called *A United Kingdom*.⁷⁰⁷ Major's *The Best Future for Britain* did lay claim to the Single Market Act but pointed to the reform of the European Community's finances and to Britain role in persuading other members to welcome new countries into the Community rather than any constitutional implications. The 1992 manifesto stated that the Conservatives would 'continue to resist changes to the Treaty of Rome that would damage British business'⁷⁰⁸. It also stated that 'The Maastricht Treaty was a success both for Britain and for the rest of Europe'.⁷⁰⁹ Nevertheless, more than 60 percent of Conservative Party's backbenchers at the time engaged on dissent activities during the 1992 Parliament in relation to the Treaty.⁷¹⁰ A 1994 survey of the Conservative Party in the House of Commons stated that 50 percent favoured the passing of an act of Parliament to 'establish explicitly the ultimate supremacy of Parliament over EU legislation'.⁷¹¹ Moreover, 79 percent believed that the way to achieve greater democratic accountability was by 'strengthening the scrutiny by national parliaments' of the European 'legislative process'.⁷¹² Another survey in 1998, under the leadership of Hague found these figures had increased to 69 percent and 84 percent respectively.⁷¹³

As was seen in the previous chapter on the Union, Major's position on the supremacy of Parliament and devolution was clear on Parliamentary sovereignty in terms of the Union and devolution. This was not, the case in the relation to the European Question in his manifestos. The core focus was on Britain's influence in 'Europe' and around the world and on the economic benefits of EC membership. The constitutional ramifications of the membership

⁷⁰⁷ See Major, J. *The Evolution of Europe* (Conservative Political Centre, 1991) for Major's view on 'Europe'. For Lamont's view's see Lamont, N., *Europe: A Community Not a Superstate* (London: Conservative Political Centre, 1991). See also *Britain in Europe: A United Kingdom in a Developing Community* (London: Conservative Political Centre, 1992), for the views of another six Conservatives. For analyse of the party after 1992 see Riddell, P., (1992) The Conservatives after 1992, *The Political Quarterly*, (63)4, 422-431. See also Cowley, P., & Garry, J. (1998). The British Conservative Party and Europe: The Choosing of John Major. *British Journal of Political Science*, 28(3), 473-499.

⁷⁰⁸ Dale, *Conservative Manifestos*, p. 360.

⁷⁰⁹ *Ibid.*, p. 360.

⁷¹⁰ Cowley, P. (1997) The Conservative Party: decline and fall, in A. Geddes and J. Tonge (eds.) *Labour's Landslide*, (Manchester: Manchester University Press) pp. 37-52. p. 42; see also Baker, D., Gamble, A., and Ludlam, S. (1994) 'The Parliamentary Siege of Maastricht 1993: Conservative Divisions and British Ratification', *Parliamentary Affairs*, (47) 1, 37-60.

⁷¹¹ *Ibid.*

⁷¹² *Ibid.*

⁷¹³ Baker, D., Gamble, A. and Seawright, D. (2002) 'Sovereign nations and global markets: modern British Conservatism and hyperglobalism', *British Journal of Politics and International Relations*, 4(3): 399-428. p. 417.

were not discussed. The perspective of influence and the role on the world stage was made clear in a quote in Gilmour and Garnett's *Whatever Happened to the Tories* book, published in 1997, which is worth quoting here:

by helping the European Union to be one of the major powers in the world, [the United Kingdom] could retain considerable control over her own destiny, or she could cling to formal sovereignty, while in reality becoming an American satellite and enjoying the international influence equivalent to a county council.⁷¹⁴

Major's *You can only be sure with the Conservatives* manifesto is by far the most comprehensive of any manifesto since 1945 on Britain and the European Question. The core sections are again in a foreign policy section of the manifesto called *Europe and the World* with two key subsections. These are *Britain and the European Union* and *A Single Currency: Our Referendum Guarantee*. These were not presented in the main section of the manifesto on the constitutional policies and position called *The Constitution*. These position statements and policies are again in a similar vein to previous manifesto that trade, economics (such as the single market) and foreign policy are highlighted and take centre stage. Nevertheless, there is a shift in Major's *You can only be sure with the Conservatives* manifesto in that a vision of the type of 'Europe' and Britain's relationship with it is provided for the first time. The manifesto states:

A Conservative Government will seek a partnership of nation states. Some others would like to build a federal Europe. A British Conservative Government will not allow Britain to be part of a federal European state.⁷¹⁵

It is also the first manifesto since 1945 to address some constitutional ramifications of membership, thus breaking the constitutional silence within the party's manifestos. It was stated that the party will not accept Treaty changes that would 'further centralise decision-making' and would 'reduce national sovereignty' or to remove Britain's 'right to permanent opt-outs'.⁷¹⁶ The constitutional policies priorities were to 'reform of the European Court of Justice', 'further strengthening of the role of national parliaments' and 'seek more co-operation between national governments' as well as retaining 'Britain's veto' and to oppose 'further

⁷¹⁴ Gilmour, I. and Garnett, M. *Whatever Happened to the Tories? The Conservatives since 1945*, London: Fourth Estate, 1997), p. 378.

⁷¹⁵ Dale, *Conservative Manifestos*, p. 360.

⁷¹⁶ *Ibid.*, p. 455.

extension of qualified majority voting'.⁷¹⁷ Additionally, the manifesto pledged to 'oppose more powers being given to the European Parliament at the expense of national parliaments'.⁷¹⁸ The manifesto stated that a referendum would be held so the British people can express their approval to 'a single currency' (the role of referendums are discussed in chapter 7). The policies were not worked out in detail, but they were clear in position of the party, but Major's second manifesto marked a shift in that it dealt with the constitutional ramifications of membership of the European Union rather than being silent of the issues and as such it marked an innovation in the party's official policy as stated in the manifestos. There were some major important constitutional ramifications throughout the 1979-92 period of Conservative Governments, yet in relation to the constitutional implications of joining 'Europe' there was constitutional silence on this subject within the party's manifestos. The Conservative manifesto preferred to take other non-constitutional perspectives such a foreign policy, influence in the world, economic growth and trade.

Hague in the general election campaign of 2001 put 'Keep the Pound' front and centre of it. David Lidington notes that:

On Europe, the big issue in Hague's time as Opposition leader was joining the Euro and the argument was, I think, both the economic and constitutional motives but constitutional motives were very important. He would make the argument that you cannot have a common monetary policy and a central bank without that making important policy decisions, less accountable to Parliament and therefore to the electorate.⁷¹⁹

Norman Lamont, in 1996, said that 'a single European currency would thus be a gigantic step towards the creation of a European government and a European state.'⁷²⁰ Major according to Forster had been 'cajoled into conceding a referendum on the Euro if the government recommended entry'.⁷²¹ Prominent Conservatives such as Ken Clarke and Michael Heseltine, during Major's premiership, viewed the Economic and Monetary Union as an economic question rather than a constitutional one.

⁷¹⁷ Ibid., p. 455.

⁷¹⁸ Ibid., p. 455.

⁷¹⁹ David Lidington interview.

⁷²⁰ Forster, *Euroscepticism in Contemporary British Politics*, p. 117. See also Bulpitt, J. (1992) 'Conservative leaders and the Euro-ratchet: five doses of scepticism', *Political Quarterly*, 63(3), pp. 258–275.

⁷²¹ Forster, *Euroscepticism in Contemporary British Politics*, p.126.

According to Hague's manifesto the 'guiding principle of Conservative policy towards the European Union is to be in Europe, but not run by Europe'⁷²² and in the subsection with the same name the two main constitutional positions were stated as (1) a 'more flexible European Union' and (2) 'Veto further transfers of power from Westminster to Brussels'.⁷²³ In line with the other manifestos, constitutional positions in relation to the EU were presented in a different part of the manifesto from the core constitutional positions of the party.

In relation to Treaties there was a policy innovation as the 1997 manifesto stated that it would not support centralised decision-making but Hague's manifesto went further stating that the party would, if it formed a government, 'insist on a Treaty "flexibility" provision'; that is, member states would only need to 'participate in new legislative actions at a European level if they see this as in their national interest' (only outside single market).⁷²⁴ It also proposed to amend domestic law (the specific law or laws were not stipulated) to include 'reserved powers'.⁷²⁵ According to *Time for Common Sense* manifesto the 'reserved powers' would 'prevent EU law from overriding the will of Parliament in areas which Parliament never intended to transfer to the EU.'⁷²⁶ Relatedly, Hague's manifesto states that the party would 'veto further transfers of power from Westminster to Brussels' and any transfer of 'rights and power to Brussels'⁷²⁷ would require a referendum.

Another prominent Conservative, Michael Portillo, in a lecture given to the Institute of Economic Affairs he said:

[w]e are being led towards a Europe which displays many of the characteristics of Britain twenty years ago. It is populated with over-manned and protected nationalised industries. In many places private sector managers are in thrall to trade unions. Business is tied down by government bureaucracy and interventionism. Public spending is appallingly high. There persists the belief that Europe can go its own sweet way, unaffected by the assault from international competition, provided that the fortress walls are built high enough.⁷²⁸

⁷²² Conservatives, *Time for Common Sense*, p. 29

⁷²³ Ibid., p. 31.

⁷²⁴ Ibid., p 29.

⁷²⁵ Ibid., p 29.

⁷²⁶ Ibid., p 29.

⁷²⁷ Ibid., p. 31.

⁷²⁸ Portillo, M. *Democratic Values and the Currency* (London: IEA, 1998), p.7.

The above quote from Portillo demonstrates the economic thinking around the UK's relationship with the Bloc. According to Garnett and Lynch the 'single currency issue was avoided but Conservative Euro-scepticism hardened'.⁷²⁹ Cowley and Green argue that Duncan Smith's:

hardening of policy was not a sign that the party was even more obsessed about Europe; rather, the shift in policy was designed to ensure that the party did not spend any longer discussing the issue.⁷³⁰

Indeed, Duncan Smith in his acceptance speech of the leadership of the Conservative Party stated the key issues he will campaign on, and these were the state of public services, health, welfare, education and the environment. Neither the constitution nor the European Question were mentioned as priorities for his leadership, thus the return of constitutional silence. According to Cowley and Green, Duncan Smith was 'determined to escape the criticism levelled at Hague in 2001 for running a single-issue campaign on Europe'.⁷³¹

In relation to the EU and the EU constitution, Howard said, in an interview with the author, that he believed that it was not 'quite right' to look the EU as 'as a constitutional issue'.⁷³² He stated that it was seen as 'a political issue' and that 'we never thought about it as a constitutional issue' as he believed it was a 'political issue relating to our relationship with the European Union'.⁷³³ Howard's manifesto in 2005 stated that the party desired to settle Britain's 'relationship with the European Union' and that would entail 'bringing powers back from Brussels to Britain'.⁷³⁴ As in the other manifestos a focus on economics and also social policy for example restoring the 'opt-out from the European Social Chapter' were highlighted. Moreover, Britain's relationship with the EU was again in the foreign policy section called *Defending our Freedoms*. The manifesto stated that they would not join the Euro and that they 'oppose the EU Constitution' and a referendum would be held 'within six months of the General Election' to 'give the British people the chance to reject its provisions' but it was also stated that EU membership was valued.⁷³⁵ There was again a return to constitutional silence.

⁷²⁹ Garnett and Lynch, *Conservatives in Crisis*, p. 265.

⁷³⁰ Cowley, P. and Green, I., 'New Leaders, Same Problems: The Conservatives', in A. Geddes and J. Tonge *Britain Decides: The UK General Election 2005*, (Basingstoke, Palgrave Macmillan, 2005) pp. 46-69. p.51.

⁷³¹ *Ibid.*, p.51.

⁷³² Interview with Michael Howard.

⁷³³ *Ibid.*

⁷³⁴ *Conservatives, Are You Thinking What We're Thinking?*, p.1.

⁷³⁵ *Ibid.*, p. 26.

Carswell, in 2006, believed that British participation ‘has been a political and economic disaster’ and believes that ‘if we do not leave sooner rather than later it will be a catastrophe.’⁷³⁶

In Cameron’s first manifesto (2010), an *Invitation to Join the Government of Britain*, the economic focus was presented, for example it was stated in the manifesto that the party would support the ‘Doha trade round and support bilateral free trade negotiations between the European Union (EU) and other countries.’⁷³⁷ The policies towards the Bloc were in a subsection called *An open and democratic Europe*. There were policy positions that were also present in Hague and Howard’s manifestos such as not joining ‘the Euro without a referendum’ and not supporting the ‘further extension of the EU’s power’⁷³⁸ without consent (also in Major’s 1997 manifesto and within Cameron’s). The position of bringing back powers was again reiterated. The core constitutional policies were in the section called *Restore democratic control*, which had been a key position within the party’s manifesto since Britain joined the EC in 1973. For example, Heath’s February 1974 manifesto stated the requirement to ‘reinforce democratic control’.⁷³⁹ It was stated that in *Invitation to Join the Government of Britain* the party would ‘amend the 1972 European Communities Act so that any proposed future Treaty that transferred areas of power, or competences, would be subject to a referendum’ and stated this is a ‘referendum lock’.⁷⁴⁰ It was also stated that the amendment to the 1972 Act would stop another future government from joining the Euro without a referendum. As in Hague’s manifesto there was also a statement about ‘ratchet clauses’, its opposition to transfer of power to the EU, and the return of power back to the UK were all restated as policy positions. This was the third manifesto in a row to do so. Furthermore, *Invitation to Join the Government of Britain* continued in line with the *modus operandi* of the previous manifestos of not discussing constitutional policies in relation to membership of the EU with other constitutional policies (these were in the *Change Politics* section), thus demonstrating once again that ‘Europe’ was not viewed as a salient constitutional issue. Nevertheless, the most striking policy was the intention to ‘introduce a United Kingdom Sovereignty Bill’ and the purpose of the policy, according to the manifesto, was to ‘make it clear that ultimate authority stays in this country,

⁷³⁶ Carswell, D. (2006) Speech to Bruges Group, Conservative Party Conference Fringe Meeting, October 2006. p.1.

⁷³⁷ Conservatives, *Invitation to Join the Government of Britain*, p. 11.

⁷³⁸ *Ibid.*, p. 113.

⁷³⁹ Dale, *Conservative Manifestos*, p. 224.

⁷⁴⁰ Conservatives, *Invitation to Join the Government of Britain*, p. 113.

in our Parliament'.⁷⁴¹ The incompatibility with the stated policy object of staying inside the EU was not clear or the constitutional ramifications of such a Bill were not discussed.

Cameron's second manifesto (2015) had an explicit section on the EU called *Real change in our relationship with the European Union*. Nevertheless, the core manifesto pledge to have a 'straight in-out referendum on our membership of the European Union by the end of 2017'⁷⁴² was first stated in the immigration section of the manifesto called *Controlled immigration that benefits Britain* and then in the EU section. As since 2001, there was the commitment to keep the pound, reform and reclaim powers the EU, and ensure the Single Market (a policy commitment since 1992) and a focus on EU level trade deals. The manifesto stated that the EU was 'too undemocratic' and the party wanted to end Britain's commitment to an 'ever closer union'.⁷⁴³ Moreover, it was stated that the party wanted 'national parliaments to be able to work together to block unwanted European legislation'.⁷⁴⁴ In a continuation of the party's *modus operandi* no specific policies were stated; rather, position statements were made in their stead.⁷⁴⁵

Nick Timothy said in an interview with the author that when he became a Co-Chief of Staff to Theresa May that the main constitutional issues were:

Brexit was obviously the most significant, but then there was the Union itself, which was under a lot of pressure, just as it is now because of Brexit, but also because of the success of the SNP and the domination of the SNP in Scottish elections. There was the Supreme Court case over the right of the executive simply to trigger Article 50, or whether it needed Parliament's approval and legislation to do so first. This was an argument about whether the executive could just take a decision that would deprive

⁷⁴¹ Ibid., p.114.

⁷⁴² Conservatives, *Strong Leadership. A Clear Economic Plan. A Brighter, More Secure Future*, p. 30.

⁷⁴³ Ibid., p.72.

⁷⁴⁴ Ibid., p.73.

⁷⁴⁵ Cliff Grantham, a special adviser in the 1990s to John Patten noted that pamphlets on the constitution at the time were stating the overall conservative case rather than more specific policy details. See Patten, J., *Modernising British Government: Approaches to the Constitution and Constitutional Reform* (London: European Policy Forum, 1992). Patten, J., *Political Culture, Conservatism and Rolling Constitutional Change* (London: Conservative Political Centre, 1991) CPC No. 0510/869 for publications around this time.

citizens of rights that Parliament had granted via the ratification of an international treaty.⁷⁴⁶

Timothy also adds:

Then there was the Northern Ireland question, which of course is still caught up with the Brexit question. So, I would probably say Brexit, the union, and the role of the Supreme Court. And of course, with Brexit, there was the fact that it amounted to a clash between representative and direct democracy: Parliament gave the public a referendum, but when the decision was made, there was no majority in Parliament to give effect to the result.⁷⁴⁷

The 2017 manifesto, under the leadership of May, represented a paradigm shift from being a member of the EU to not being of member. Being member of the EU had been the position of the Conservative Party's manifestos since Macmillan's *The Next Five Years* manifesto in 1959; that is, a policy position of 48 years or so. Thus, May's manifesto reverted back to a position that was more similar to Eden's 1955 position that a European Unity is a good thing but not as Britain as a member. Nevertheless, it was not a paradigm shift in relation to how Britain's relationship with the EU was viewed. On page one of the manifesto, it is cited by May that 'Brexit will define us: our place in the world, our economic security and our future prosperity'.⁷⁴⁸ This sentence by May is a perfect encapsulation of the Conservative Party's perspectives in relation to the EU. The core statements within the manifesto were the 'White Paper on the United Kingdom's Exit the European Union', the 'passage of the European Union (Notification of Withdrawal) Act', invoking Article 50, and the 'Great Repeal Bill White Paper', which were located in a section called *Leaving The European Union*, meaning that the constitutional positions were in at least three sections of the manifesto (*Our Precious Union* and *The Home Of Democracy And The Rule Of Law*).⁷⁴⁹ Danny Kruger MP said, 'of course Brexit was a constitutional decision, but the British public voted to leave the EU, fundamentally because of identity and culture not the constitution'.⁷⁵⁰

⁷⁴⁶ Nick Timothy in an interview with the author.

⁷⁴⁷ Ibid.

⁷⁴⁸ Conservatives, *Forward Together*, p.1.

⁷⁴⁹ Ibid., pp. 35-37.

⁷⁵⁰ Danny Kruger interview with the author.

Johnson's 2019, *Get Brexit Done*, manifesto was not an exception in discussing the relationship between Britain and the EU in a different section of the manifesto and the modus operandi of the Conservative Party's manifesto was again at work; that is, to state a position but not to put any policy detail in relation to constitutional issues in the manifesto. An example of this is the statement of that the 'future relationship will be one' that allows Britain to '[t]ake back control of our laws'.⁷⁵¹ Stating (if at all) broad positions rather than specific policies.

In summary, there was a paradigm shift from Eden's *United for Peace and Progress* manifesto to Macmillan's *The Next Five Years* manifesto in favour of membership. The European Question has not been seen as a constitutional question within the official policy statements with the manifestos from 1945 to 1992 and that they have been dealt with through a non-constitutional perspective such as a foreign policy, influence in the world, economic growth and trade. There was again a return to constitutional silence in 2005 but from 2010 onwards constitutional issues in terms of the relationship between Britain and Europe has been a side issue and of secondary importance if viewed as salient at all. This has meant that constitutional issues have not been couched in constitutional terms, forms or ideas but there was some policy innovation in the 2001 manifesto but on the whole, there was a continuity of policy position from 1959 to 2015 and the shift back to the 1955 position in 2017 onwards. To utilise Cameron's terminology the party may have been banging on about Europe, but it has been constitutionally silent.

⁷⁵¹Conservatives, *Get Brexit Done*, p. 5.

Hollowing-out of The State: Common Sense, Human Rights and the Courts

‘The laws that we make form the basis of judgments in our courts, which are respected around the world. This unequalled democracy and legal system is our greatest national inheritance.’⁷⁵²

The hollowing out of the State as noted in a previous chapter has been conducted sideways. In other words, flowing towards the direction of the courts and away from parliament. The aim of this chapter is to analysis the Conservative Party’s manifesto on this issue (the relationship between the courts, parliament and the executive) and human rights.

In this chapter, I will argue that the Conservative Party manifestos have not engaged with human rights as a constitutional issue from 1900 to 1997, which I have termed ‘the era of human rights as foreign policy and constitutional silence’. Relatedly, when the manifestos have engaged with the debate about human rights it has been seen as a foreign policy issue (in relation to other countries’ human rights) rather than a constitutional issue that required addressing within a British context. I will also argue that the role of the courts was seen as protecting the individual and enforcing parliament’s will rather than a being a constitutional court. A constitutional court was dismissed in Major’s 1997 manifesto stating that ‘transferring power away from parliament to legal courts - undermining the democratic supremacy of parliament as representatives of the people.’⁷⁵³ In relation to these policies, they aimed at incremental change, and it can be gleaned from the historical approach that one manifesto policy further developed the last one in relation to machinery and administration of justice.

Major’s second manifesto does mark a critical juncture as it was the first manifesto to apply human rights to a British context. Thereafter, what I have coined, ‘a dualist approach’ was taken. From 2001 to 2019 there was a dualist approach, seeing human rights through the prism of home and abroad rather than just abroad. Nevertheless, the ‘home’ perspective within the manifestos was seen as *specific* issues such as the role of the military or about deporting foreign criminals rather than any overall policy suite or constitutional framework that addressed the constitutional issues. The framing of the human rights by the Conservative Party was twofold (1) was as a foreign and defence issue where Britain ‘can do good on the world stage’; and (2) enabling or disabling of effective implementations of Home Office policies.

⁷⁵² Conservatives, *Forward Together*. p. 42.

⁷⁵³ Dale, *Conservative Manifesto*, p. 276.

Within the Conservative Party manifestos human rights were not explicitly expressed until 1950⁷⁵⁴ and the role of the courts were not a core theme within them. Human rights within a British context were not included in the manifestos from 1900 to 1997. I have referred to this period as the ‘era of human rights as foreign policy and constitutional silence.’

There is an example of a group of Conservative backbenchers in the 1870s advocating for the restoration of the Lords’ appellate jurisdiction in the Judicature Act of 1876. Stevens argues that the ‘purpose’ of the Act ‘had been to bolster the peers as a branch of the legislature.’⁷⁵⁵ I suggest this could be seen as an early example of Conservatives pushing back against the sideways hollowing out of the State. Nevertheless, Baldwin’s 1929 manifesto is the first of the manifesto to provide an implicit statement about the role of the courts. It notes that ‘we have secured the enforcement of the Act through the medium of the Courts.’⁷⁵⁶ The Act was the Agricultural Wages Act of 1924, which demonstrates Baldwin’s view that the courts ought to enforce Acts of Parliament. Nevertheless, Churchill’s 1950 manifesto was the first time that human rights were mentioned in the party’s manifestos. Yet, they were mentioned in relations to foreign affairs in general and in relation to ‘The admission of the Government of Western Germany into the Council of Europe’ and that ‘she accepts freely and fully the Western democratic conception of human rights’, in particular.⁷⁵⁷ Moreover, the manifesto states that ‘Appeals against dismissal’ within the National Health Service ‘should be allowed to go to the Courts instead of to the Minister’.⁷⁵⁸ Thus, demonstrating the view that the courts ought to be the arbiter of disputes rather than setting policy, which the Minister ought to do.

Eden’s manifesto of 1955,⁷⁵⁹ in a section called *Liberty and the Law* addressed the relationship (between the courts, parliament, executive and the citizen) and stated that ‘Justice between

⁷⁵⁴ There are no mentions of human rights before 1950. Human rights are mentioned once in 1950, 2001 and 2005; there are two mentions of human rights in 1987 and 1992; there are four mentions in 2017 and 2019; there are five mentions in 2010, and the most by far is the 19 mentions in 2015. There are no mentions of human rights between 1950 and 1987 in the Conservative manifestos.

⁷⁵⁵ Stevens, *The English Judges*, p.93.

⁷⁵⁶ Stanley Baldwin’s Election Address 1929.

⁷⁵⁷ Dale, *Conservative Manifestos*, p. 88.

⁷⁵⁸ *Ibid*, p.86.

⁷⁵⁹ See Ramsden, J. *The Age of Churchill and Eden* (Harlow: Longman, 1995) for a wider analysis of this period.

citizen and citizen, and justice between citizen and State must be upheld and strengthened'.⁷⁶⁰ Thus, demonstrating that under his leadership he wanted to argue in favour of the current system and improve it, which is in line with both the conservative constitutional goods and the conservative principles. The focus in the 1950 manifesto was not on abstract conceptions but rather on improving the machinery and administration of the processes of justice, such as access to legal advice through legal aid and the improve of the administration of tribunals and of public inquiries. Macmillan's manifesto, as in Eden's, mentioned 'Legal Aid and Advice Acts' and that it should be further extended and access to legal advice was mentioned (like in Eden's) stating that the 'present income and capital limits will be reviewed to ensure that help is not denied to anyone who needs it.'⁷⁶¹ The policy of further extension of 'legal aid' was also presented in Douglas-Home's manifesto in 1964. Eden, Macmillan and Douglas-Home's manifestos present policy continuity in terms of direction and the focus of the policy as well as the focus on improving administration of the system rather than any radical conceptual or constitutional change. Moreover, all of Heath's four manifestos, in 1966, 1970, February and October 1974, had the same *modus operandi*. The 1966 manifesto pledged to 'Preserve the Juvenile Courts' and 1970 manifesto pledged to change the law ensure to compensation to victims 'in addition to fines or other punishments imposed by the Courts', and in the *Firm Action for a Fair Britain*, in the section the *Protecting the Rights of the Individual* stated that it was the Conservatives that had made it easier for 'consumers to get cheap and speedy settlement of small claims in the County Courts'.⁷⁶² All demonstrate the focus on improving the efficiency of the administration. In Heath's *Putting Britain First* it was claimed that 'When in office we substantially improved the machinery of justice. We will continue to do so and will review the machinery and jurisdiction of Magistrates' Courts'.⁷⁶³ Moreover, the manifesto stated that the party favoured the 'phased extension of Legal Aid',⁷⁶⁴ which was a policy continuation since Eden's *United for Peace and Progress* manifesto in 1955.

Keith Joseph called for a new Bill of Rights was required to set constitutional limits on taxation in Freedom under Law in 1975.⁷⁶⁵ In a pamphlet for the Conservative Society of Lawyers it

⁷⁶⁰ Dale, *Conservative Manifestos*, p. 118.

⁷⁶¹ *Ibid*, p., 136.

⁷⁶² *Ibid*, p., 219.

⁷⁶³ *Ibid*, p., 258.

⁷⁶⁴ *Ibid*, p., 258.

⁷⁶⁵ Joseph, K., *Freedom under Law* (London: Conservative Political Centre, 1975).

was stated that ‘we do not believe that a Bill of Rights is, in the present circumstances, the right approach’.⁷⁶⁶ It then added ‘Indeed, we see it as one likely to do positive harm.’⁷⁶⁷

Thatcher’s 1979 and 1983 manifestos had the same *modus operandi* as her predecessors that the focus was on empowering the courts to enable them to prosecute criminals and to improve the machinery and administration of justice. For example, the 1979 manifesto stated that the party would ‘amend the 1961 Criminal Justice Act’ and ‘revise the Children and Young Persons Act 1969’ to ensure that magistrates had the ‘power’ that they needed.⁷⁶⁸ Relatedly, the 1983 manifesto focused on ‘improving the administration of family law’ by ‘reviewing the family jurisdiction of the courts.’⁷⁶⁹ Thatcher’s *The Next Moves Forward* manifesto in 1987 was the first one to mention human rights since Churchill’s 1950 manifesto, which means that there was 37 years of silence on the topic in the Conservative Party’s manifestos. This from 1950 to 1987 was dominated by what I have termed the human rights silence paradigm. The *modus operandi* was the same as Churchill’s in that human rights were seen through the prism of foreign policy and not seen as a constitutional issue, which I have coined the Churchill-Thatcher prism. For example, in the section called *The World Stage* it is stated that:

This national revival is not confined to increased economic strength. Britain is also playing a major part on the international stage. From the White House through Europe to the Kremlin our voice is heard on arms control, on East-West issues, on human rights, on the Middle East and on African affairs.⁷⁷⁰

Relatedly, human rights are again mentioned in the section of the manifesto called *Defending the Nation in Britain and The World* stating that the party would ‘welcome any move by the Soviet Union towards respect for basic human rights.’⁷⁷¹ Then adding that Britain ‘must not lower our guard. Strong defence is still the surest foundation for building peace.’⁷⁷² Major’s first manifesto in 1992 also followed the *modus operandi* of the Churchill-Thatcher prism of viewing human rights as a foreign policy issue stating that:

⁷⁶⁶ Conservative Society of Lawyers, *Another Bill of Rights?* (London: Conservative Society of Lawyers, 1976). Conservative Party Archive PUB 534/5.

⁷⁶⁷ *Ibid.*

⁷⁶⁸ Dale, *Conservative Manifestos*, p. 257.

⁷⁶⁹ *Ibid.*, p., 386.

⁷⁷⁰ *Ibid.*, p., 314.

⁷⁷¹ *Ibid.*, p., 349.

⁷⁷² *Ibid.*, p., 356

The world has been transformed in recent years. Communism has collapsed in Eastern Europe, and the Soviet Union has fallen apart. Everywhere Socialism is in retreat and democracy, human rights and market economics are advancing.⁷⁷³

Relatedly, *The Best Future for Britain*, in the section of the manifesto called *Our Influence for Good* it also pledged to utilise ‘overseas aid’ to ‘promote good government’ abroad which included ‘respect for human rights’.⁷⁷⁴ The manifesto also focused on reform of the administration and machinery stating that:

We have already introduced a wide range of reforms following our Civil Justice Review. Extending the jurisdiction of the County Courts has helped speed up justice. The success of the small claims system in these courts has shown that simplified procedures can enable people to conduct their own cases or rely on a lay adviser.⁷⁷⁵

Moreover, also stating that: ‘We will extend the types of cases which can be handled by the County Courts in a simplified way.’⁷⁷⁶ Moreover, in this regard Major’s manifesto had the same policy aims as previous manifestos; that is, to improve the administration and machinery of the courts.

In 1996, Brian Mawhinney, who was the Chairman of the Conservative Party at the time, wrote in relation to the Labour Party’s policy position of the incorporation of the European Convention on Human Rights into UK law that the incorporation ‘would be a fundamental constitutional change. The case against the codification of rights is profound. It is supremely arrogant of one generation to assume that its views should wipe away the wisdom of past generations and bind those unborn for decades to come’.⁷⁷⁷ Labour, Mawhinney wrote, ‘must explain why the opinions of one generation of politically correct academics and constitutionalists should wipe away a Constitution that has evolved over centuries’.⁷⁷⁸ This argument sits within the conservative constitutional goods that were outlined in chapter 3, in arguing against constitution change that does not strengthen the Westminster system and draws upon the fourth and fifth principles of the conservative view of the constitution.

⁷⁷³ Ibid., p., 356

⁷⁷⁴ Ibid., p., 358

⁷⁷⁵ Ibid., p., 386

⁷⁷⁶ Ibid., p., 386.

⁷⁷⁷ Mawhinney, *Safeguarding our Constitution*.

⁷⁷⁸ Ibid.

It was Major's second manifesto that was the critical juncture in terms of manifesto policy. It was the first manifesto to address the concept of human rights in the form of a Bill of Rights, and the first to address the matter as a constitutional issue. The manifesto rejected the concept of the Bill of Rights stating that the Conservatives under Major's leadership did 'not believe there is a case for more radical reform that would undermine the House of Commons'.⁷⁷⁹ It was also stated that:

A new Bill of Rights, for example, would risk transferring power away from parliament to legal courts - undermining the democratic supremacy of parliament as representatives of the people. Whilst this may be a necessary check in other countries which depend upon more formalised written constitutions, we do not believe it is appropriate to the UK.⁷⁸⁰

Thus, *You can only be sure with the Conservatives* manifesto took a constitutional view and a conservative view, which aligned with three conservative constitutional goods (1, 3, and 4). Moreover, it also represented a paradigm shift in that it addressed human rights explicitly as a British and constitutional issues rather than as the Churchill-Thatcher paradigm as addressing them as only a foreign policy issue or the human rights silence paradigm. Consequently, it does mark a policy innovation as human rights are being seen within the British context.

The Human Rights Act 1998 (HRA) further expanded the role of the judiciary within the constitution⁷⁸¹. Bogdanor writing in 2009 believed that the HRA represents 'the cornerstone of the new British Constitution'.⁷⁸² The Act, for instance, ascribed a new role for the judiciary under sections three and four of the Act, in reviewing the compatibility of legislation to the European Convention on Human Rights. Nevertheless, the Act did not provide the ability to the courts to declare incompatible legislation invalid. The Act also provided new ground for the judicial review of executive actions.⁷⁸³ In an interview with the author Sir John Hayes said, 'that the Act was incredibly continuously disruptive, they knew it would destroy what was the previous decentralised English rights, which were largely assured by a combination of common

⁷⁷⁹ Dale, *Conservative Manifestos*, p. 386.

⁷⁸⁰ *Ibid.*, p. 386.

⁷⁸¹ In 2007 The Conservative Society of Lawyers published a pamphlet with research extracts on the HRA and a potential Bill of Rights by Conservatives. Conservative Society of Lawyers, *A Modern Bill of Rights* (London: Conservative Society of Lawyers, 2007).

⁷⁸² Bogdanor, *The New British Constitution*, p. 62.

⁷⁸³ Kavanagh, A. *Constitutional Review under the UK Human Rights Act* (Cambridge, Cambridge University, 2009); also see Young, A. *Parliamentary Sovereignty and the Human Rights Act* (Hart, Oxford, 2008).

law and Parliament'.⁷⁸⁴ Hayes added that HRA was 'superimposed on our constitution,' and it 'work very well before human rights'.⁷⁸⁵ Nevertheless, Hague's manifesto did not mention or address the Act directly as the focus was on the European Convention on Human Rights. The policy was to 'exempt the armed forces' from the Convention. How this would be achieved constitutionally was not addressed. According to Lidington:

the Human Rights Act, we did make arguments about that. That it would create a tension between the courts, the senior courts in this country and Strasbourg. It was better to leave things where you had to exhaust domestic remedies before you went to Strasbourg. The idea of leaving the convention was not something that the seriously mooted by the leadership.'⁷⁸⁶

Hague's application of human rights within a British context was in a limited and specific way and they were not discussed in constitutional terms or ideas. As in line with previous Conservative manifestos, human rights policy was not written in any detail in Howard's manifesto in 2005. In a subsection called *Communities, Transport and the Environment*, it stated that 'Together with clear guidance for police and our review of the Human Rights Act, this will ensure fairness for all, rather than special rules for different groups.'⁷⁸⁷ Howard's manifesto, like Major's in 1997 and Hague's viewed human rights through the prism of British politics and again it was in a limited and specific way. Howard's manifesto focused on the impact on the police and the 'special rules for different groups'⁷⁸⁸ rather than on the impact on military personal (Hague) or the relationship between the courts and parliament (Major in 1997). Nevertheless, Howard's manifesto was the first to mention the HRA and pledged to review it. The policy details and the topic of the review was not specified, which has been the modus operandi for Conservative manifestos.

There was silence on The Constitutional Reform Act 2005, which reformed the office of Lord Chancellor and established a Supreme Court and thus abolishing the appellate jurisdiction of the House of Lords, which received Royal assent on 24 March 2005. It was not mentioned in the Howard's manifesto. This could have been due to the proximity to the publication of *Are*

⁷⁸⁴ Sir John Hayes interview with the author.

⁷⁸⁵ Ibid.

⁷⁸⁶ David Lidington interview.

⁷⁸⁷ Conservative Party, *Are You Thinking What We're Thinking?*, p.22.

⁷⁸⁸ Ibid, p.22.

You Thinking What We're Thinking? on the 11 April 2005 and the general election held on the 5 May 2005. According to Lidington:

The other changes that were brought in, the Supreme Court, there was less of a row about that, and it was one for the lawyers. I think with that we did criticise and vigorously, the fact that this all happened pretty much overnight, and we now know even Derry Irvine wasn't in the loop, and Blair had to pedal back at the last minute. We didn't have a big, big, big fight over that one as over some the other issues.⁷⁸⁹

Baroness Shephard of Northwold in an interview to the author said:

I do believe that when the Supreme Court was established by Tony Blair, with very little discussion and certainly no consultation even with the Queen, it did actually alter things quite a lot, because it was fairly evident to everybody that eventually it would be involved in constitutional disputes and thus it does prove to be the case.⁷⁹⁰

For Geoffrey Cox MP, writing in 2011, The Constitutional Reform Act was a further encroachment of liberal constitutionalism and deepening the role of judges in the constitution.⁷⁹¹ According to Norton:

The Conservative opposition in the period from 1997 to 2010 generally had no problem in determining its stance on the measures introduced by the Labour government. Embracing essentially the traditional approach, it opposed substantial change to the extant constitution. However, it faced a problem prospectively, in that when it returned to office the constitution would no longer be that which it had been defending when it was in power.⁷⁹²

Indeed, in relation to human rights and the roles of the courts the Conservative manifestos did not propose any substantial change to the extant constitution. Michael Howard said that the HRA was 'really difficult' but he also noted that he had 'always been opposed to it'.⁷⁹³ This was because he thought 'it invites judges to carry out balancing exercises because they have to look at whether Acts of Parliament were proportionate, which is the responsibility of

⁷⁸⁹ David Lidington interview.

⁷⁹⁰ Baroness Shephard of Northwold interview with the author.

⁷⁹¹ Cox, G., *The Living Constitution: A Conservative Response to Liberal Constitutionalism* in (eds) Davis, D., Binley, B., and Baron, J., *The Future of Conservatism: Values Revisited* (London: ConservativeHome, 2011).

⁷⁹² Norton, *Changing Constitution*. p. 328.

⁷⁹³ Michael Howard interview.

parliament and not of the judges in my opinion'.⁷⁹⁴ He added that 'it's a very difficult topic because it's not easy to see what you can do without withdrawing from the convention, and withdrawing from the convention is a very difficult thing to do politically'.⁷⁹⁵ Rees-Mogg in the interview with the author linked the 'European Question' with the role of the courts in the UK.⁷⁹⁶ He said that 'we suddenly instituted a system without realising it which made parliament subordinate to the courts'.⁷⁹⁷ He added that it 'took a long time for this to become obvious. It took about 15 years before it was clear that the courts could overrule a parliament and could strike down primary legislation'.⁷⁹⁸ According to Rees-Mogg, this changed the 'relationship with the other parts of the constitution'.⁷⁹⁹ He suggested that the solution to 'Americanisation' of the British constitution is 'to put the courts back into the position of interpreting the law rather than deciding the boundaries of the law'.⁸⁰⁰

Cameron in June 2006 made a speech to the *Centre for Policy Studies* where he outlined how a future Conservative government would consider repealing the HRA and replacing it with a Bill of Rights. In Cameron's 2010 manifesto, in the section called *Restore our civil liberties*, went further than Howard's policy of reviewing the HRA and pledged that 'We will replace the Human Rights Act with a UK Bill of Rights'.⁸⁰¹ Such a policy would, according to the manifesto 'protect our freedoms from state encroachment and encourage greater social responsibility'.⁸⁰² The policy of a Bill of Rights was indeed a policy innovation, which was diametrically opposed to Major's 1997 manifesto, which warned against any such policy on constitutional grounds. Cameron's policy in the 2010 manifesto was not argued for on constitutional grounds or using constitutional terms. According to Norton, the '2010 manifesto could be described as adopting a conservative approach with a radical tinge'.⁸⁰³ Norton notes the 'so-called British bill of rights in place of the Human Rights Act' and also noted that 'like the previous government, it adhered to no clear approach to constitutional change'.⁸⁰⁴ In the section called *A liberal Conservative foreign policy*, human rights as foreign policy were raised

⁷⁹⁴ Ibid.

⁷⁹⁵ Ibid.

⁷⁹⁶ Jacob Rees-Mogg in an interview with the author.

⁷⁹⁷ Ibid.

⁷⁹⁸ Ibid.

⁷⁹⁹ Ibid.

⁸⁰⁰ Ibid.

⁸⁰¹ Conservatives, *Invitation to Join the Government of Britain*, p. 79.

⁸⁰² Ibid., p. 79.

⁸⁰³ Norton, *Politics UK*, p. 328

⁸⁰⁴ Ibid, p. 328.

again. This time in the context of China as well as other countries. Thus, dualist perspectives of human rights was again utilised.

Cameron's 2015 manifesto had the most mentions of human rights of any manifesto with 19 mentions (e.g., May and Johnson's manifestos mentions 'human rights' four times). In the section *Fighting crime and standing up for victims*, the manifesto pledged to 'scrap the Human Rights Act and curtail the role of the European Court of Human Rights, so that foreign criminals can be more easily deported from Britain.'⁸⁰⁵ The position within the manifesto that the policy is expressed is indicative and it demonstrates a utility view based on the *Home Office prism*. Moreover, it was stated that:

The next Conservative Government will scrap the Human Rights Act, and introduce a British Bill of Rights. This will break the formal link between British courts and the European Court of Human Rights, and make our own Supreme Court the ultimate arbiter of human rights matters in the UK.⁸⁰⁶

The policy is also stated again in the section called *Real change in our relationship with the European Union*. It states that the policy:

will restore common sense to the application of human rights in the UK. The Bill will remain faithful to the basic principles of human rights, which we signed up to in the original European Convention on Human Rights. It will protect basic rights, like the right to a fair trial, and the right to life, which are an essential part of a modern democratic society. But it will reverse the mission creep that has meant human rights law being used for more and more purposes, and often with little regard for the rights of wider society. Among other things the Bill will stop terrorists and other serious foreign criminals who pose a threat to our society from using spurious human rights arguments to prevent deportation.⁸⁰⁷

The dual perspectives of human rights at home and abroad is also presented with the manifesto. Human rights are utilised as a foreign policy platform, for example standing 'up for the rule of law and human rights in Zimbabwe' and 'Sri Lanka'. The reform of the administration and machinery of justice was also present in Cameron's 2015 manifesto, and pledged to 'continue to review our legal aid systems, so they can continue to provide access to justice in an efficient

⁸⁰⁵ Conservatives, *Strong Leadership. A Clear Economic Plan. A Brighter, More Secure Future*, p. 58.

⁸⁰⁶ Ibid, p. 60.

⁸⁰⁷ Ibid, p. 73.

way'.⁸⁰⁸ Moreover, in an interview with the author, John Hayes also noted the Human Rights Act 'is very, very frustrating' especially in stopping the 'Government from deporting illegal migrants',⁸⁰⁹ which was another articulation of the Home office perspective on the HRA.

Munce argued that Cameron's position on HRA and a British Bill of Rights was fundamentally un-conservative on two levels: (1) constitutional and (2) philosophical.⁸¹⁰ Munce also discerns four overlapping phases to the Conservative Party's response to the HRA: which he calls 'initial opposition', 'ineffectual opposition', 'purposeful opposition' and 'constrained opposition'. Munce's argues the Conservatives under Cameron did not have a settled position on the HRA over this time period. Nevertheless, in terms of manifesto position both the 2010 and 2015 manifestos had a stated position and that was to replace the Human Rights Act with a Bill of Rights.

Flinders' focus, in his 2009 article, was on the Conservative Party's attitude towards constitutional reform and democratic renewal. Flinders argues that the Conservative Party was incredibly consistent from 1997 until David Cameron became leader.⁸¹¹ He argues that 'under William Hague, Ian Duncan Smith and Michael Howard the focus was to rebuild the role of Parliament and protect the concept of parliamentary sovereignty'.⁸¹² Nevertheless, Flinders argues that Cameron's election as leader 'appeared to represent a new stage in recent Conservative constitutional thinking'.⁸¹³ He argued that it was possible to trace the evolution of three distinct strands of thinking on the topic. These are: (1) his in 'initial standpoint', which was closely associated with the Democracy Taskforce and focused on parliamentary reform and shifting the balance of power from the government to legislative; (2) a policy of a British Bill of Rights from around mid-2006; and (3) from mid-2007 Cameron's focus shifted suddenly towards devolving power to the localities and individuals, which Cameron termed 'fixing our broken politics'.⁸¹⁴

Dominic Grieve writing in 2015 provided a critical exposition of the Conservative paper called '*Protecting Human Rights in the UK: the Conservatives' Proposals for changing Britain's Human Rights Laws*'. Grieve concluded that the Conservatives should want to remain within

⁸⁰⁸ Ibid, p. 60.

⁸⁰⁹ John Hayes interview.

⁸¹⁰ Munce, *Profoundly Un-Conservative?*.

⁸¹¹ Flinders, *Conserving the Constitution*.

⁸¹² Ibid.

⁸¹³ Ibid., p. 252.

⁸¹⁴ Flinders, *Conserving the Constitution*, p. 252

the jurisdiction of the ECHR to maintain and to ensure the Court's effectiveness and continued viability.⁸¹⁵

May's 2017 manifesto stated that it would 'not bring the European Union's Charter of Fundamental Rights into UK law' and that it would 'not repeal or replace the Human Rights Act while the process of Brexit is underway'.⁸¹⁶ Thus, breaking with Cameron's policy of replacing the HRA with the British Bill of Rights. Nevertheless, Under May the Party would 'consider our human rights legal framework when the process of leaving the EU concludes'.⁸¹⁷ Thus, not ruling it out in the future with a policy that was more aligned with Howard's manifesto, which was to review the HRA, than Cameron's policy. Moreover, May's manifesto stated that Britain would 'remain signatories to the European Convention on Human Rights for the duration of the next parliament.'⁸¹⁸ Thus, again not ruling out leaving in a future parliament. All of which was stated in the section on leaving the EU, which was indicative as they were all seen through a political prism as was the European question as a whole. In the same way as Hague's manifesto there was a policy position to exempt 'British troops' from the European Court of Human Rights. May's manifesto stated its commitment to the legal and judicial system stating that a:

strong criminal justice system requires a good legal system. We cherish our strong and independent judiciary. Our courts and judiciary are respected as the finest in the world. Legal services are a major British export and underpin our professional services sector.⁸¹⁹

Michael Tugendhat in 2019 argued that there was a conservative case for human rights. Tugendhat argued that Conservative values and Conservative Party politicians helped to shape the Universal Declaration of Human Rights (UDHR) in 1948 and the European Convention on Human rights (ECHR) in 1950.⁸²⁰ He does this by providing an overview of the history of conservatism in the UK, with a focus on the way that Conservative administrations promoted

⁸¹⁵ Grieve, *Why Human Rights Should Matter to Conservatives*.

⁸¹⁶ Conservatives, *Forward Together*. p. 37.

⁸¹⁷ *Ibid.*, p. 37.

⁸¹⁸ *Ibid.*, p. 37.

⁸¹⁹ *Ibid.*, p. 44.

⁸²⁰ Tugendhat, *The Conservative Case for Human Rights*.

the protection of human rights.⁸²¹ Tugendhat argued that the Conservative Party should continue to play a key role in protecting human rights legislation.⁸²²

Johnson's manifesto was the only one to mention human rights or the Human Rights Act in a section explicitly on the constitution, called *Protect our democracy*. It was stated:

We will update the Human Rights Act and administrative law to ensure that there is a proper balance between the rights of individuals, our vital national security and effective government. We will ensure that judicial review is available to protect the rights of the individuals against an overbearing state, while ensuring that it is not abused to conduct politics by another means or to create needless delays.⁸²³

It was preceded with the sentence 'The ability of our security services to defend us against terrorism and organised crime is critical'.⁸²⁴ Thus, demonstrating the 'Home office' prism and the need to tackle terrorism rather than any constitutional issues. The same dualism was in present Johnson's manifesto; that is, human rights seen also through a foreign and defence policy prism and a platform for Britain to 'do good in the world'.

In summary, the Conservative Party has not had a clear overall constitutional framework for human rights within a British context. The Conservative Party manifestos did not engage with human rights as a constitutional issue from 1900 to 1997. Major's 1997 manifesto is an outlier in that it was the only manifesto to address the issues as a constitutional one. If the manifestos have engaged with the debate about human rights (there was 37 years of silence on the topic in the manifestos from 1950 to 1987) it has been seen as a foreign policy issue (in relation to other countries' human rights) rather than a constitutional issue (Churchill-Thatcher) prism. From 2001 to 2019 there was a dualist approach seeing human rights through the prism of home and abroad rather than just abroad. Nevertheless, the British context within the manifestos was seen as specific issues such as the role of the military or about deporting foreign criminals rather than any policies that addressed the constitutional issues such as of the role of the courts and their relationship with parliament and the Government. Consequently, they were not addressed from a constitutional perspective or ideas. The framing of human rights (and the HRA) was through two prisms (1) as a foreign and defence prism and (2) Home Office prism. The HRA was seen through the prism of the Home Office and the relationship with EU rather than a

⁸²¹ Ibid.

⁸²² Ibid.

⁸²³ Conservatives, *Get Brexit Done*, p. 48.

⁸²⁴ Ibid., p.48.

constitutional measure. Consequently, these prisms have coloured the policies within the Conservatives manifestos. Finally, the role of the courts within the Conservatives manifesto from 1950 to 2019 have articulated the view that courts should protect the individual and enforce the will of parliament. Moreover, improving the machinery and administration of justice has been a policy aim rather than any radical reform.

Representation, Parliament and Referendums

‘Parliament - alongside the Crown and our legal system - is one of the three key institutions that uphold our constitution. The supremacy of parliament is fundamental to our democracy...’⁸²⁵

I will argue that House of Commons reform first became a manifesto issue in 1950. From 1950 to 1964 there was a willingness to come to all-Party agreements on the Commons reform. Since 1964, there was a clear *modus operandi* from Alec Douglas-Home’s manifesto in 1964 to May’s in 2017. This *modus operandi* focused the policy area on improving scrutiny of government and the efficiency of legislation going through the House rather than on any substantive changes. This, I posit, is in line with both the conservative principle and the conservative constitutional goods. Moreover, the manifestos (if the reform House of Commons was mentioned) from Churchill to Thatcher desired for all-party conferences or a Speaker’s Conference to arrive at a consensus on the reform. These types of arrangements were dropped from Major to Johnson. Relatedly Heath’s manifesto of October 1974 was an outlier in terms of electoral reform as the other manifestos since Eden’s explicitly or implicitly back the first-past-the-post system.

The Party also sought ‘all-Party conference solutions’ or ‘cross-party consensus’ to the reform of the House of Lords. There was a slight change in the *modus operandi* around Howard’s manifesto that the Party would strive to build consensus around its policy but the paradigm of cross-party solution towards the House of Lords stayed firmly in place and is still established despite May and Johnson’s manifestos breaking from the ‘elected element’ paradigm. Eden to Major (1955-1997) had no policies for any substantive change of the House of Lords. Hague’s manifesto in 2001 was a critical juncture as there was a paradigmatic shift as it was the first manifesto to state that the official Conservative policy was for an elected or part elected chamber. The ‘elected element’ paradigm was central to the Conservatives’ policy towards the House of Lords from 2001 to 2015. During these years the Conservative Party’s official position was not in line with the conservative constitutional goods, two and seven in particular and that this period was an anomaly in terms of the core paradigm towards the Upper House.

The first manifesto to mention a referendum was that of January 1910; it was not mentioned again in a manifesto until Thatcher’s in 1979. Thus, 69 years of silence in the manifesto with

⁸²⁵ Dale, *Conservative Manifestos*, p. 276.

an implicit policy of no referendums. Having no policy is of course in line with the conservative constitutional goods principles. After 1979 there was another 18 years of silence. I argue that Major's 1997 manifesto is a critical juncture as it ushered in the new paradigm, I have called 'the referendum as a political tool'. Moreover, the use of the referendum in this way was not in line with the conservative principles or the conservative constitutional goods. I argue that this paradigm stayed in place until the 2019 manifesto broke with it to establish the explicit 'no referendums' paradigm.

The Centre of the Nation: The House of Commons and the Electoral System

In the academic literature the period of the 1830s to the 1850s has been coined the 'age of reform'. Such great constitutional bills were passed such as the repeal of the Test and Corporations Acts, Catholic Emancipation Act and the Great Reform Act.⁸²⁶ These Acts have been referred to as 'The revolutionary trilogy of great constitutional reforms.'⁸²⁷ In Robert Peel's Tamworth Manifesto, the Great Reform Act of 1832 was seen as a decisive and conclusive measure.⁸²⁸ In some academic research there seems to be little doubt that further measures would inevitably lead to full adult male enfranchisement as the implications became clear.⁸²⁹ Indeed, that was the case. The Second Reform Act of 1867 has been cited as the perhaps the most significant constitutional change of the nineteenth century.⁸³⁰ Disraeli in his election address, which was published in the *Birmingham Daily Post* on the 5th of October 1868, claimed credit for the Second Reform Act of 1867 writing that:

⁸²⁶ See Phillips, J. A. *The Great Reform Act in the Boroughs, English Electoral Behaviour, 1818-1841*, (Oxford, Oxford University Press, 1992); Phillips, J.A, and Wetherell, C., (1995) The Great Reform Act and the Political Modernisation of England, *American Historical Review*, 411-436; Phillips, J.A., and Wetherell C., (1991) The Great Reform Bill of 1832 and the Rise of Partisanship, *Journal of Modern History*, , 621-646 about the Reform Act 1832.

⁸²⁷ Butler, *Conservatives: A History*. p.56.

⁸²⁸ See the Tamworth Manifesto see also Gash, N., *Politics in the Age of Peel: A Study in the Technique of Parliamentary Representation* (Hassocks, 1977) and Parry. J., *The Age of Peel* (London: Conservative political Centre, 1996) CPC No. 901.

⁸²⁹ See Himmelfarb, G., (1966) The Politics of Democracy: The English Reform Act of 1867, *Journal of British Studies*, (6), 97-138; Parry, J.P., *The Rise and Fall of Liberal Government in Victorian Britain*, p. 280; Davis, J., and Tanner, D., (1996) 'The Borough Franchise after 1867, *Historical Research*, (69), 306-327.

⁸³⁰ Hall, C., McClelland, K., and Rendall, J., *Defining the Victorian Nation: Class, Race, Gender and the British Reform Act of 1867* (Cambridge: Cambridge University Press, 2000). For the effects of the Act in Lancashire, see: Vincent, J., The Effect of the Second Reform Act in Lancashire, *The Historical Journal*, 11 (1968), 84-94; Lowe, J.C., (1973) 'Tory Triumph of 1868 in Blackburn and in Lancashire', *Historical Journal*, (16) 733-748; Greenhall, R.L., (1974) 'Popular Conservatism in Salford 1868 – 1886, *Northern History*, (9) 123-138.

The Conservative government decided to terminate this state of affairs and by a series of measures, in the course of two years, we brought about a settlement of the question, broad in its principles, large and various in its provisions, but, as we believe, in unison with the character of the country and calculated to animate the spirit of the community and add strength and stability to the state.⁸³¹

Nevertheless, not all Conservatives were as enthusiastic about the Second Reform Act. For example, the future Prime Minister Lord Salisbury was not impressed and he took aim at Disraeli over the Reform Act of 1867,⁸³² because he saw it as the Conservatives surrendering to the pressure for parliamentary reform. Philip Twells,⁸³³ in his election address, held a similar view to the extension of franchise.⁸³⁴

Jacob Rees-Mogg said that in:

Lord Blake's view is that Disraeli was complete opportunist and the 1867 Reform Bill only did things because they annoyed Gladstone, was his basic view. I'm afraid I think this is fundamentally wrong, which I say with certain diffidence because Blake⁸³⁵ was so a distinguished figure, because I think Disraeli sets out practically everything that he then does in his early novels. And Blake, basically, dismisses this and says that's not important, and I don't agree. I think that you see that Disraeli has a pretty well-formed view of the world, which he implements once he has the majority with which to do it.⁸³⁶

Rees-Mogg add to this by saying:

I would suggest that that's broadly how the Conservatives have acted, that the Conservatives have always been keen on power and have always been willing to, in Rab Butler's phrase, deal with the art of the possible.⁸³⁷

⁸³¹ Disraeli, B. Election address published in *Birmingham Daily Post*, October 5, 1868.

⁸³² See Blake, R. *Disraeli* (London: Eyre & Spottiswoode, 1967). pp. 498-500.

⁸³³ A Conservative candidate for the City of London.

⁸³⁴ See his Election address in the *Standard* published on 30 January 1874.

⁸³⁵ See Blake, *Disraeli*.

⁸³⁶ Jacob Rees-Mogg interview.

⁸³⁷ *Ibid.*

There were other ‘second order’⁸³⁸ reforms such as the 1872 Ballot Act, which was a major electoral reform which brought in secret voting.⁸³⁹ There was also a redistribution of seats⁸⁴⁰ and the Parliamentary Elections (Returning Officers) Act 1875.⁸⁴¹ According to Blaxill and Saleh ‘The 1885 reforms – namely the Corrupt and Illegal Practices Act of 1883, the Third Reform Act of 1884, and the Redistribution of Seats Act of 1885 – transformed Britain’s electoral system.’⁸⁴² Douglas Carswell noted that some constitutional issues stem from the 1884 Reform Act and said that ‘it’s a myth, that first passed the post is an ancient part of our Constitution, it is really a late Victorian invention, rather like the Palace of Westminster itself.’⁸⁴³

There is some level of disagreement on Lord Salisbury’s views on the House of Commons.⁸⁴⁴ For example, The journalist Sir Henry Lucy believed that Salisbury held ‘pure affectation’ for it.⁸⁴⁵ Nevertheless, Michael Hicks Beach⁸⁴⁶, who from June 1885 to January 1886 was the Chancellor of the Exchequer and Leader of the Conservative Party in the House of Commons, believed that Salisbury had ‘small respect for the opinions of the House of Commons, and constantly chafed against his obligation as Prime Minister to support in the Lords proposals to which his colleagues in the Commons had been obliged to agree.’⁸⁴⁷

Nevertheless, the first manifesto to have a section headed the *House of Commons* was Churchill’s *This is the Road* manifesto of 1950 (and not for the first time this was the case). Before the 1950 manifesto the Commons was not referred to in relation to reform. For example, Baldwin’s manifesto in 1929 or Salisbury’s in 1900 stated the need for the Conservatives to achieve a Commons majority but no reform of the House itself. *This is the Road* manifesto accused the Labour Party of bringing in ‘measures for changing the constitution of the House of Commons which directly violated the all-Party agreement reached by the Speaker’s

⁸³⁸ Thomas, *Conservatives, the Constitution and the Quest for a ‘Representative’ House of Lords*.

⁸³⁹ Lawrence, J, *Electing Our Masters: The Hustings in British Politics from Hogarth to Blair* (Oxford, 2009).

⁸⁴⁰ Salisbury, ‘The Value of Redistribution: A Note on Electoral Statistics’, *National Review*, 4 (1884), 145-162.

⁸⁴¹ See Hanham, H. J., *Elections and Party Management: Politics in the Time of Disraeli and Gladstone*, (London, 1959) for general elections in this period.

⁸⁴² Blaxill, L., and Saleh, T. (2016). The Electoral Dynamics of Conservatism, 1885–1910: ‘Negative Unionism’ Reconsidered. *The Historical Journal*, 59(2), 417-445. p. 417.

⁸⁴³ Douglas Carswell interview with the author.

⁸⁴⁴ He was a member until 1868.

⁸⁴⁵ Lucy, H., *Memories of Eight Parliaments* (London, 1908), p. 121.

⁸⁴⁶ Later the first Earl St Aldwyn.

⁸⁴⁷ As cited in Hanham, *The nineteenth century constitution*, p. 68.

Conference and were designed to give advantage to their own Party.⁸⁴⁸ Churchill in a handwritten note of a draft version of the manifesto had changed the word to ‘violated’ from ‘flouted’, which strengthened the language used.⁸⁴⁹ This violation was mentioned again before pleading to restore ‘the University constituencies’.⁸⁵⁰ The 1951 manifesto was much pared back and less structured than the 1950 manifesto but it repledged to restore the University constituencies. In Churchill’s letters to his wife Clementine his main concern was in 1954 was the payment of the members of the House of Commons. He according to his letters was in favour but there was according to Churchill it was a ‘real row in the Tory Party’ and Rab Butler was ‘much puzzled’ on ‘which way to steer’.⁸⁵¹

Eden’s manifesto also had a section called *House of Commons* and it stated the aim was to ‘achieve all-Party agreement to amend the rules governing the redistribution of Parliamentary constituencies’.⁸⁵² It was stated that the ‘longer interval between general reviews would be more appropriate’ and moreover that ‘mathematical equality between electorates ought not to be an over-riding consideration.’⁸⁵³ Macmillan’s manifesto is light on constitutional policies and did not refer to the House. Alec Douglas-Home’s stated that the Conservatives had made reforms to ‘the procedure of the House of Commons’ and the party would ‘continue this work of modernising our institutions.’⁸⁵⁴ It stated that the policy was to establish a ‘select committee to consider further reforms in parliamentary procedure’.⁸⁵⁵ The three priorities according to the manifesto were (1) reviewing ‘the methods for scrutinising public expenditure’; (2) investigating speeding up the passage of Bills that were ‘technical’ and ‘relatively uncontroversial’; and (3) looking at the means of redress of ‘complaints of maladministration’. There was also a pledge to ‘call an all-party conference’ to ‘review electoral law’ including the ‘extension of postal voting’.⁸⁵⁶

Heath in his 1970 manifesto, as in Churchill’s manifestos of 1950 and 1951 accused the Labour Government of failing to implement a reform of parliamentary constituency boundaries to ‘gain

⁸⁴⁸ Dale, *Conservative Manifestos*, p. 90.

⁸⁴⁹ Churchill Archive Centre: CHUR 2/89.

⁸⁵⁰ Dale, *Conservative Manifestos*, p. 99.

⁸⁵¹ Letter dated May 28, 1954. See also the letters dated 31 May 28, 1954 and 5 June, 1954. Churchill Archive Centre:

⁸⁵² Dale, *Conservative Manifestos*, p. 125.

⁸⁵³ *Ibid.*, p. 125.

⁸⁵⁴ *Ibid.*, p. 159.

⁸⁵⁵ *Ibid.*, p. 159.

⁸⁵⁶ *Ibid.*, p. 159.

an unfair advantage at this election'.⁸⁵⁷ Heath pledged to 'return to the previous honest and fair system' where 'changes in Parliamentary constituency boundaries are made on the recommendation of the impartial Boundaries Commission.'⁸⁵⁸ Heath in his fourth manifesto (October 1974) pledged to establish 'a Speaker's Conference to examine our electoral system and to make recommendations.'⁸⁵⁹ The reason for this is because there have been people questioning 'whether our electoral system ensures that Parliament and the legislation it passes reflect the wishes of the people.'⁸⁶⁰ Indeed, The Conservative Action of Electoral Reform (CAER) founded by Anthony Wigram, was set up in 1974 according to the group, 'when Labour won four more seats but 250,000 fewer votes and formed an administration with the support of only 28% of the electorate' and the 'unfairness' of first-past-the-post system became clear.⁸⁶¹ They published a book called *Adversary Politics and Electoral Reform* edited by S.E. Finer (1975) and were in favour of proportional representation. Lord Blake expressed his view in favour of electoral reform in *Conservative Opportunity*.⁸⁶² Nevertheless, Heath's manifesto did not provide a steer to what the recommendations should be within the manifesto. Lord Waldegrave in an interview to the author expressed the importance of context on the 1970s to constitutional and electoral thinking and also to the importance of conservatism.⁸⁶³ Waldegrave also said because of the current political context his thinking on the subject of the constitutional has changed since the publication of *Binding of Leviathan* in 1978.⁸⁶⁴

Thatcher's first two manifestos focused on committees within the House of Commons and improving legislation and scrutiny of government and the 1979 manifesto stated that the party was inclined towards the proposals of the 'all-party parliamentary committees'.⁸⁶⁵ The 1983 manifesto stated that the Party had 'modernised the Select Committees' and that the party would 'pursue sensible, carefully considered reforms' if they are of 'practical value'.⁸⁶⁶ Major's 1992 and 1997 manifestos had the same *modus operandi* as Thatcher's in that they

⁸⁵⁷ Ibid., p. 194.

⁸⁵⁸ Ibid., p. 194.

⁸⁵⁹ Ibid., p. 258.

⁸⁶⁰ Ibid., p. 258.

⁸⁶¹ A history of CAER is available on their website:

<https://conservativeelectoralreform.org.uk/history/>

⁸⁶² Blake and Patten, *The Conservative Opportunity*.

⁸⁶³ Lord Waldegrave interview.

⁸⁶⁴ Waldegrave, W. *Binding of Leviathan: Conservatism and the Future* (London: Hamish Hamilton, 1978) For other works see also Waldegrave, W. *Three Circles Into One: Brexit Britain - how did we get here and what happens next?* (London: Mensch Publishing, 2019) and Waldegrave, W. *A Different Kind Of Weather: A Memoir* (London: Constable, 2015).

⁸⁶⁵ Dale, *Conservative Manifestos*, p. 276.

⁸⁶⁶ Ibid, p., 310.

focused on Parliamentary reforms that would improve the efficiency and effectiveness of the House. These were in two key areas: (1) the scrutiny of government and (2) improving the legislative process. There were no concrete proposals but a statement that the reform would endeavour to make the House more efficient. Major in his second manifesto explicitly reject PR stating that:

A system of proportional representation would be more likely to produce unstable, coalition governments that are unable to provide effective leadership - with crucial decisions being dependent on compromise deals hammered out behind closed doors. This is not the British way.⁸⁶⁷

Hague's 2001 manifesto was also in line with Thatcher and Major's manifestos. The core focus was on 'strengthened parliamentary scrutiny' and improving the ability of the house to 'hold the Government to account'.⁸⁶⁸ It did, however, state two reforms rather than a general position: these were (1) to reintroduce PMQ as a 'twice a week' event and to ensure 'that Select Committees are independent of party managers'.⁸⁶⁹ There was also a policy innovation in that the manifesto pledged to reduce the 'reduce the size of the House of Commons'.⁸⁷⁰ There was an explicit commitment to keep the 'voting system for general elections'.⁸⁷¹ As can be seen in the below table, the policy of reducing the number of MPs within the House of Commons was restated in the next four manifestos.

There were differences within the overall policy of reduction. The 2001 manifesto did not state a size. The 2005 stated the number of MPs should be cut by '20 per cent' (there were 646 MPs at the 2005 election, and this would have meant a reduction of 129.2 MPs equalling a chamber of 517 MPs). Cameron's 2010 manifesto stated a '10 per cent' reduction (there were 650 MPs at the 2010 election meaning reduction of 65 MPs equalling a chamber of 585). The 2015 manifesto stated the figure of 600 MPs and so did the 2017 manifesto. Johnson's 2019 manifesto dropped the policy, thus ending the era of reduction of MPs as an official policy that lasted from the 2001 manifesto to May's in 2017.

⁸⁶⁷ Ibid, p., 427; See also Norton, P. *Power to the People* (London: Conservative Policy Forum, 1998) for a defence of the First Past the Post System in this time period.

⁸⁶⁸ Conservatives, *Time for Common Sense*, p. 46.

⁸⁶⁹ Ibid, p. 46.

⁸⁷⁰ Ibid, p. 46.

⁸⁷¹ Ibid, p. 46.

Howard's manifesto also focused on reforms of the House of Commons to improve scrutiny of the executive and legislation. For example, through strengthening select committees. Neither the electoral system nor the franchise were explicitly mentioned. Cameron's stated that 'Labour have meddled shamelessly with the electoral system to try to gain political advantage'.⁸⁷² The *modus operandi* of improving scrutiny was also present and again through empowering 'Select Committees'.⁸⁷³ There was an explicit commitment to the 'first-past-the-post system' 'because it gives voters the chance to kick out a government they are fed up with.'⁸⁷⁴ In 2010 there was also a pledge to 'ensure every vote will have equal value by introducing "fair vote" reforms'.⁸⁷⁵ This would be achieved by equalising 'the size of constituency electorates',⁸⁷⁶ which was according to Eden's manifesto of 1955 'ought not to be an over-riding consideration',⁸⁷⁷ therefore this was a policy shift and innovation.

The provisions of the Coalition's agenda covering constitutional issues were embodied in section 24 of *The Coalition: Our Programme for Government*, entitled 'Political Reform'.⁸⁷⁸ Bogdanor in a substantial book called *The Coalition and the Constitution*, which covered the formation of the Coalition, the structure of the Coalition Government and its policies such as electoral reform and the Fixed-Term Parliaments Act 2011.⁸⁷⁹ Norton noted that the Coalition Government followed a primarily Liberal Democrat agenda. Moreover according to Norton and Thompson, the Coalition held together, 'not so much because of the Coalition programme for constitutional change, but rather despite it'.⁸⁸⁰ This was because the 'two parties started from diametrically opposite positions on constitutional change'.⁸⁸¹ Moreover, the 'Coalition almost failed at the first hurdle, that of formation, because of the parties' stances on the electoral system' and 'They would doubtless have happily gone their own ways in dealing with the constitution of the United Kingdom.'⁸⁸² Loughlin and Viney agree with Norton and Thomson that a critical issue on which the formation of the Coalition rested was that of constitutional

⁸⁷² Conservatives, *An Invitation to Join Government*, p. 67.

⁸⁷³ Ibid, p. 7.

⁸⁷⁴ Ibid, p. 67.

⁸⁷⁵ Ibid, p. 67.

⁸⁷⁶ Conservatives, *An Invitation to Join Government*, p. 67.

⁸⁷⁷ Dale, *Conservative Manifestos*, p. 125

⁸⁷⁸ The constitutional policies were the fixed-term five-year parliaments; a referendum on the introduction of the Alternative Vote (AV); the creation of fewer and equal-sized constituencies; reform of the House of Lords; legislation to provide for recall of MPs; press regulation; strengthening parliament in waging war and English votes for English laws.

⁸⁷⁹ Bogdanor, V., *The Coalition and the Constitution* (London: Hart Publishing, 2011).

⁸⁸⁰ Norton and Thompson, *Parliament and the Constitution: The Coalition in Conflict*, pp. 129–44.

⁸⁸¹ Ibid, p. 142.

⁸⁸² Ibid, p. 142.

reform and on this, and notwithstanding a degree of overlap of policies, the distance between the parties was ‘considerable’.⁸⁸³ Moreover, Matthews argued that three critical factors together explain the Coalition’s record on the constitution: (1) the clash of constitutional philosophies within the Coalition; (2) the dilemmas with which the Liberal Democrats were confronted with in the transition from opposition to government; and, (3) the extent to which the governing norms of constitution effectively neuter attempts to its reform.⁸⁸⁴

Nevertheless, *Strong Leadership. A Clear Economic Plan. A Brighter, More Secure Future* manifesto stated that the Government had:

improved the operation of Parliament, strengthening its ability to hold the Government to account, with reforms such as the election of Select Committee chairs and the creation of the Backbench Business Committee, which enables backbenchers, for the first time, to determine a significant proportion of the House of Commons’ business.⁸⁸⁵

Thus, keeping the *modus operandi* of focusing on scrutiny and efficiency. The policy to ‘make votes of more equal value’ via ‘boundary reforms’ was also restated and the pledge ‘to tackle voting fraud.’⁸⁸⁶ May’s manifesto went one step further in relation to being in favour of first-past-the-post electoral system than either of Cameron’s manifestos (which only pledged to keep it for ‘Westminster elections’) as it pledged to ‘extending first-past-the-post electoral system to Police and Crime Commissioner elections’ and ‘mayoral elections’ as well as retaining it for ‘parliamentary elections’.⁸⁸⁷ Moreover, May’s manifesto constituted the policy innovation that ‘a form of identification must be presented before voting.’⁸⁸⁸ Johnson’s 2019 manifesto also pledged ‘updated and equal Parliamentary boundaries’ and to ‘get rid of the Fixed Term Parliaments Act’.⁸⁸⁹ The *Get Brexit Done* manifesto also stated the party’s support for ‘the First Past the Post system of voting’. The 7th Marquess of Salisbury said, ‘I’m afraid I’m an unreconstructed first-pass-the-post person’.⁸⁹⁰

⁸⁸³ Loughlin, and Viney, *The Coalition and the Constitution*. pp. 59-86.

⁸⁸⁴ Matthews, *Inaction and Reaction*.

⁸⁸⁵ Conservatives, *Strong Leadership. A Clear Economic Plan. A Brighter, More Secure Future*, p. 49.

⁸⁸⁶ *Ibid.*, p. 47.

⁸⁸⁷ Conservatives, *Forward Together*, p. 43

⁸⁸⁸ *Ibid.*, p. 43.

⁸⁸⁹ Conservatives, *Get Brexit Done*, p. 48.

⁸⁹⁰ Lord Salisbury interview with the author.

Elysian Fields: The House of Lords

Lord Grey in trying to get the Great Reform Bill, passed threatened to create new peers to ensure the passage of the of the Bill. From the Reform Act of 1832 forward the House of Lords was perceptibly the weaker of the two Houses of Parliament.⁸⁹¹

Lord Parkinson of Whitley Bay said, in an interview with the author, of the House of Lords:

It is the place where all of the different constituent parts of our Constitution meet: the Throne is ever present, whether The Queen is literally sitting on it or not, or represented by the mace on the Woolsack, it's the place where the established Church through the Lords Spiritual are constantly represented. And it's where, until the Constitutional Reform Act of 2005, the judiciary sat in the House Lords as the highest court of appeal in the land.⁸⁹²

Disraeli said about his elevation to the House of Lords that 'I am dead: dead, but in the Elysian fields'. Disraeli in his election address of 1874, wrote that Liberals desired to 'impugn the independence of the House of Lords.'⁸⁹³

Moreover, two Conservative candidates at the 1874 election Thomas Cordes and John Johnson wrote of their belief in upholding the Constitution and the House of Lords. Johnson in his election address wrote of the desire to 'uphold the House of Lords as a vital branch of the Legislature' and that he was 'ready to lend my aid to the removal of any proved abuse.'⁸⁹⁴ Cordes noted that he was 'firmly attached to the Constitution of the country, and ... maintenance ... [of] our hereditary Second Chamber.'⁸⁹⁵ When the Conservative Party was in opposition under Lord Salisbury, according to Weston, he 'relied on what may be called a referral or referendal theory to cripple Liberal legislation'⁸⁹⁶. Weston describes its tenets thus:

'the House of Lords had a referendal function: it had the duty of referring measures to the electorate or nation whenever important questions arose and there was ground for

⁸⁹¹ Hanham, H. J, *The Nineteenth Century Constitution, 1815-1914* (Cambridge: Cambridge University Press 1969), p 172; See Gash, N., *Reaction and reconstruction in English politics 1832.-1852* (Oxford: Faber and Faber, 2013).

⁸⁹² Lord Parkinson of Whitley Bay in an interview with the author.

⁸⁹³ Election address of Benjamin Disraeli, *Daily News*, 26 January 1874. Is also published in *The Times* on 26 January called 1874 The General Election.

⁸⁹⁴ Election address of John G. Johnson, *Trewman's Exeter Flying Post*, 28 January 1874.

⁸⁹⁵ Election address of Thomas Cordes, *Western Mail*, 3 February 1874

⁸⁹⁶ See Taylor, R., *Lord Salisbury* (London, 1975); See also Salisbury's 'Disintegration' article in the *Quarterly Review* which has been reprinted in Smiths, Lord Salisbury on politics, pp. 335-76.

believing that the government, resting on the House of Commons, lacked a mandate for its measures. Only if a mandate was forthcoming would or should the house of lords permit a disputed measure on a vital question to pass into law'.⁸⁹⁷

A.L. Kennedy believed that Salisbury did not desire to change the relationship between the two houses.⁸⁹⁸ Salisbury said 'this house would not be doing its duty if it opposed itself further against the will of the nation.'⁸⁹⁹ This view was also shared by other Conservative/Unionist peers, such as the Duke of Devonshire and Lord Robertson to name just two. Salisbury believed that the House of Commons was only the representative of the nation in theory and the House of Lords ought to look for guidance from the electorate in the country in practice and to refer back to the people if the House of Common had no mandate.

Neither of the Lord Salisbury's 1900 nor Balfour's 1906 manifesto mention the House of Common or the House of Lords.⁹⁰⁰ Nevertheless, the main bulk of the January 1910 manifesto is on the constitution with special focus on the role of the House of Lords. Relatedly, other constitutional aspects such as the relationship with the Commons and the composition and the use of referendums are mentioned. The January 1910 manifesto is considerably longer than the 1906 manifesto and the December 1910 manifesto and is dominated by the position of the Upper House. In the manifesto Balfour wrote that the 'attack on the House of Lords' 'is but the culmination of a long-drawn conspiracy' to destroy the constitution and that the Liberals' 'desire what is in effect a single Chamber Legislature', which Balfour called the 'single Chamber plot.'⁹⁰¹ Balfour wrote that 'For the single Chamber system is not consistent with the democratic working of representative Government in complex and developing communities'.⁹⁰² Relatedly the manifesto stated that the 'single Chamber system is impossible'.⁹⁰³ Thus, this was in line with the conservative constitutional good of defending the checks and balances within the bicameral nature of Parliament. He also wrote:

⁸⁹⁷ Weston, C.C., (1982) Salisbury and the Lords, 1868-1895, *The Historical Journal*, (25)1, pp.103-129. p.105.

⁸⁹⁸ Kennedy, A. L., *Salisbury, 1830-1903: Portrait of a Statesman* (London: John Murray, 1953), p.75.

⁸⁹⁹ Le May, *The Victorian constitution*, pp 135-6.

⁹⁰⁰ For analysis of this period and the House of Lords see Close, D., The Collapse of Resistance to Democracy: Conservatives, Adult Suffrage and Second Chamber Reform 1911-1928, *The Historical Journal*, (20)4 (1977), 893-918.

⁹⁰¹ Dale, *Conservative Manifestos*, p. 13.

⁹⁰² *Ibid*, p. 12.

⁹⁰³ *Ibid*, p. 13.

If you ask me whether this constitutional machinery could not be improved, either by some change in the composition of the House of Lords, or by the institution of a Referendum, I am certainly not going even to suggest a negative reply. The House of Lords as at present constituted contains, I suppose, more men of first-class eminence in the business of law, of arms, of literature, of science, and of finance, more men who have held great administrative posts overseas, more men in daily touch with local business than the House of Commons. Its debates on great occasions...on a more even level of excellence. Nor would it, I think, be wise to turn it into a second and rival House of Commons and make it completely elective. But this does not mean that, even for its comparatively subordinate, though all-important, constitutional functions, it cannot be improved. Nor is any such opinion held by its most distinguished members.⁹⁰⁴

Balfour then stated that ‘It is not so much the privileges of the Lords which are threatened by the single Chamber plot, as the rights of the people. It is in their interest that the plot must be defeated.’⁹⁰⁵ Balfour again in his December 1910 manifesto mentioned the ‘Single Chamber conspiracy.’⁹⁰⁶ Eighteen years later, Balfour in a speech, on 25 July 1928, at a ceremony held for his 80th birthday in the Speaker's Courtyard of Parliament said that ‘undoubtedly the best Constitution for people of British origin’,⁹⁰⁷ thus reaffirming his commitment to it.

A joint manifesto for the December 1918 election Lloyd George and Bonar Law stated that:

It has been recognised by all parties that reform is urgently required in the constitution of the House of Lords, and it will be one of the objects of the Government to create a Second Chamber which will be based upon direct contract with the people, and will therefore be representative enough adequately to perform its functions.⁹⁰⁸

Lexden has argued that the aforementioned means electing members to the House of Lords.⁹⁰⁹ Nevertheless, the wording is ambiguous as can be expected and the election of members is not

⁹⁰⁴ Ibid, p. 13.

⁹⁰⁵ Ibid, p. 13.

⁹⁰⁶ See Fraser, P., (1963) The Unionist Debacle of 1911 and Balfour's Retirement, *Journal of Modern History*, 354–65.

⁹⁰⁷ This was quoted in *The Times* on the 26th of July 1928, p. 16.

⁹⁰⁸ Dale, *Conservative Manifestos*, p. 21

⁹⁰⁹ Lexden, A., Lords Reform, *The House* magazine, 16 May 2022. Available at <https://www.alistairlexden.org.uk/sites/www.alistairlexden.org.uk/files/2022-05/Lord%20Lexden%20%E2%80%93%20Lords%20Reform%2C%20May%202022.pdf>

explicitly stated. There were several proposals to reform House of Lords in this period,⁹¹⁰ but Bonar Law's 1922 manifesto did not mention the House of Lords at all and nor did his successor Stanley Baldwin's⁹¹¹ manifestos of 1923, 1924, 1929, 1931 and 1935.⁹¹² It was Churchill's second manifesto where the House of Lords is again mentioned. It stated that it was the party's 'aim to reach a reform and final settlement of the constitution and powers of the House of Lords' and the means to do so should be via 'an all-Party conference'.⁹¹³ This section of the draft manifesto was edited and changed by Churchill. The original, which he crossed out, ran thus 'Constitutional changes should be made on the advice of an all-Party conference' with the all-Party part circled and the word conference was underlined.⁹¹⁴ The all-Party conference will have two proposals before it. These are:

- (a) the present right to attend and vote based solely on heredity should not by itself constitute a qualification for admission to a reformed House;
- (b) a reformed House of Lords should have powers appropriate to its constitution, but not exceeding those conferred by the Act of 1911.⁹¹⁵

Interestingly, in a draft version of the manifesto, Churchill ticked option B.⁹¹⁶ This had the *modus operandi* of the party as having a position but not a detailed one and that major constitutional changes ought to be (if they can be) addressed on a cross-party basis to ensure greater stability and greater success of the reform. Churchill's 1951 manifesto had one sentence on the topic, and it reiterated the position to hold an all-Party conference on the reform of the Lords.

⁹¹⁰ See Raina, P. *House of Lords Reform: A History. Volume 1. The Origins to 1937: Proposals Deferred* (2 vols, Oxford, 2011). See Close, D.H., 'The Collapse of Resistance to Democracy: Conservatives, Adult Suffrage, and Second Chamber Reform, 1911–1928', *HJ*, (1977), 893.

⁹¹¹ For Conservative electoral success during this time see: Jarvis, D., 'The Shaping of Conservative Electoral Hegemony, 1918– 1939', in *Party, State and Society: Electoral Behaviour in Britain Since 1820*, ed. Jon Lawrence and Miles Taylor (Aldershot, 1997), 131–52; for a work on Baldwin see Williamson, P., *Stanley Baldwin: Conservative Leadership and National Values* (Cambridge, 1999); Ramsden, R., *A History of the Conservative Party. Vol. 3: The Age of Balfour and Baldwin, 1902–1940* (London: Longman Higher Education 1978) 287; Middlemas, K., and Barnes, J., *Baldwin: A Biography* (Littlehampton Book Services Ltd, 1969). Young G.M. *Stanley Baldwin* (London: Rupert Hart-Davis, 1952). For a work on Baldwin and the constitution see Schwarz, B., 'The Language of Constitutionalism: Baldwinite Conservatism', in *Formations of Nation and People*, ed. Schwarz, B., and Langan M., (1984), 1–18.

⁹¹² The 1935 manifesto was a joint one with Ramsay MacDonald and Sir John Simon.

⁹¹³ Dale, *Conservative Manifestos*.

⁹¹⁴ Churchill Archive Centre CHUR 2/89.

⁹¹⁵ Dale, *Conservative Manifestos*, p. 90

⁹¹⁶ Churchill Archive Centre CHUR 2/89.

Eden's manifesto stated that 'It has long been the Conservative wish to reach a settlement regarding the reform of the House of Lords, so that it may continue to play its proper role as a Second Chamber under the Constitution.'⁹¹⁷ It also was explicit that any reform of the House of Lords should focus 'solely' on its 'composition'.⁹¹⁸ It also bemoaned Labour 'refusal to take part in the conversations' that the Conservatives had 'proposed' but this should not 'postponed reform indefinitely' as the Conservatives would 'continue to seek the co-operation of others in reaching a solution.'⁹¹⁹

Under Macmillan, the Life Peerages Act 1958 came into effect. Enoch Powell opposed it on the grounds that it would change the composition of the House of Lords.⁹²⁰ And Rhodes Boyson wrote of Life Peers that 'they are neither fish nor fowl.'⁹²¹ Boyson as well as calling for a Bill of Rights and a regular use of referendums, desired all peers to become hereditary again. Macmillan's *The Next Five Years* manifesto does not mention the House of Lords and Douglas-Home's manifesto only had one part of a sentence of the topic stating thus: 'We have made reforms in the composition of the House of Lords'.⁹²² Lord Butler (a Conservative Peer) writing in 1965 that the Conservative Party 'strongly' supports the 'bicameral system, and if practicable a reform of the House of Lords'.⁹²³ Heath's first manifesto *Action Not Words* (1966) had no words on the House of Lords and neither do *A Better Tomorrow* (1970), *Firm Action for a Fair Britain* (February 1974) and *Putting Britain First* (October 1974).

Thatcher's manifesto in 1979 in a section called *The Supremacy of Parliament* defended the necessity of a 'strong Second Chamber' that was required 'not only to revise legislation but also to guarantee our constitution and liberties.'⁹²⁴ The manifesto stated that 'our opponents have proposed major constitutional changes for party political advantage. Now Labour want not merely to abolish the House of Lords but to put nothing in its place'. According to the 1979 manifesto 'This would be a most dangerous step.'⁹²⁵

An example of a Conservative using the Electoral Dictatorship thesis to argue for change is Sir Ian Gilmour. In a foreword to the book *Conservative Party Politics*, he argued that reform was

⁹¹⁷ Dale, *Conservative Manifestos*, p. 125.

⁹¹⁸ Ibid, p. 125

⁹¹⁹ Ibid, p. 125

⁹²⁰ Hickson, *Britain's Conservative Right*, p. 88.

⁹²¹ Centre Forward, *A radical Conservative Programme* (London: Temple Smith, 1978), p.165.

⁹²² Ibid, p. 159

⁹²³ Butler, *The Conservatives: A History*, p.15.

⁹²⁴ Ibid, p. 276

⁹²⁵ Ibid, p. 276

required because ‘Britain is less well protected than any other democratic country against the arbitrary actions of a temporary parliamentary majority. Moreover, ‘the dangers of a Labour government flouting the constitutional conventions like they did in the 1970s’⁹²⁶ have become more of a danger and ‘preventing the Labour government, with little popular support, wrecking those policies’,⁹²⁷ Gilmour suggested reform of the House of Lords into an elected chamber as ‘the most obvious and easiest’ reform’.⁹²⁸ Furthermore, Gilmour believed that ‘there has been relatively little discussion of the constitution and no agreement’ and there is ‘no consensus on piecemeal reform’ with the Conservative Party about the constitution.⁹²⁹ It can be said that there was not any firm proposal for reform since Churchill’s 1950 manifesto, which was around 30 years before Gilmour was writing.

In 1980, various reports, memorandums and notes were written internally on the House of Lords both for and against reform and with varying degrees of radicalism and conservatism. To mention some of the authors these were Norton, Benyon, Britto, Cooke and Hailsham as well as Cormack, Garel-Jones and Cranborne who co-authored a report on the topic. There was also a sub-committee of the Constitutional Committee on Lords reform. These debate crossed into the public domain with articles by Lord Carrington, Lord Blake, Brendon Rhys Williams MP, Lord Cranborne MP and John Stokes MP and Enoch Powell gave a public speech in Leicester.⁹³⁰ Nevertheless, Thatcher’s 1983 manifesto stated almost word for word as in her first manifesto that ‘Labour want to abolish the House of Lords’ but a ‘strong Second Chamber is a vital.’⁹³¹ The Conservative will ensure that the Lords ‘has a secure and effective future’.⁹³² In her third and final manifesto *The Next Moves Forward* (1987) the House of Lords is not mentioned. Major’s 1992 manifesto picks up where his successor left off in that the House of Lords was not mentioned. Major’s second manifesto was straight to the point that the ‘opposition proposals on the House of Lords - would be extremely damaging.’ Consequently, the party’s manifestos from Eden to Major (1955-1997) had no policies for any substantive change of the House of Lords and seven out of the 12 manifestos during this time do not mention the House of Lords at all. Since 1900 the House of Lords had not been mentioned in

⁹²⁶ Gilmour, I., in Layton-Henry, Z., (ed) (1980) *Conservative Party Politics* (Basingstoke: Macmillan, 1980), p. xiv.

⁹²⁷ *Ibid*, p. xiv.

⁹²⁸ *Ibid*, p. xiv.

⁹²⁹ *Ibid*, p. xiv.

⁹³⁰ See CRD 4/32/1; CRD 4/32/2; CRD 4/32/3; and CRD 4/32/4 at the Conservative Party Archive.

⁹³¹ Dale, *Conservative Manifestos*, p. 276

⁹³² *Ibid*, p. 276.

16 of the 26 manifestos until 1997. Nevertheless, Hague's manifesto in 2001 was a critical juncture as there was a paradigmatic shift as it was the first manifesto to state that the official Conservative policy was for an elected or part elected chamber. The manifesto stated that 'We would like to see a stronger House of Lords in the future, including a substantial elected element.' Moreover, Hague's manifesto stated that the Conservatives would 'seek consensus on lasting reform in the House of Lords.' Therefore, in terms of the policy position of having elected members the manifesto is a critical juncture because of the paradigmatic shift; however, there was policy continuation in terms of desiring a strong House of Lords and endeavouring to find cross-party consensus on the type of reform.

Lord Young of Cookham said 'The Conservative Government introduced Life Peers in the 1950's, but opposed the Labour Government's abolition of the Hereditaries in the 1990's. The policy was "No Stage 1 without Stage 2"' that meant according to Lord Young that 'removal of the hereditary Peers should not take place without the second stage of the reform, introducing a predominantly elected second chamber.' Lord Cranborne (latterly 7th Marquess of Salisbury) writing in 1997 wrote that 'Mr Blair (planned) to remove the only truly independent element left on Parliament, the hereditary peerage'.⁹³³ It is necessary to quote Lidington at length here, who was Hague's Parliamentary Private Secretary (PPS) from June 1997 to June 1999:

House of Lords reform, we had some of that in Blair's time and then of course it came back under the Coalition government. The critique was that it is a half-baked solution, it was interesting remembering the Committee debates on getting rid of the hereditary peers. It was a real showdown between William Hague and Robert Cranborne. Robert did the dirty about keeping some hereditary peers in the Lords and that had a really big impact on thinking within the Parliamentary Party. There was real anger in a bunch of Conservative MPs about that.⁹³⁴

The 5th Viscount Ridley in an interview with the author said:

Hereditarys sometimes turn out to have surprising advantages, e.g. the monarchy... Lord Salisbury, Lord Cranborne, as he then was, was also right to say well, okay, but that will turn the House of Lords into a pure system of patronage. It was right to leave behind a small residue of the hereditary peerage, who saw it as their role to remind the

⁹³³ Cranborne, R., *The Chain of Authority* (London: Politeia, 1997), p.14.

⁹³⁴ David Lidington interview.

House of Lords of its independence from recent governments and present government was, I think, a reasonable constitutional point to make.⁹³⁵

Ridley also added that:

Of course, it was intended to be entirely temporary. And the elections to replace dying hereditary peers was therefore thought not to be much of a concession by Lord Irvine when he gave it because he didn't think that the second phase would be delayed very long. Well, attempts to get a second phase of reform of the House of Lords through have floundered on the old problem that always comes up, which is the House of Commons doesn't want to give another chamber greater legitimacy.⁹³⁶

Lidington added:

I think, Hague's view was you can't dig in and defend the hereditary peers as actually that is not the ground on which The Conservative Party is going to rebuild itself naturally. You probably have to have a conversation and try and get some of your own ideas together about what kind of House you would want. The one thing I noticed after "Cranborne Day" was a very big shift in the Conservative parliamentary party towards more radical House of Lords reform towards going to more elected upper house. There was a big issue as it was becoming increasingly difficult to sustain the idea that you have a second chamber whose legitimacy was grounded on appointment by the Prime Minister of the day, and I think sheer number of new peers that Blair created actually did accelerate that mood in the Conservative Party.⁹³⁷

Andrew Tryie argued that the second chamber should be elected.⁹³⁸ Duncan Smith became leader in September 2001 after prevailing in the Conservative leadership contest.⁹³⁹ Nevertheless, he did not lead the Conservatives into the next election.

Howard's 2005 manifesto did not break out of the new paradigm that was set by Hague's manifesto. It also argued for a 'substantially elected House of Lords'⁹⁴⁰ with the wording

⁹³⁵ 5th Viscount Ridley interview with the author.

⁹³⁶ Ibid.

⁹³⁷ David Lidington interview.

⁹³⁸ Tryie, A., *Reforming the House of Lords: A Conservative Approach* (Conservative Policy Forum, 1998).

⁹³⁹ Hayton and Heppell, *the Quiet Man of British Politics*.

⁹⁴⁰ Conservatives, *Are you Thinking What We're Thinking?* p. 21.

very similar to Hague's' position of 'substantial elected element'.⁹⁴¹ It also stated the party will 'seek cross-party consensus'.⁹⁴² This cross-party consensus until like the previous position it would be built around the Conservatives policy. In other words, persuading the other parties that the Conservatives had the right answer on Lords reform rather than building from a neutral foundation. Moreover, it lamented that 'proper reform of the House of Lords has been repeatedly promised but never delivered.'⁹⁴³ Bill Cash MP, also writing in 2005, put the elected element in House of Lords at 80%.⁹⁴⁴

Cameron's manifestos did not deviate from the new paradigm. The policy in the 2010 manifesto was again almost word for word the same as Howard's. The party will 'work to build a consensus for a mainly-elected second chamber'.⁹⁴⁵ Relatedly, the manifesto stated that a 'second chamber should play an important role in our democracy.'⁹⁴⁶ In July 2012 there was a crisis over House of Lords reform. A bill was brought forward, which would have seen four-fifths of peers elected, but 91 Conservative MPs defied the whip to vote against the bill.⁹⁴⁷ Oliver Heald in a pamphlet for the Conservative Society of Lawyers argues that the Government's policy on the Lords was wrong on a number of levels but the House should be elected but indirectly.⁹⁴⁸ A Conservative MP from the Midlands said to the author 'We are not interested in the constitution anymore. Not since the Lord's debacle in 2012. The constitution and the focus on it, is not part of the modernisation project of Cameron. There are more important issues to tackle'.⁹⁴⁹

Cameron's 2015 manifesto stated that there was 'a strong case for introducing an elected element into our second chamber' but stated it was 'not a priority' but it also committed the party to ensuring that the House of Lords fulfils its valuable role as a chamber of legislative scrutiny and revision.⁹⁵⁰ Thus, not deviating from the new paradigm great by Hague's manifesto. Lidington said about this paradigmatic shift that: 'Yes, there was definitely a shift

⁹⁴¹ Conservatives, *Time for Common Sense*, p. 46.

⁹⁴² Conservatives, *Are you Thinking What We're Thinking?* p. 21.

⁹⁴³ *Ibid.*, p. 21.

⁹⁴⁴ Cash made these remarks in *Rediscovering Conservatism for the British Nation and Being Conservative: A Cornerstone of policies to Revive Tory Britain* (London: Cornerstone Group, 2005).

⁹⁴⁵ Conservatives, *An invitation to Join the Government of Great Britain*, p. 67.

⁹⁴⁶ *Ibid.*, p. 67.

⁹⁴⁷ Cowley, P., Stuart, M. (2010) Where has all the trouble gone? British intra-party parliamentary divisions during the Lisbon ratification. *British Politics*, 5 133–148, p.5.

⁹⁴⁸ Heald, O. *An Elected Chamber – Building A Better House?* (London: Conservative Society of Lawyers, 2012).

⁹⁴⁹ A Conservative MP from the Midlands in an interview with the author.

⁹⁵⁰ Conservatives, *Strong Leadership. A Clear Economic Plan. A Brighter, More Secure Future*. p. 49.

in the '90s and 2000s but it's also never been something that's all the Party has been united'.⁹⁵¹ Lord Naseby said, in an interview to with the author, that he still wished the House of Lords to be an appointed chamber not an elected one.⁹⁵²

May's *Forward Together* manifesto broke from this paradigm in 2017 as it did not commit the party to an elected element and stated that 'comprehensive reform is not a priority' and the main focus would be to ensuring its relevance and effectiveness by addressing its 'size'.⁹⁵³ This broke from the 'elected element' paradigm that was central to the Conservative's policy towards the House of Lords from 2001 to 2015. Johnson's manifesto was not committal on policy towards the Lords and only stating that 'the role of the House of Lords' would be looked at a by Constitution, Democracy and Rights Commission.⁹⁵⁴

In summary, the Conservatives in their manifestos policy (if this was stated) was to conserve the bicameral nature of parliament throughout this time period. From 1922 to 1950 the Conservative manifestos were silent on the topic of the House of Lords. Churchill's 1950 and 51 and Eden's manifesto noted the need for reform but did not state what that should be, but it should be based consensus. From this time to Major was the 'non-substantive change' phase. The more important in terms of policy innovation and a paradigm shift was from Hague's leadership to Cameron's. Both May and Johnson's manifesto shift back into the older paradigm of stating that the House of Lords requires reform but did not commit to what it should be. Consequently, the 14 years or so and four manifestos between were the 'elected element' paradigm was driving the official policy position is an anomaly from the core paradigm towards the Upper House. Both May's and Johnson's manifestos have returned to the core paradigm and have broken with the 'elected element' paradigm at least in terms of official manifesto policy.

Referendums

Lord Balfour of Burleigh (who resigned from Arthur Balfour's cabinet in 1903) introduced a Bill in the House of Lords entitled the *Reference to the People Bill*. It provided for a referendum to solve deadlocks between the two houses.⁹⁵⁵ Nevertheless, the first reference to a referendum in a Conservative manifesto was in Arthur Balfour's manifesto of January 1910 and he wrote

⁹⁵¹ David Lidington interview.

⁹⁵² Lord Naseby in an interview with the author.

⁹⁵³ Conservatives, *Forward Together*, p. 43.

⁹⁵⁴ Conservatives, *Get Brexit Done*, p. 48.

⁹⁵⁵ Butler, *The Conservatives: A History*.

that ‘If you ask me whether this constitutional machinery could not be improved, either by some change in the composition of the House of Lords, or by the institution of a Referendum, I am certainly not going even to suggest a negative reply.’⁹⁵⁶ But no policy was provided. Yet, it was not mentioned again in a manifesto until Thatcher’s in 1979 meaning there was 69 years of manifesto silence and an implicit policy of no referendums. Having no policy is of course in line with the conservative constitutional goods principles. Thatcher manifesto stated the Conservative desired ‘to discuss with all parties’ ‘the use of referendums’,⁹⁵⁷ thus demonstrating that the Conservatives in terms of policy position desired to gain consensus on a novel constitutional device, and that they did not have an official manifesto policy. The 1970s witnessed the use of this constitutionally novel device. There were referendums in Scotland and Wales in 1979 and there was nationwide ballot on the membership of the European Community in 1975.

After Thatcher’s 1979 manifesto the referendum was not again mentioned until Major’s *You can only be sure with the Conservatives*. Consequently, there was another 18 years of silence. Major’s 1997 manifesto is a critical juncture as it ushered in the new paradigm, I have called ‘the referendum as a political tool’. As discussed in chapter 5, this was in relation to the Single Currency. The policy was not couched in constitutional ideas or expressed in constitutional language The prism was a political one, in the context of Britain’s relationship with Europe. In June 1997 in a joint publication by the Conservative Political Centre and the Society of Scottish Conservative Lawyers published, J. Ross Harper called *Referendums Are Dangerous*, in which his very first sentence was ‘I worry about the growth of government by referendum’.⁹⁵⁸ Nevertheless, Hague’s manifesto was again in line with Major’s new paradigm; that is, the referendum was utilised as a political tool to solve tricky policy problems. Relatedly, the concept of local referendums to be utilised before ‘large increases in Council Tax’⁹⁵⁹ (which was also in Howard, Cameron, May and Johnson’s manifestos) seen through a prism of economics of keeping taxes low rather than a constitutional one of the relations of local government with the national one (This is further discussed in chapter 8). Howard’s manifesto was also in this new paradigm. It was seen as political tool to solve issues. For example, on Britain’s relationship with Europe, the manifesto pledged to hold a ‘referendum on the

⁹⁵⁶ Dale, *Conservative Manifestos*, p. 13.

⁹⁵⁷ *Ibid*, p. 276.

⁹⁵⁸ Harper, R.J. *Referendums Are Dangerous* (London: Conservative Political Centre and the Society of Scottish Conservative Lawyers, 1997), p.7.

⁹⁵⁹ Conservatives, *Time for Common Sense*, p. 44.

European Constitution, in which we will campaign for a “no” vote.’⁹⁶⁰ Moreover, it was also being used as a tool, this time in the context of Welsh devolution where the party did not have a set position as the referendum would provide three options (1) to keep the Assembly in its current form (2) increase the powers of the Assembly or (3) abolish the Assembly. Firmly in this paradigm were the 2010 and 2015 manifestos where Cameron doubled down into the paradigm. Both of which used the referendum as a policy tool and the three key areas of policy were local government finance, Europe and devolution. Moreover, May’s manifesto of 2017 was also within this paradigm in relation to local government finance stating that: ‘We will continue to ensure that local residents can veto high increases in Council Tax via a referendum.’⁹⁶¹ Moreover, it only ruled out a referendum on Scotland’s place within the UK during the ‘Brexit process’ not ruling out the use of the referendum at all. Iain Stewart MP said he believed that ‘there should not be a second Scottish independence referendum for some considerable time because there was a clear, clear verdict on that’.⁹⁶² From the 1997 manifesto to the 2017 manifesto ‘the referendum as a political tool’ paradigm was firmly in place consequently signify a paradigmatic shift in the policy position of the party.

The 2019 manifesto under Johnson saw another shift, this time out of the paradigm that was held for the past 22 years or so to a formal position of no referendums (except the veto on council tax). The *Get Brexit Done* manifesto stated explicitly ‘No more referendums’ and that the party ‘are opposed to a second independence referendum.’⁹⁶³ The manifesto stated that:

The failure of Parliament to deliver Brexit – the way so many MPs have devoted themselves to thwarting the democratic decision of the British people in the 2016 referendum – has opened up a destabilising and potentially extremely damaging rift between politicians and people. If the Brexit chaos continues, with a second referendum and a second Scottish referendum too, they will lose faith even further.⁹⁶⁴

This was the first time in the party’s history within the manifesto the use of the referendum and its constitutional consequences, such as opening up a ‘damaging rift between politicians and people’ was mentioned.⁹⁶⁵ Lidington, in an interview, did raise that ‘in recent years there is a

⁹⁶⁰ Conservatives, *Are You Thinking What We’re Thinking?*, p. 29.

⁹⁶¹ Conservatives, *Forward Together*, p. 14.

⁹⁶² Iain Stewart MP interview with the author.

⁹⁶³ Conservatives, *Get Brexit Done*, p. 45.

⁹⁶⁴ *Ibid.*, p. 48.

⁹⁶⁵ *Ibid.*, p. 48.

tension between the ideas of popular sovereignty and parliamentary sovereignty'.⁹⁶⁶ Lord Tebbit said:

I don't like referenda. I don't think they're normally compatible with or can't live in harmony with a parliamentary style of government. But there are occasions when we are calling into question our parliamentary government and that's when you have a referendum.⁹⁶⁷

Tebbit also adds that he thought it might be helpful on 'some moral issues' 'for those in parliament to understand the feelings in the country but they shouldn't be bound by the giant opinion poll that we call a referendum.'⁹⁶⁸ Douglas Carswell said that 'the tension was a good thing' and it 'certainly isn't new.'⁹⁶⁹ This tension; however, had not been addressed before the 2019 manifesto. This was not expressed in constitutional terms or ideas. Within the 'the referendum as a political tool' paradigm the use of a referendum was not seen through a constitutional prism and the manifestos did not address critical questions around the type of referendum that should be used, their relationship with parliament as a whole or with either house or how it sits within the Westminster system of government.

In sum, from 1910 to 1979 there were 69 years of implicit policy of no referendums as there was no mention of them in the manifestos. Balfour's manifesto mentioned them but did not have a policy and meaning from 1900 to 1997 there was no explicit policy of referendums or their usage. Thatcher's 1979 manifesto mentioned the need to discuss the use of referendums but did not state a policy position. After this there no policy or mentions of referendums for another 18 years until the new paradigm was create in 1997. The 2019 manifesto broke with the 'the referendum as a political tool' paradigm that had lasted for 22 years to establish the explicit 'no referendums' paradigm. The next chapter shall turn to local government.

Overall, In relation to the House of Commons the Conservative Party's manifestos from 1964 to 2017 had a clear *modus operandi* of focusing on improving scrutiny of government and his was in line with both the conservative principles and the conservative constitutional goods. In terms of the House of Lords the 2001 manifesto was a critical juncture as there was a paradigmatic shift and consequently a policy innovation as it was the first manifesto to state that the official policy was for an elected or part elected chamber. The elected element

⁹⁶⁶ David Lidington interview.

⁹⁶⁷ Lord Tebbit in an interview with the author.

⁹⁶⁸ Ibid.

⁹⁶⁹ Douglas Carswell interview.

paradigm was central to the Conservative's policy towards the House of Lords from 2001 to 2015. This period was an anomaly from the core paradigm towards the Upper House as a non-elected chamber. During these years the Conservative Party's official position was not in line with the conservative constitutional goods. The 2017 and 2019 manifestos broke from the elected element paradigm and shifted back into the older paradigm.

Local Government: Efficiency, Efficiency, Efficiency

Regional government would be a dangerously centralising measure - taking power away from elected local authorities.⁹⁷⁰

When the British constitution became more of a pressing political matter, the Conservative manifestos became increasingly silent on the constitution as a whole, and instead focused on certain discrete aspects of the constitution. For example, local government reform (which is the focus of this chapter) devolution (chapter 4) and the Human Rights Act (chapter 6) became dominant themes. Relatedly, there was a particular focus on local government in the 2001, 2005 and 2010 manifestos (as can be seen in the table of indicative quotes on local government) which demonstrates the party's trouble and toil in addressing Labour's constitutional programme. Since Baldwin's 1929 manifesto, local government reform was included in the Party's manifestos and it focused on efficiency and finance. This 'efficiency and finance' paradigm has thus been in place and the manifesto have not shifted from it. The reforms were viewed through a financial/economic and efficiency prism rather than constitutional one. Some examples are of how local government reforms have been couched in ideas and terms such as 'Growth Deals' (2015, 2017), freeports (1983) 'Greater levels of foreign investment' (2019), and value for money (1955, 1992, 2001). Thus, it is difficult to have a coherent constitutionally conservative position on reform, if the reform is not viewed through a constitutional prism. This is because a reform may be desirable from an economic or financial perspective, but it may not be constitutionally desirable. For example, unitary councils or combined authorities may provide a financial incentive and efficiency, but they may consolidate power rather than disperse it. Dispersing power and making it as local as possible is in line with the conservative constitutional goods. Part of this 'efficiency and finance' paradigm, was about delivery of national government policies, especially on housing, education and health. Moreover, there was no overall blueprint for local government and its relationship with the national government over that delivery of policy. This does chime with the 'suspicion of grand political blueprints' principle as the Conservatives manifesto did not have a grand plan during this period (Churchill-Eden position) that is, the desire for small and local councils, was the core position from 1950 until 1964. This was then replaced by the Douglas-Home-Heath position for bigger more efficient 'regional councils', which was in place from 1964 to 1979. Moreover, there was a return to the Churchill-Eden position from 1983 to 2010. The two manifestos under

⁹⁷⁰ Dale, *Conservatives Manifestos*, p. 457.

Cameron's leadership took a hybrid approach (mixing the Douglas-Home-Heath and Churchill-Eden position) and May and Johnson's manifesto returned again to the Douglas-Home-Heath position.

The first manifesto to address local government was Baldwin's 1929 manifesto. There were significant Acts and debates about local government before this. Two examples are the Municipal Corporations Act 1835 that incorporated the boroughs of England and Wales and there was the Local Government Act 1888 that established county councils and county borough councils with the same territorial extent as the 1835 Act. The 1888 Act was introduced by Charles Ritchie,⁹⁷¹ who was President of the Board of Trade in Lord Salisbury's ministry. Disraeli in his early part of his career opposed the Whigs' Irish municipal corporations legislation in 1838 and 1839.⁹⁷² Disraeli's position was that Ireland should not be governed on local devolution principles which were distinct from his view on how England should be governed.⁹⁷³ This chapter shall focus on local government policy within the party's national manifestos on the territorial extent that they cover.

Baldwin's 1929 manifesto focused on efficiency and finance. To be precise the 'adjustment of financial relations between Local Authorities and the Exchequer' and as consequence of this adjustment of the 'increased national contribution' that 'ratepayers will gain materially'.⁹⁷⁴ This manifesto explicitly or implicitly set the paradigm for future manifestos. In the joint manifesto of 1935 'Financial adjustments' to 'Local Authorities' was again the prism for the policy but this time for 'school buildings and conveyance of children'.⁹⁷⁵ Relatedly, in Churchill's 1945 manifesto the focus was again on funding ('Subsidies') for 'Local authorities' to 'get on with the job'⁹⁷⁶ of building houses. His second manifesto of 1950 stated that the Conservatives desired to 'restore adequate confidence and responsibility to local government' and that 'functions and financial arrangements' 'must be reviewed and overhauled'.⁹⁷⁷ Moreover, the party wished to 'restore functions to the smaller authorities' and that the party

⁹⁷¹ Later the 1st Baron Ritchie of Dundee.

⁹⁷² For a biography of Disraeli for this time period see Ridley, J. *The Young Disraeli 1804 -1846* (London: Sinclair-Stevenson, 1995).

⁹⁷³ See Monypenny, W.F., Buckle, G., *The Life of Benjamin Disraeli: Earl of Beaconsfield; Volume 4* (United States: Palala Press, 2018).

⁹⁷⁴ Dale, *Conservatives Manifestos*, p. 45.

⁹⁷⁵ There was the Local Government Act 1933 between these manifestos, but it was not mentioned explicitly in them. For facts about local government see chapter 9 in Butler and Butler, *British Political Facts 1900 -1985*.

⁹⁷⁶ Dale, *Conservatives Manifestos*, p. 63.

⁹⁷⁷ *Ibid.*, p. 90.

favoured ‘devolution to the boroughs and district councils.’⁹⁷⁸ The focus on efficiency and delivery was also present within the manifesto especially in the section *Power Should be More Decentralised*. At the end of the section called Local Government (which was also the end of the section on the constitution), Churchill wrote that ‘in all we strive to do we shall seek to serve the nation as a whole without fear or favour’ and he then added remarks about this will be done without ‘class’ or ‘party’ favour.⁹⁷⁹ This section was published in the manifesto in a section called *Our Purpose*. Churchill’s third manifesto had one sentence on local government, and it ran thus: ‘We shall seek to restore to Local Government the confidence and responsibility it has lost under Socialism.’⁹⁸⁰

Eden’s 1955 manifesto provided the most attention to local government since the topic was first explicitly raised by Baldwin in 1929. It stated that ‘We shall cherish local democracy’.⁹⁸¹ The focus was again on local government finance and its ability to carry out its functions. This the manifesto expressed ‘will receive our urgent attention.’⁹⁸² The manifesto stated that a fundamental duty on every ‘Local Council’ was to ensure ‘value for money’ and they are economical.⁹⁸³ They also required ‘modernising’ and according to the manifesto ‘Parliament will introduce effective machinery for adapting local government to modern needs. In so doing we shall give full weight to valuable local traditions.’⁹⁸⁴ As in Churchill’s manifestos there was the preference for ‘smaller authorities’ and that ‘local government should be as local as possible’.⁹⁸⁵ Eden’s manifesto also stated that any ‘allocation of functions must be’ ‘consistent with efficiency and economy’.⁹⁸⁶

The 1959 *The Next Five Years* manifesto has a very short passage on local government and stated that ‘We look forward to reforming and strengthening the structure of local democracy, in the light of reports from the Local Government Commissions for England and Wales’.⁹⁸⁷ It also stated the role of local councils in delivering houses. In 1964 it was stated that:

⁹⁷⁸ Ibid., p. 79.

⁹⁷⁹ Churchill Archive Centre CHUR 2/89.

⁹⁸⁰ Ibid., p. 99.

⁹⁸¹ Ibid., p. 118.

⁹⁸² Ibid., p. 122.

⁹⁸³ Ibid., p. 122.

⁹⁸⁴ Ibid., p. 122.

⁹⁸⁵ Ibid., p. 122.

⁹⁸⁶ Ibid., p. 122.

⁹⁸⁷ Ibid., p. 134.

In completing the reorganisation of local government, we shall aim to produce a system giving full scope to local knowledge, and capable of discharging within our regional plans the increasing responsibilities.⁹⁸⁸

The paradigm of 'efficiency and finance' was in play as the focus was on local authority finance and the delivery of policy including 'services of child care for young people deprived of normal home life and affection'⁹⁸⁹ housing and health. As part of the *The Conservative Way Ahead* in Heath's 1966 manifesto there would be 'more regional administration with strong and modernised local government.'⁹⁹⁰ It also pledged that to 'Modernise local government and its finance' in Scotland and to 'Overhaul the structure and organisation of Local Government in Wales.'⁹⁹¹ Heath's 1970 manifesto stated that 'The independence of local authorities has been seriously eroded by Labour Ministers. On many issues, particularly in education and housing, they have deliberately overridden the views of elected councillors.'⁹⁹² It stated that the party thought 'balance of power between central and local government' was wrong and it will 'redress the balance and increase the independence of local authorities.'⁹⁹³ The party was also 'convinced of the need for reform of the present structure of local government' and this would provide for a 'two-tier structure'.⁹⁹⁴ The February 1974 Manifesto stated that 'We have carried through the most important reforms of local government this century' referring to the Local Government Act 1972 and that these 'reforms by the appointment of local ombudsmen' will continue.⁹⁹⁵ There was also a statement about reviewing the 'electoral provisions for London boroughs'.⁹⁹⁶ The main focus was financial and economic. Two examples are the publication 'Balance Sheet, a Budget Statement, and annual spending programmes' and the improvement of 'the regional offices of Government' and the 'regional economic planning councils'.⁹⁹⁷ The main focus in October 1974 was 'local government expenditure'.⁹⁹⁸ Heath's February 1974 manifesto doubled down on the efficiency and finance paradigm and there was a clear break in the preference for small council toward regional ones.

⁹⁸⁸ Ibid., p. 159.

⁹⁸⁹ Ibid., p. 160.

⁹⁹⁰ Ibid., p. 166.

⁹⁹¹ Ibid., p. 172.

⁹⁹² Ibid., p. 193.

⁹⁹³ Ibid., p. 193.

⁹⁹⁴ Ibid., p. 193.

⁹⁹⁵ Ibid., p. 220.

⁹⁹⁶ Ibid., p. 220.

⁹⁹⁷ Ibid., p. 220.

⁹⁹⁸ Ibid., p. 223.

Thatcher's *The Challenge of Our Times* (1983) was explicit in seeing local government through a financial prism as the subheading was called *Local Government: Saving Ratepayers' Money*. The manifesto noted the achievements of 'Conservative authorities in saving ratepayers', 'value for money' and that the national Government 'shall encourage every possible saving by this policy.'⁹⁹⁹ Moreover, it stated that the Metropolitan Councils and the Greater London Councils have 'shown to be a wasteful and unnecessary tier of government. We shall abolish them and return most of their functions to the boroughs and districts'.¹⁰⁰⁰ This broke with the Douglas-Home-Heath era of regional councils and returned to the Churchill-Eden position. Reform of local government was considered in the 'efficiency and finance' paradigm stating the purpose was to 'strengthen local democracy and accountability'.¹⁰⁰¹ The concept of accountability was a consideration, but the focus was on delivering services as 'efficiently as possible'.¹⁰⁰² Both of Major's manifestos were against regional government, stating that they 'would be a dangerously centralising measure - taking power away from elected local authorities'.¹⁰⁰³ In a speech in Blackpool, Major said, 'we must also look at the things we left undone or uncompleted....a fresh look at reviving local government - a big job there'.¹⁰⁰⁴ The year before a group of 12 Conservatives including 10 councillors published *Local Government: The Conservative Approach* via the Conservative Political Centre, which stated the need for councils to be 'business-like, 'efficient' and 'value for money'.¹⁰⁰⁵ Hague's manifesto was also against the 'the imposition of artificial new layers of government,' and stated that 'artificial regional tiers of administration in England'¹⁰⁰⁶ should be abolished. It also committed to the abolition of the Regional Development Agencies and to 'give responsibility for enterprise and development back to county councils, and to unitary authorities where appropriate',¹⁰⁰⁷ which was in line with the Churchill-Eden position. Howard's manifesto was also in line with the Churchill-Eden position that the policy aim was the 'Abolition of regional assemblies' and that the powers should be 'returned to local authorities.'¹⁰⁰⁸

⁹⁹⁹ Ibid., p. 304.

¹⁰⁰⁰ Ibid., p. 304.

¹⁰⁰¹ Ibid., p. 344.

¹⁰⁰² Ibid., p. 344.

¹⁰⁰³ Ibid., p. 457.

¹⁰⁰⁴ Leader's speech, *Blackpool 1997 John Major* (Blackpool, 1997).

¹⁰⁰⁵ Blackman, *et al*, *Local Government: The Conservative Approach* (London: Conservative Political Centre, 1996).

¹⁰⁰⁶ Conservatives, *Time for Common Sense*, p. 44.

¹⁰⁰⁷ Ibid., p. 45.

¹⁰⁰⁸ Conservatives, *Are You Thinking What We're Thinking?*, p. 23.

Cameron's 2010 manifesto adopted the 'hybrid approach'; that is, mixing the Douglas-Home-Heath and Churchill-Eden position. The manifesto stated that the party desired an 'elected mayor in England's largest cities,'¹⁰⁰⁹ but also 'we need to push power down to the most appropriate local level: neighbourhood, community and local government.'¹⁰¹⁰ Moreover, the manifesto was situated in the 'efficiency and finance' paradigm. It stated that it desires that 'Local government should be at the heart of our economic recovery,' and provide 'clear incentives for communities which go for growth.'¹⁰¹¹ As in the Thatcher's manifesto (1983) the concept of accountability was also present. This did not shift the manifesto out of the paradigm, it did however add a new dimension to it. It also stated that the party would scrap 'Labour's uncompleted plans to impose unwieldy and expensive unitary councils' and they would abolish the 'Government Office for London as part of our plan to devolve more power downwards to the London boroughs and the mayor of London'¹⁰¹² which was in line with Thatcher's 1983 manifesto. Cameron's 2015 manifesto continued in the same approach and paradigm. It stated that 'We will not let anyone impose artificial regions on England – our traditional towns, boroughs, cities and counties are here to stay.'¹⁰¹³ The prism of economics for local government reform was again present and it was stated that 'We support policies that grow the economy' and 'We will devolve powers and budgets to boost local growth in England'.¹⁰¹⁴ May's manifesto hailed the devolution to 'English local authorities', 'newly elected mayors', 'combined authorities', 'local councils' and 'local enterprise partnerships' and said that this had empowered them.¹⁰¹⁵ The 2017 manifesto then pledged to 'consolidate our approach' 'so all authorities operate in a common framework' and stated that 'we will continue to support the adoption of elected mayors, but we will not support them for the rural counties.' Regional deals 'Cardiff Capital', 'Swansea Bay City' and 'North Wales Growth Deal' were pledged thus continuing the with the 'efficiency and finance' paradigm and viewing local government reform through the economic prism. Nevertheless, there was a shift away from the 'hybrid approach' within Cameron's two manifestos and a shift back to the Douglas-Home-

¹⁰⁰⁹ Conservatives, *Invitation to Join the Government of Britain*, p. 73.

¹⁰¹⁰ Ibid, p.73. See for Lowndes, V., and Gardner, A., (2016) Local governance under the Conservatives: super-austerity, devolution and the 'smarter state', *Local Government Studies*, 42:3, 357-375 for an analyse of local government.

¹⁰¹¹ Ibid., p. 74.

¹⁰¹² Ibid., p. 76.

¹⁰¹³ Conservatives, *Strong Leadership. A Clear Economic Plan. A Brighter, More Secure Future*. p. 69.

¹⁰¹⁴ Ibid., p. 13.

¹⁰¹⁵ Conservatives, *Forward Together*, p. 24.

Heath one. Johnson's 2019 manifesto was a continuation of this stating its 'ambition is for full devolution across England, building on the successful devolution of powers to city region mayors, Police and Crime Commissioners and others, so that every part of our country has the power to shape its own destiny'.¹⁰¹⁶ There was also the economics prism as there was the ambition to generate higher 'levels of foreign investment' 'Through bodies like the Northern Powerhouse, Western Gateway and Midlands Engine and the Oxford-Cambridge Arc'.¹⁰¹⁷ Lord Haselhurst said that he was 'beginning to be persuaded by the examples of the West Midlands, Greater Manchester and other combined authorities with elected mayors that there was a better way of exercising devolved power than the present two-tier system that too often leads to overlap and policy disagreement.'¹⁰¹⁸ Kruger believes that local government reform should have three priorities (1) fiscal autonomy (2) tax raising powers and (3) freedom over spending.¹⁰¹⁹

In conclusion, all the Conservative manifestos from 1929 to 2019 spanning 90 years has been located in the 'efficiency and finance' paradigm. Therefore, reforms of local government have been viewed through a financial/economic and efficiency prism rather than a constitutional one. Part of this 'efficiency and finance' paradigm was about delivery of the national government policies. The Churchill-Eden position was in ascendancy from 1950 until 1964 and again from 1983 to 2010. Nevertheless, the Douglas-Home-Heath position was in ascendancy from 1964 to 1979 and again in from 2017 to 2019. During Cameron's leadership there was a 'hybrid approach'. The approach to local government reform in the Conservative Party's manifestos were not from a constitutional paradigm or seen through a constitutional prism; they were couched in economic and financial forms, ideas and language.

¹⁰¹⁶ Conservatives, *Get Brexit Done*, p. 29.

¹⁰¹⁷ *Ibid.*, p. 29.

¹⁰¹⁸ Lord Haselhurst interview.

¹⁰¹⁹ Danny Kruger interview.

Conclusion

The purpose of this present research was to answer the three research questions, in short, these were to investigate (1) if the Conservative Party's manifesto policies towards the British constitution were consistent with conservative ideas and principles; (2) the extent to which there has been continuity and innovation in these policies; and (3) were they couched in constitutional terms, forms or ideas. Consequently, this conclusion has been structured around the core research questions and Trzeciak and Mackay's¹⁰²⁰ components for a good conclusion. The rationale behind this was to ensure that it is clear that the research questions have been answered and that the conclusions can be addressed with the main themes in mind, but also with the results from each of the chapters also embedded within the overall conclusion.

To enable this analysis a theoretical framework was created. I specified the core principles of conservative view of the constitution or in other words conservative constitutionalism. These were (1) the organic nature of society; (2) scepticism of individual's reasoning powers; (3) suspicion of grand political blueprints; (4) an historical empirical approach to decision making; (5) a commitment to the past and future generations; (6) the wisdom of generations, tradition and custom; and (7) a trustee model of representation. Relatedly, and deriving from these principles, I suggested seven 'goods', which I named *conservative constitutional goods*. These are (1) strengthening and deepening of the Westminster system; (2) increasing efficiency and conserving the dignified elements; (3) change conducted within the grain of the constitution; (4) upholding the rule of law; (5) strengthening the Union; (6) conserving the uncodified nature of constitution; and (7) defending the checks and balances within the bicameral nature of Parliament. This framework provided the explanatory power to answer the research questions and provided a frame of reference.

Innovation, Principles and Constitutional Policy

A result of this research, and it is interesting to note, that in terms of official manifesto policies in relation to constitutional affairs, Churchill's manifesto of 1950 (not 1945) was a critical juncture within Conservative manifestos. This is because it was the first manifesto to raise some of the central constitutional issues that this research deals with. For example, Scotland and Wales were mentioned in terms of devolution for the first time (and more so in the 1951 manifesto), it was also the first manifesto to have a section on reform of the House of Commons,

¹⁰²⁰ Trzeciak, J., and Mackay, S., *Study skills for academic writing* (New York: Prentice Hall, 1994).

the first to mention Britain's relationship with the Europe and the first manifesto to mention human rights. Consequently, there was a policy innovation in doing so.

The Union

In terms of Ireland there was a clear policy paradigm of no Home Rule until there was a discernible policy innovation and consequently a paradigm shift in 1922 under the leadership of Bonar Law. This policy innovation did not emanate from the *opposition to Home Rule in Ireland* paradigm but from the *defence of Northern Ireland within the Union* paradigm. In Thatcher's 1983 manifesto there was a shift in emphasis within this new paradigm. The shift of emphasis within the *defence of Northern Ireland within the Union* paradigm was that of consent of the *people* of Northern Ireland rather than of their *Parliament*. Thus, an implicit indication of the use of the referendum as the required constitutional tool. Therefore, in relation to Ireland within the Union, there was a policy rupture in 1922 and a new paradigm was formed. This paradigm is still in place, but there has been an innovation within the policy in terms of *who* provides the consent. There has been, apart from a minor innovation from within the policy framework, a continuation of policy and a stability within the Conservatives' manifestos for about 100 years in relation to Northern Ireland.

There has also been a continuation of policy in relation to Wales and Scotland staying within the Union. In relation to devolution there was a clear continuation of policy and then there was a policy oscillation.¹⁰²¹ There was a paradigm shift to a *pro-legislative devolution* paradigm under the leadership of Heath, however, both Thatcher's three and Major's two manifestos reverted to the *anti-devolution* paradigm. The manifestos under Hague, Howard and Cameron's in 2010 were embedded within the *acquiescence legislative devolution* paradigm. May and Johnson's manifestos operated again from the *pro-legislative devolution* paradigm, thus, representing a policy rupture and innovation and then an oscillation between the competing paradigms. This also represents a flux in the Conservatives policy in relation to devolution for Wales and Scotland, but it also demonstrated a direction of travel towards the pro-legislative devolution paradigm, in which the party currently operates. There is still a tension though in

¹⁰²¹ For and analysis of Conservative oscillation on welfare see Pitt, D., *Conservative Welfare Policies: Ideational Oscillation in the Age of Brexit* in Beech, M., and Lee, S., *Conservative Governments in the Age of Brexit, 2015-2020* (London: Palgrave Macmillan, 2023), pp 171–194.

being a Unionist party who has previously argued against devolution and then shifts its position in favour of it. There is also a dilemma of interpreting one of the core conservative constitutional goods; that is, strengthening the Union. There is a strong case that since 1997 the Union policies have not been in line with the ‘goods’. I have identified three core perspective on this. These are (1) *steppingstone* perspective; (2) *devolution or no Union* perspective; and (3) *federalism to save the Union* perspective. *Steppingstone* perspective was the core official policy position from 1885 to 1997 and the *devolution or no Union perspective* has been the official policy since 1997 to 2019. *The federalism to save the Union* perspective has not been in the manifestos, but it was found from the interviews conducted that this an increasing element within the Conservatives. This is an area that requires further research. The analysis of the manifesto did not demonstrate this new and increasing perspective, thus there was a major benefit of conducting the interviews alongside the document analysis. The constitutional policies towards the Union have brought dilemmas, tensions and ambiguities. Devolution in Wales, Scotland and Northern Ireland have not had a theoretical or ideological blueprint to follow, which is in line with the conservative view of the constitution. Relatedly, there has not been a coherent constitutionally conservative position on reform of devolution in Wales or Scotland and England has been largely missing from the policy suite or discussed separately. Moreover, the Union and devolution has not been viewed holistically. Consequently, devolution policy has not been joined-up or thought through from a Union perspective but rather it has been viewed as a special policy problem that requires a particular (economic) policy remedy. This does chime with the suspicion of grand political blueprints as the Conservative Party did not have a grand plan for devolution in their manifestos, but the policies had not been expressed in constitutional forms, ideas or rhetoric. Reform of devolution has not been viewed through a constitutional prism since 2001 and the Union has been increasingly seen through economic and financial prisms and this has brought constitutional difficulties.

The European Question, Human Rights and the Courts

There was a palpable paradigm shift and hence a policy rupture in Macmillan’s manifesto in favour of membership of the European Project. The Conservative Party’s position on the constitutional aspects of the European Question from 1945 until 1997 is best described as the era of *banging on about Europe and constitutional silence*. Major’s 1997 manifesto broke the constitutional silence on the European Question, but silence soon returned. There was a minor policy innovation in Hague’s manifesto but overall, there was continuation of policy position from 1959 to 2015 in favour of membership. May’s manifesto represented another policy

rupture and a shift back to the policy position in 1955 and before. I provided a typology of Conservative positions on the European Question in relation to how they have prioritised Britain's relationship with the EU. There were: Brexit First, Union First, Economy First, Influence First, Sovereignty First and Trade First. In terms of the manifesto policies towards the European Question they have all had some influence on policy position, but the emphasis was on Influence First, Economy First and Trade First except for the 2019 manifesto, which was Brexit First. Thus, the Conservatives manifestos have not seen the European Question as a constitutional question. Rather it has been seen through many different perspectives such as a question of leadership on the world stage, an economic question, a foreign policy question or a political one to name a few. The European Question was seen through non-constitutional perspectives. As a consequence, the policies and positions towards 'Europe' have not been in constitutional terms, forms or ideas or in conservative principles or goods.

The Conservative Party manifestos did not engage with human rights as a constitutional issue from 1900 to 1997, but rather as a foreign policy issue. I have termed this period as the era of *human rights as foreign policy and constitutional silence*. Within the Conservative Party manifestos human rights were not explicitly expressed until 1950. The Conservative Party has not had a clear overall constitutional framework for human rights within a British context. Major's 1997 manifesto is an outlier in that it was the only manifesto to address the issues as a constitutional one. There was 37 years of silence on the topic in the manifestos from 1950 to 1987 in which the Churchill-Thatcher prism (perceiving human rights as a foreign policy issue rather than a constitutional issue) was dominant. From 2001 to 2019 there was a dualist approach, seeing human rights through the prism of home and abroad rather than just abroad. Nevertheless, the 'home' perspective within the manifestos was seen as specific issues, such as the role of the military or about deporting foreign criminals rather than any overall policy suite or constitutional framework that addressed the constitutional issues. The framing of human rights by the Conservative Party was twofold (1) was as a foreign and defence issue where Britain 'can do good on the world stage'; and (2) enabling or disabling of effective implementations of Home Office policies. The HRA was seen through the prism of the Home Office and the relationship with EU rather than a constitutional measure. Consequently, these prisms have coloured the policies within the Conservatives manifestos and there have been policy ruptures (e.g. for and against a Bill of Rights) and innovations and competing paradigms, but there has been a lack of a constitutional perspective. Thus, conservative constitutional goods were not applied.

The role of the courts within the constitution has not been a *core* theme within the Conservative manifestos. Yet, there has been a clear continuation of policy in the relation to the role of the courts within the Conservatives manifesto. From 1929 to 2019 they have articulated the view that courts should protect the individual within the rule of law and enforce the will of Parliament rather than being a constitutional court. Relatedly, improving the machinery and administration of justice has been the key policy aim, thus representing a strong policy continuation. In relation to these policies, they aimed at incremental change, and it can be gleaned from the historical approach that one manifesto policy further developed the last one in relation to improving the machinery and administration of justice, which is in line with both conservative principles and goods. On this the Conservatives have been the most consistent and coherent in terms of policies and the paradigm it operated in.

House of Commons, Lords and Referendums

In relation to the House of Commons the Conservative Party's manifestos from 1964 to 2017 had a clear *modus operandi* of focusing on improving scrutiny of government and the improving the efficiency of legislation rather than on any substantive changes to the House. This was in line with both the conservative principles and the conservative constitutional goods. From 1945 to 1992 the policy position was to utilise all-party conferences or Speaker's Conferences to arrive at a consensus on the reform the House of Commons should take, rather than provide a detailed policy prescription within the manifestos. I have called this the era of *cross-party consensus building*. There was, however, a policy rupture from 1992 that lasted until 2019 when these policies were dropped, yet the Commission on Constitution, Democracy and Rights in Johnson's manifesto could perhaps be seen as a return to the *cross-party consensus building* era, but the commission was not focused upon the House of Commons *per se*. The manifesto of October 1974 was an outlier in terms of electoral reform as the other manifestos since 1955 had explicitly or implicitly supported the first-past-the-post system.

The party also sought 'all-Party conference solutions' or 'cross-party consensus' to the reform of the House of Lords. There was a change in the policy in the 2005 manifesto. This was that the party would strive to build consensus around *its* policy but the paradigm of cross-party solution towards in the House of Lords stayed firmly in place. From 1922 to 1950 the Conservative manifestos were silent on the topic of the House of Lords. Churchill's 1950 and '51, and Eden's manifesto noted the need for reform but did not state what it should be, but stated that reform should be based on consensus. From 1955 to 1997 (*non-substantive change*

phase) there were no policies for any substantive change of the House of Lords. The 2001 manifesto was a critical juncture as there was a paradigmatic shift and consequently a policy innovation as it was the first manifesto to state that the official policy was for an elected or part elected chamber. The *elected element* paradigm was central to the Conservative's policy towards the House of Lords from 2001 to 2015. This period was an anomaly from the core paradigm towards the Upper House as a non-elected chamber. During these years the Conservative Party's official position was not in line with the conservative constitutional goods. The 2017 and 2019 manifestos broke from the *elected element* paradigm and shifted back into the older paradigm of stating that the House of Lords requires reform but did not commit to what it should be. There was, however, a policy to conserve the bicameral nature of Parliament throughout the time period analysed.

From 1910 to 1979 there were 69 years of implicit policy of no referendums, Balfour's manifesto mentioned referendums but did not have a policy on them and Thatcher's 1979 manifesto stated the need to *discuss* the use of referendums, but again did not state a policy position. From 1900 to 1997 there was no explicit policy of referendums or their usage in the manifestos. In 1997, *the referendum as a political tool* paradigm was created and thus a policy innovation. This innovation and paradigm were in place within the Conservative manifesto for 22 years until the 2019 manifesto which represented a policy rupture. This created an *explicit no referendums* paradigm rather than an implicit one as before 1997.

Local Government

Baldwin's 1929 manifesto in terms of local government reform set the *efficiency and finance* paradigm. Part of this paradigm was about delivery of national government policies, especially on housing, education and health. The paradigm has been in place ever since spanning 90 years. The approach to local government reform in the Conservative Party's manifestos were not from a constitutional paradigm or seen through a constitutional prism as they were couched in economic and financial forms, ideas and language. Therefore, the reforms were viewed through a financial/economic and efficiency prism rather than constitutional one. Thus, it is difficult to have a coherent constitutionally conservative position on reform, if the reform is not viewed through a constitutional prism. Moreover, there was no overall blueprint for local government and its relationship with the national government other than delivery of policy. This does chime with the suspicion of grand political blueprints principle as the Conservatives' manifestos did not have a grand plan. Nevertheless, there were three key positions towards the size and type

of local councils identified by this research: (1) the Churchill-Eden position (desire for small and local councils); the Douglas-Home-Heath position (for bigger more efficient regional councils); and (3) the ‘hybrid approach’ mixing the (Douglas-Home-Heath and Churchill-Eden positions). The Churchill-Eden position was in the ascendancy from 1950 until 1964 and again from 1983 to 2010. Nevertheless, the Douglas-Home-Heath position was in the ascendancy from 1964 to 1979 and again from 2017 to 2019. During Cameron’s leadership there was a ‘hybrid approach’.

Constitution to Democracy: A shift in Rhetoric

An important finding to emerge from this study is the marked change in constitutional language to *pathos* driven rhetoric. Some indicative quotes have been provided in Table 20 below and quoted in the following text. First of all, there was no consistent macro-level use of headings within the Conservatives manifestos, which can be seen in the previous tables. The manifestoes did not have all the constitutional policies in one section and they lacked an overall vision of the constitution and treated the issues as discrete ones. Language matters. In a draft copy of the 1950 manifesto, Churchill edited the document to read ‘Conservatives regard the British Constitution as the safeguard of liberty’ rather than as ‘a’ safeguard of liberty. He also put a line through ‘believe in’ and added ‘regard’ as well as adding the word ‘British’.¹⁰²² These were minor but pertinent changes.

When the British constitution became a hot topic, for example because of the Labour Government’s changes, the Conservative seemed to go quite on the specific areas that required policies and become more animated in general. Or in other words, the rhetoric was dialled up and the substantive constitutional policies dialled down. Moreover, the rhetoric to articulate the positions were *pathos* driven. This is drawing on the Aristotelian triptych of ethos (the person), pathos (use of emotion) and logos (use of logic).¹⁰²³ *Pathos* refers to the ability to establish an emotional connection between themselves and their audience or in this case between the Conservative Party’s constitutional positions and the electorate. This can be realised through positive and negative communication. The positive style is about engaging the constitutional *imaginings* of the electorate. The negative emotional style is based on the threat of specific constitutional outcome, like the break-up of the Union as well as threat of an outcome anger and fear can also be utilised to engage the electorate. The Conservative Party’s

¹⁰²² Churchill Archive Centre CHUR 28/9

¹⁰²³ Aristotle, *The Art of Rhetoric* (London: HarperPress, 2012).

manifestos demonstrating their disapproval and anger at their rival parties' constitutional policies, especially the 1997 - 2010 Labour Government's constitutional changes.

The rhetoric was also strong in both of the manifestos during Major's leadership of the Conservative Party. The manifestos were critical of the rival parties' constitutional policies, especially, Nationalist, Labour, Liberal plans on devolution. For example, in the 1992 manifesto, *The Best Future for Britain*, it suggests that the other parties' policies on devolution are 'costly' and that the policies could have a 'grave impact' on the country and the policies 'do not intend to bring about separation, but run that risk'.¹⁰²⁴ The *pathos* driven rhetoric continued in *You can only be sure with the Conservatives*, as Major made the constitution one on his core themes and mentioned it in his forward to the manifesto. Major writes 'We must protect our constitution and unity as a nation from those who threaten it with unnecessary and dangerous change'.¹⁰²⁵ Major also writes that 'to succumb to a centralised Europe while calling it "not being isolated"; to break up our country while calling it "devolution"'.¹⁰²⁶ By 2001 the Labour Party had introduced a vast arrange of constitutional changes and from 2001 to 2010, the Conservatives rhetoric became stronger and more emotive within the party's manifestos during this time period. This was when the Conservatives was in opposition and the Labour Government was implementing its constitutional reform agenda. Hague's 2001 manifesto, *Time for Common Sense*, claimed that 'Our constitution is being perverted, and faith in politics and politicians is at an all-time low.'¹⁰²⁷ It was also claimed, in the manifesto, that the House of Lords had 'suffered a botched reform' and 'the way we govern ourselves has been abused.'¹⁰²⁸ Moreover, Labour's policies on regional government were described as 'alien', 'unaccountable and 'unnecessary'.¹⁰²⁹ The manifesto claimed that Labour policies were 'crude', and that the constitution had been changed in an 'unthinking way' and 'often for narrow party advantage'.¹⁰³⁰ Hague's manifesto pledged to 'restore balance to our vandalised democracy'.¹⁰³¹ The disapproval of Labour's constitutional reforms were again expressed in Howard's 2005 manifesto and it claimed that:

¹⁰²⁴ Dale, *Conservative Manifestos*, p. 414.

¹⁰²⁵ *Ibid.*, p. 422.

¹⁰²⁶ *Ibid.*, p. 422.

¹⁰²⁷ Conservatives, *Time for Common Sense*, p. 45.

¹⁰²⁸ *Ibid.*, p. 45.

¹⁰²⁹ *Ibid.*, p. 45.

¹⁰³⁰ *Ibid.*, p. 45.

¹⁰³¹ *Ibid.*, p. 45.

Under Mr Blair, the way we are governed has become less accountable, more complex and, ultimately, less democratic. Ministers don't take responsibility for their failures. Unprecedented powers have been given to new, unelected and remote bodies, including regional assemblies for which there is no popular support. The House of Commons has been steadily undermined, and proper reform of the House of Lords has been repeatedly promised but never delivered.¹⁰³²

The pathos driven rhetoric continued in Cameron's *Invitation to Join the Government of Britain* manifesto claiming that:

Labour's constitutional vandalism has weakened Parliament, undermined democracy and brought the integrity of the ballot into question. Our unbalanced devolution settlement has caused separatism to gather momentum in Scotland, and separatists have propped up a weakened Labour Party in Wales.¹⁰³³

In a similar vein to Howard's manifesto, it was claimed that 'Labour have meddled shamelessly with the electoral system to try to gain political advantage'.¹⁰³⁴ In the rhetoric utilised in the manifestos there is a remarkable continuity from 2001 to 2010. For example, Conservative manifestos were utilising terms such as 'vandalised', 'constitutional vandalism',¹⁰³⁵ 'perverted',¹⁰³⁶ 'costly',¹⁰³⁷ 'dangerous',¹⁰³⁸ 'abused',¹⁰³⁹ 'less democratic',¹⁰⁴⁰ 'manifest unfairness',¹⁰⁴¹ and 'extremely damaging'. Here are two examples from 2017 and 2019. May's 2017 manifesto stated that 'collective faith in our democratic institutions and our justice system has declined in the past two decades' and it was the purpose of the party to 'to re-establish faith in our democracy, and in our democratic and legal institutions'.¹⁰⁴² The 2019 manifesto stated that 'The failure of Parliament to deliver Brexit – the way so many MPs have devoted themselves to thwarting the democratic decision of the British people in the 2016 referendum.'¹⁰⁴³

¹⁰³² Conservatives, *Are You Thinking What We're Thinking?*, p.21.

¹⁰³³ Conservatives, *Invitation to Join the Government of Britain*, p. 83.

¹⁰³⁴ Conservatives, *Are You Thinking What We're Thinking?*, p.21.

¹⁰³⁵ Conservatives, *Invitation to Join the Government of Britain*, p.83.

¹⁰³⁶ Conservatives, *Time for Common Sense*, p. 45.

¹⁰³⁷ Conservatives, *The Best Future for Britain*.

¹⁰³⁸ Conservatives, *You can only be sure with the Conservatives*.

¹⁰³⁹ Conservatives, *Time for Common Sense*. p. 45.

¹⁰⁴⁰ Conservatives, *Are You Thinking What We're Thinking?*.

¹⁰⁴¹ Conservatives, *Strong Leadership. A Clear Economic Plan. A Brighter, More Secure Future*.

¹⁰⁴² Conservatives, *Forward Together*, p.42.

¹⁰⁴³ Conservatives, *Get Brexit Done*, p. 48.

From Major's second manifesto, *You can only be sure with the Conservatives*, there was also another marked change in constitutional rhetoric. This change in rhetoric was a move away from a more conventional constitutional rhetoric, such as 'constitution' and 'parliament' to an all-encompassing term. The core term utilised was 'democracy'. There was one exception and that was Cameron's 2010 manifesto, but it also utilised an all-encompassing term - 'politics'¹⁰⁴⁴ thus keeping with the trend to use an all-encompassing term. The language used until the 2001 manifesto had been couched in conservative, traditional and constitutional forms until the catch-all phrases began to be used. Hague's manifesto has a mixed of these, but this section of the manifesto is a good example of this shift from words like 'parliament' and the 'constitution' to word 'democracy'. It stated that 'Britain's democracy has always been one of our greatest strengths. It has made our country what it is, and has embodied and defended our freedoms.'¹⁰⁴⁵ Relatedly, it stated that 'Because Labour do not understand how the history and stability of our democratic structures have underpinned our national life, they have altered them in a crude, unthinking way, often for narrow party advantage.'¹⁰⁴⁶ This signifies a strong use language as driven by *pathos* but there was a lack of substantive policies to fix constitution *qua* constitution. The manifestos discussed the 'non-vandalised' parts of the constitution, if any at all, and not the 'vandalism' of the constitution. This could be put like this: 'The living room has been vandalised, lets fix the bathroom'. An explanation for the Conservative Party not tackling the constitutional changes of New Labour is that they were too damaging to the constitution and thus have had lasting negative effects.

An explanation for this shift in rhetoric is that democracy is an *easier* term to understand and that the term constitution does not resonate with the British public. Baroness Shephard in an illuminating passage, in an interview with the author, said:

we practise democracy all the time, if you want to be chairman of the darts committee in a pub, you have to be elected. If you run the Women's Institute, you have to be elected as a president at the Women's Institute.¹⁰⁴⁷

¹⁰⁴⁴ See Table 21 for the frequency of the terms used.

¹⁰⁴⁵ Conservatives, *Time for Common Sense*, p 45.

¹⁰⁴⁶ *Ibid.*, p.45.

¹⁰⁴⁷ Baroness Shephard interview with the author.

Moreover, Will Tanner, in an interview with the author, said that ‘I think democracy is a much more approachable and relatable word than constitution, which does often come across as a quite a quaint and old-fashioned term in some ways’.¹⁰⁴⁸

Another explanation, which has emerged from this research is that the Conservative policies within the manifestos were increasingly couched in non-constitutional ideas or forms and consequently the party’s positions and on their political rivals’ policies would not be couched in *logos* rhetoric. The utilisation of rhetoric can illustrate a way of thinking about the constitution. Hence, constitutional arguments had to be embedded in *pathos* as the prism being utilised did not facilitate a logical debate on the constitutional aspects. The party, however, still required to articulate and defend its positions and to be electorally successful needed to be persuasive to the electorate. The move towards catch-all phrases such as ‘democracy’, this research has found, is correlated with the utilisation of other non-constitutional prisms to frame and shape the party’s constitutional policies and positions. Further research should be done to investigate this link between the rhetoric used and the non-constitutional prisms utilised for constitutional policies to establish causation or not. Moreover, a core question that also requires further research and investigation on the question ‘are manifestos meant to be discrete documents written in the political context of the day or do they represent Conservative thought over time?’ Moreover, there are different people writing the manifestos across time and multiple people writing each manifesto. This could explain the differences within them. Nevertheless, more research is required on this topic as this PhD research has demonstrated some continuity in policy and rhetoric as well as policy rupture and a pattern of the change of rhetoric that is not explained by the change of writer(s). Another implication of the results of this study is that the constitutional debates will provide more heat than light as the Conservative Party manifestos have moved to a negative *pathos* driven arguments.

Lack of Macro Level Constitutional Thinking

The critique of Whig constitutional policy during the 1830s rested more on Conservatives’ beliefs about the mistakes of the Whig and Liberal Governments in relation to constitutional policies rather than being based upon an abstract vision of what the British constitution ought to be. This style of criticism is consistent with the conservative constitutional goods on multiple levels, but specifically in line with the conservative principles of the scepticism of the individual’s reasoning powers and the suspicion of grand political blueprints. The Whig and

¹⁰⁴⁸ Will Tanner interview with the author.

Liberal ministries dominated most of British politics between the 1830s and the 1860s,¹⁰⁴⁹ which meant for most of this period the Conservative Party's constitutional arguments and positions were oppositional. Nevertheless, it is difficult to analyse the Conservative Party's 'manifestos' policies towards the British constitution in this period for the reasons enumerated in the introduction. From the analysis of manifestos from 1900 and some of the election addresses of the party's leaders before this, it has been found that there was no holistic or macro level thinking about the constitution in the manifestos. The Conservatives mainly avoided (no constitutional policies in their manifestos), if it was not a hot political topic, which is in line with conservative view of the constitution.

Non-constitutional Prisms and Institutional Memory Loss

This research has also found that in the Conservatives manifestos there are key areas where the policies or positions were not in line with conservative constitutional goods. These areas of nonalignment with the goods correlated with the most contested areas of the constitution. For example, House of Lords reform, devolution and 'Europe'. These were the issues where the party required to formulate new policy platforms due to the changing constitutional context. Where the party had more alignment with the goods was in areas where the constitutional policies required less innovation due to the context that the party was operations within, which suggest a difficulty in dealing with constitutional questions within the top of the current Conservative Party. The primary reason for this is that the Conservative Party's manifestos did not take a constitutional perspective on these issues. Consequently, the positions and policies advocated were seen through other prisms and hence have not been constitutionally coherent. The party has been reluctant to put detailed and specific policies into the manifestos on the constitution instead opting for general statements of principle as was more prevalent in leaders' election address before the modern detailed manifestos. For instance, the setting up of a commission (e.g. Speaker's) or waiting to hear the findings of a commission or the idea of All-Party discussions were stated in the manifestos. Therefore, the party has been more willing to say there is an issue or problem but not to prescribe a detailed policy agenda for in it.

The use of non-constitutional prisms for constitutional issues and the lack of an overall vision for the constitution *qua* constitution raises the questions of institutional memory loss within the Conservative Party as well as a lack of practical, tacit and individual know-how, or practical

¹⁰⁴⁹ See Cannon, J., (ed.), *The Whig Ascendancy: Colloquies on Hanoverian* (London Palgrave Macmillan 1981) for a work on the Whig dominance.

knowledge, which is essential to the conservative view of the constitution. A Conservative MP, who was also a junior minister, said to the author, ‘I know nothing about our constitution, and I don’t even have an interest in it. I know that it is unwritten and that means no one really knows what it is’.¹⁰⁵⁰ A Conservative Cabinet Minister, said to the author, ‘I do think there is less interest in the constitution as a subject, than there has been in the past’.¹⁰⁵¹ Jesse Norman MP in an interview with the author did not explicitly worry about the Conservative Party’s loss of understanding of the British constitution, but he did in a podcast with Thomas Prosser. He said ‘one of the things that is extraordinary over the last decade or two is how a decent understating of the British constitution has dropped out of political discourse. So, we have people making arguments that reflect no understanding of how the British constitution works at all.’ Norman also added, as an example, that politicians are making ‘quasi-presidential arguments’ about Boris Johnson ‘receiving a personal mandate’ and that ‘licences him to act in a presidential way’ and this is ‘ignorant’ of the British constitution.¹⁰⁵² Institutional memory loss could explain why the Conservative Party have been couching its constitutional policies in non-constitutional forms and ideas as it does not have the expertise at the top of the party, perhaps especially those who write and formulate the policy that make it into the manifesto, but also more broadly. There were multiple uses of other prisms such as financial, economic, efficiency, foreign policy, and international trade rather than a constitutional one where the party does have expertise. Thus, it is difficult to have a coherent constitutionally conservative position on the constitution, if it is not viewed through a constitutional prism. One implication of the findings is that if the Conservative Party has lost the capacity to think about the constitution, as can be suggested by the finding of this research, and as the party most likely to be able to change, reform or fix the constitution as they are currently in Government, I suggest that it is likely the party will not solve constitutional issues in a sustainable constitutional way. Thus, the party will have to re-visit the issues again (or the next party in power). An example, of this could be the Fixed-term Parliament Act 2011, which was repealed by The Dissolution and Calling of Parliament Act 2022 only a few years later. It could also be envisaged that some politicians at the top of the party may overstep the proper constitutional boundary as they are not embedded within the conservative constitutional tradition or the constitutional tradition. This institutional memory loss within the party also can also partly explain why some the

¹⁰⁵⁰ Conservative MP and junior minister interview with the author.

¹⁰⁵¹ Conservative Cabinet Minister interview with the author.

¹⁰⁵² Prosser, P., (2022, August) Why Edmund Burke matters – a conversation with Jesse Norman, *Tom’s Curiosity Shop*. URL: <https://thomasprosser.substack.com/p/why-edmund-burke-matters-a-conversation#details>

constitutional policies did not align with the conservative constitutional goods and therefore the party's manifestos has become *unconservative* on some constitutional issues.

If this trend of approaching constitutional policies through other prisms continues the debates about constitutional affairs will be conducted on the turf of other areas of public policy rather than constitutional ones and the consequences of this trend will be poorly or underdeveloped constitutional policies. Thus, a major implication of the research findings is that constitutional issues are unlikely to be solved by a coherent constitutional policy in the near future as they are seen through the perspective of other prisms. Moreover, it is likely that there will be contestation in relation to policy as there are competing paradigms and perspectives that have been utilise within the party's manifestos. In conclusion, the Conservative Party has dwelt in the paradigm of *homo economicus* or economic man (especially since 1997, but this can be also seen as far back as 1929) or in other words, the party has fallen into its modern comfort zone of economics and out of its historical one of 'constitutional man' and this overall paradigm has dominated the party's constitutional positions.

Appendix

Appendix A

Table 1. A few Examples of Definitions of Constitutions

| Broad and Abstract | Narrow and Concrete |
|---|--|
| The system of laws, customs and conventions which define the composition and powers of the various state organs to one another and to the private citizen (Hood Phillips 1978) | Wheare (1966) some define a 'constitution' as a particular document in which the rules are embodied. |
| The set of the most important rules and common understandings in any given country that regulate the relations among that country's governing institutions and also the relations between that country's governing institutions and the people of that country Anthony King (2007). | Paine provided a statement of what he thought was a constitution, which is seen to be a statement of a modern constitution. Paine argued a constitution must possess four key features: and the first was that it must have a real existence in a document. This partly explains why some definitions stress the document. Thomas Paine. In his Rights of Man of 1791. |
| J.A.G. Griffith 'the constitution is what happens' as cited by Hennessy in 1989. | F.F. Ridley (1988), has stipulated that for a constitution to be a constitution it must embody the rules, and this must be entrenched and only be amendable by some extraordinary procedure. |

Table 2. Indicative Chronology of Constitutional Events from the 1832 Reform Act to European Union (Withdrawal Agreement) Act 2020.

| |
|---------------------------------------|
| Reform Act 1832 |
| Municipal Corporations Act 1835 |
| Municipal Corporations Act 1882 |
| Second Reform Act 1867 |
| Ballot Act 1872 |
| Supreme Court of Judicature Act 1873 |
| Reform Act 1884 |
| Supreme Court of Judicature Act 1875 |
| Appellate Jurisdiction Act 1876 |
| Local Government Act 1888 |
| Parliament Act 1911 |
| Representation of the People Act 1918 |

Government of Ireland Act 1920
the Local Government Act 1933
Parliament Act 1949
Local Government Act 1972
European Communities 1972 Act
1986 European Communities (Amendment) Act.
European Union Treaty 1992 (Maastricht Treaty)
Human Rights Act 1998
Scottish, Welsh and Northern Ireland devolution Acts of 1998
Amsterdam Treaty 1999
Nice Treaty 2003
Constitutional Reform Act 2005
Lisbon Treaty 2009
European Referendum Act of 2015
Scotland Act 2012
Scotland Act 2016
Wales Act 2017
European Union (Withdrawal) Act 2018
European Union (Withdrawal Agreement) Act 2020

Table 3. Election Address/Manifesto Quotes on the Union

| Year | |
|--------------|---|
| 1906 | On one subject only does change, nay, even to hint of change, seem to them abhorrent. With a light heart the Radical leaders are prepared to destroy the Union, to uproot an ancient Church... |
| January 1910 | Here, then, I close what is not and cannot be more than an indication of certain important portions of the policy which I trust our party will pursue. To maintain the Empire, the Union and the Constitution, these are among the traditional obligations of the party which gain rather than lose in force as time goes on. |
| 1992 | The United Kingdom is far greater than the sum of its parts. Over many centuries its nations have worked, and frequently fought, side by side. Together, we have made a unique mark on history Together, we hold a special place in international affairs. To break up the Union now would diminish our influence for good in the world, just at the time when it is most needed. |
| 1992 | We believe strongly that we should go on working together in full partnership in a Union that has served every part of the United Kingdom well. |
| 1992 | The Union has brought us strength both economically and politically. Yet it has preserved the historic and cultural diversity of our islands. Our constitution is |

| | |
|------|--|
| | flexible, fair and tolerant. It has made this country one of the best places in which to live, work and bring up our children. These benefits cannot be tossed away lightly We will fight to preserve the Union, a promise which only the Conservatives can give at this election. |
| 1997 | We owe much of that to the strength and stability of our constitution – the institutions, laws and traditions that bind us together as a nation. |
| 1997 | The Union between Scotland, Wales, Northern Ireland and England underpins our nation's stability. The Conservative commitment to the United Kingdom does not mean ignoring the distinctive individuality of the different nations. |
| 1997 | THE NATION. Maintain the unity of the United Kingdom and preserve the stability of the Nation through an evolutionary - rather than revolutionary - approach to constitutional change. |
| 2001 | we will work to ensure devolution is a success. But we will restore balance to our vandalised democracy. |
| 2015 | Scottish MPs are able to cast the decisive vote on matters that only affected England and Wales, while English and Welsh MPs cannot vote on matters that only affect Scotland. This leaves a space for resentment to fester – and put our Union in jeopardy. |
| 2015 | We will work to ensure a stable constitution that is fair to the people of England, Scotland, Wales, and Northern Ireland. |
| 2017 | We are a United Kingdom, one nation made of four – the most successful political union in modern history. Its very existence recognises the value of unity – England, Northern Ireland, Scotland and Wales achieve less as two, three, or four, than as the United Kingdom together. This unity between our nations and peoples gives us the strength to change things for the better, for everyone, with a scale of ambition we simply could not possess alone. |
| 2017 | significant decision-making has been devolved to the parliament in Scotland and assemblies in Wales and Northern Ireland. Devolved administrations in Edinburgh, Cardiff and Belfast exercise greater powers than equivalent governments elsewhere in the democratic world. In England, we have given considerable powers to city mayors and combined authorities, while local councils now have greater control of the taxes they collect. This positive evolution of our constitution has given a voice to people who felt distant from the centre of power, and responsibility to people for their own part of our great country. We will continue to work in partnership with the Scottish and Welsh governments and the Northern Ireland Executive, in a relationship underpinned by pooling and sharing resources through the Barnett Formula. We will respect the devolution settlements: no decision-making that has been devolved will be taken back to Westminster. Indeed, we envisage that the powers of the devolved administrations will increase as we leave the EU. However, we can still do more for the people of Scotland, Wales and Northern Ireland |
| 2017 | The United Kingdom Government has in the past tended to ‘devolve and forget’. So we will be an active government, in every part of the UK. We will work closely with the Northern Ireland Executive, the Scottish and Welsh governments, and the new devolved authorities in England, for the benefit of all our people |
| 2019 | The United Kingdom is the most successful political and economic union in history. Together, England, Scotland, Wales and Northern Ireland are safer, stronger and more prosperous. For more than 300 years, our people have built this great country together. And we believe our best days lie ahead. |
| 2019 | By getting Brexit done, we will deliver certainty so that all four nations of the UK can move on together. This will allow us to strengthen the Union, by making it our mission |

| | |
|------|---|
| | as a Government to work for the whole of the United Kingdom, delivering for all of its people wherever they live. |
| 2019 | Strengthening the Union: Conservatives have a proud history of upholding and strengthening the devolution settlements in Scotland, Wales and Northern Ireland. We also want to ensure that the UK Government and its institutions are working effectively to realise the benefits of four nations working together as one United Kingdom. |

Table 4. Election Address/Manifesto Quotes on Ireland and Northern Ireland Home Rule

| Year | |
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| 1906 | There are many things still obscure in the long catalogue of revolutionary changes advocated by the new Ministers, but some things are plain enough - Home Rule, disestablishment, ... have lost none of their ancient charm in the eyes of Radical law-makers, and to the troupe of old acquaintances is now added a procession of shadowy suggestions respecting which we hardly yet know enough to say whether they are dangerous or merely useless. |
| December 1910 | Behind the Single Chamber conspiracy lurk Socialism and Home Rule |
| 1918 | Ireland is unhappily rent by contending forces, and the main body of Irish opinion has seldom been more inflamed or less disposed to compromise than it is at the present moment. So long as the Irish question remains unsettled there can be no political peace either in the United Kingdom or in the Empire, and we regard it as one of the first obligations of British statesmanship to explore all practical paths towards the settlement of this grave and difficult question on the basis of self-government. But there are two paths which are closed - the one leading to a complete severance of Ireland from the British Empire, and the other to the forcible submission of the six counties of Ulster to a Home Rule Parliament against their will. In imposing these two limitations we are only acting in accordance with the declared views of all English political leaders. |
| 1922 | Our first task, if returned to power, will be the ratification of the Irish Treaty. We are prepared to take our part in making good that Treaty, both in the letter and in the spirit, and to co-operate with the Irish Government in the new relationship within the Empire which the Treaty will have created. We are equally pledged to safeguard the freedom of choice and the security of the Parliament and Government of Northern Ireland. We earnestly hope that further progress will be made in dealing with the anarchy in the South, and that both in the North and in the South it will be realised that the prosperity of Ireland as a whole can only be achieved by good will between the Governments and peoples of the two portions of that country. |
| 1950 | We shall not allow her position as an integral part of the United Kingdom and of the Empire to be altered in the slightest degree without the consent of the Northern Ireland Parliament. |
| 1955 | We renew the pledge of faith to Northern Ireland. We shall not allow her position as an integral part of the United Kingdom and of the Empire to be altered in the slightest degree without the consent of the Northern Ireland Parliament. |

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| 1964 | It is a cardinal principle of our policy that Northern Ireland's partnership with Great Britain in the United Kingdom shall remain unchanged so long as that is the wish of the Parliament at Stormont. |
| 1970 | We reaffirm that no change will be made in the constitutional status of Northern Ireland without the free consent of the Parliament of Northern Ireland. |
| February 1974 | In March 1972 conditions in Northern Ireland had reached the point where we were obliged temporarily to suspend the Province's Parliament and institute a period of direct rule from Westminster, appointing a Secretary of State for Northern Ireland. After almost two years of unceasing effort, the extremists were isolated and a reconciliation was brought about between the responsible political leaders of the Protestant and Catholic communities in the Province. |
| February 1974 | On January 1, 1974 the new Northern Ireland Executive took office. It is still a tender plant. But the fact remains that those who used to be political opponents are today working together on the new Executive in Northern Ireland to bring a better life to their strife-torn Province |
| October 1974 | We recognise that Ulster is at present under-represented at Westminster, but obviously any change in that representation must await an agreement on the future devolution of government in Northern Ireland. |
| 1979 | In the absence of devolved government, we will seek to establish one or more elected regional councils with a wide range of powers over local services. |
| 1983 | The people of Northern Ireland will continue to be offered a framework for participation in local democracy and political progress through the Assembly. There will be no change in Northern Ireland's constitutional position in the United Kingdom without the consent of the majority of people there, and no devolution of powers without widespread support throughout the community. |
| 1987 | We will continue to work within the Province for a devolved government in which both communities can have confidence and will feel able to participate. |
| 1987 | We are determined that terrorism will not succeed; that the vital principles of democracy will be upheld; and that the people of Northern Ireland themselves should determine their constitutional position. |
| 1987 | There will be no change in the present status of Northern Ireland as part of the United Kingdom unless the people of Northern Ireland so wish it. |
| 1987 | That is at the heart of the Anglo-Irish Agreement which was signed with the Republic of Ireland in 1985. The Agreement offers reassurance to both sides of the community that their identities and interests will be respected, and that any change in the status of Northern Ireland would only come about with the consent of a majority of the people of the Province. It commits both governments to work together in the fight against terrorism. |
| 1992 | We have upheld our pledge that Northern Ireland will remain an integral part of the United Kingdom in accordance with the democratically expressed wishes of the majority of the people who live there. |
| 1992 | In the new Parliament we will continue to seek to re-establish stable institutions of Government in Northern Ireland, so that powers currently exercised by Ministers in the Northern Ireland Office can be returned to locally-elected politicians. |
| 1997 | ...extended the basic powers of the Northern Ireland Grand Committee |
| 1997 | After a quarter of a century we wish to see the unique and originally temporary system of direct rule ended and a successful restoration of local accountable democracy achieved.'... |

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| 1997 | Guarantee that the constitutional position of Northern Ireland cannot and will not be changed without the broad consent of the people of Northern Ireland. |
| 2001 | Northern Ireland Conservatives have always upheld the principle that the future of Northern Ireland will be determined solely by democracy and consent and never by violence. The next Conservative Government will resolutely maintain Northern Ireland's position within the United Kingdom, in accordance with the democratically expressed wishes of the greater number of its people. |
| 2001 | Conservatives continue to believe that the Belfast Agreement offers the best chance for lasting peace and political stability...work tirelessly and constructively to bring about the full implementation of all aspects of the Agreement |
| 2005 | In the absence of devolved government, we will make direct rule more accountable |
| 2005 | We will continue to work for a comprehensive political settlement, based on the principles of the Belfast Agreement. |
| 2005 | We are committed to supporting Northern Ireland's position within the United Kingdom in accordance with the consent principle. |
| 2010 | In Northern Ireland, we strongly support the political institutions established over the past decade and we are committed to making devolution work. |
| 2010 | we will stop the practice of 'double-jobbing', whereby elected representatives sit in both Westminster and Stormont |
| 2010 | We will continue to promote peace, stability and economic prosperity and work to bring Northern Ireland back into the mainstream of UK politics |
| 2015 | ...implement the Stormont House Agreement in Northern Ireland. |
| 2015 | We will maintain Northern Ireland's position within the United Kingdom on the basis of the consent of its people. Our strong support for the political institutions established over the past two decades as a result of the various Agreements will continue work to implement fully and faithfully the historic Stormont House Agreement to enable devolution to function more effectively |
| 2015 | We have agreed with Northern Ireland's parties a deal to help ensure that politics works, the economy grows and society is more cohesive and united. |
| 2017 | Our commitment to the 1998 Belfast Agreement and its successors, together with the institutions they establish, is undiminished. A Conservative government will continue to work for the full implementation of the 2014 Stormont House and 2015 Fresh Start Agreements. |
| 2017 | Our commitment to the 1998 Belfast Agreement and its successors, together with the institutions they establish, is undiminished. The next Conservative government will therefore work to re-establish a strong, stable and inclusive executive at the earliest opportunity. We will uphold the essential principle that Northern Ireland's future should only ever be determined by democracy and consent. |
| 2019 | Northern Ireland enjoys huge benefits from membership of the United Kingdom and our country is stronger and richer for Northern Ireland being part of it. That is why we will never be neutral on the Union and why we stand for a proud, confident, inclusive and modern unionism that affords equal respect to all traditions and parts of the community. |
| 2019 | we will not deviate from the principle of consent or the three-stranded approach. We will continue to work with all sides to re-establish the Northern Ireland |

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| | Executive and Assembly so that the people of Northern Ireland can enjoy the full advantages of devolved government for the benefit of the whole community. |
| 2019 | We will continue to work with all sides to re-establish the Northern Ireland Executive and Assembly so that the people of Northern Ireland can enjoy the full advantages of devolved government for the benefit of the whole community. |
| 2019 | That is why we will never be neutral on the Union and why we stand for a proud, confident, inclusive and modern unionism that affords equal respect to all traditions and parts of the community. |

Table 5. Elections Addresses, 1868-1900

| Year | Name of the Manifesto | Party Leader | Name of The Section (s) with The Main Constitutional Policies |
|------|--|-------------------|---|
| 1868 | Election Address | Benjamin Disraeli | Irish Church and Reform Act |
| 1874 | Election Address | Benjamin Disraeli | Church of England and Franchise extension |
| 1880 | Letter to the Lord Lieutenant of Ireland | Benjamin Disraeli | I Implicitly mentioned in wider Irish affairs |
| 1900 | The Manifesto of the Marquess of Salisbury | Lord Salisbury | N/A |

Table 6. Election Addresses, 1906-1935.

| Year | Name of the Manifesto | Party Leader | Name of The Section (s) with The Main Constitutional Policies or Position |
|---------------|---|-----------------|---|
| 1906 | Arthur Balfour's Election Address | Arthur Balfour | N/A |
| January 1910 | Arthur Balfour's Election Address | Arthur Balfour | N/A |
| December 1910 | Arthur Balfour's Election Address | Arthur Balfour | N/A |
| 1918 | The Manifesto of Lloyd George and Bonar Law | Bonar Law | N/A |
| 1922 | Andrew Bonar Law's Election Address | Bonar Law | N/A |
| 1923 | Stanley Baldwin's Election Address | Stanley Baldwin | N/A |
| 1924 | Stanley Baldwin's Election Address | Stanley Baldwin | A Broad and National Policy |
| 1929 | Stanley Baldwin's Election Address | Stanley Baldwin | The Empire and Trade and Employment in the |

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| | | | subsections Local Government and Civil Administration |
| 1931 | The Nation's Duty | Stanley Baldwin | No constitutional policies |
| 1935 | A Call to The Nation | Stanley Baldwin | No constitutional policies |

Table 7. Manifestos, 1945-1964.

| Year | Name of the Manifesto | Party Leader | Name of The Section (s) with The Main Constitutional Policies |
|------|---|-------------------|---|
| 1945 | Winston Churchill's Declaration of Policy to the Electors | Winston Churchill | N/A |
| 1950 | This is the Road | Winston Churchill | The United Kingdom and The Constitution |
| 1951 | 1951 Conservative Party General Election Manifesto | Winston Churchill | N/A |
| 1955 | United for Peace and Progress | Anthony Eden | Constitutional Questions, Scottish Affairs and Welsh Affairs |
| 1959 | The Next Five Years | Harold Macmillan | Policy For Progress in the subsection Public Administration |
| 1964 | Prosperity with a Purpose | Alec Douglas-Home | Freedom and Order |

Table 8. Election Address/Manifesto Quotes on Devolution on Scotland and Wales

| Year | |
|------|---|
| 1950 | A new Minister of State for Scotland, with Cabinet rank, will act as deputy to the Secretary of State and in order to secure a proper distribution of departmental duties an additional Under-Secretary will be appointed. The whole situation as between Scotland and England in the light of modern developments requires a review by a Royal Commission and this we propose to appoint. |
| 1950 | The status of the heads of United Kingdom Departments in Scotland should be enhanced. The powers of local councils must be maintained and strengthened and the supervision of the Secretary of State over them reduced. Wherever Scottish law and Scottish conditions on matters needing legislation differ materially from those in England and Wales, separate Scottish Bills based on conditions in Scotland ought to be promoted. |
| 1950 | A special responsibility for Wales should be assigned to a member of the Cabinet. |
| 1951 | The Unionist policy for Scotland, including the practical steps proposed for effective Scottish control of Scottish affairs, will be vigorously pressed forward. |
| 1951 | There will be a Cabinet Minister charged with the care of Welsh affairs |

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| 1955 | We have ensured that a senior member of the Government shall be constantly in Scotland, and have already transferred from Whitehall to Scotland a variety of additional responsibilities. Next year, in accordance with the recommendation of the Royal Commission on Scottish Affairs, the Secretary of State will take over the care of Scottish roads and bridges. Where further measures of this kind are shown to be in the best interests of Scotland, we shall not hesitate to adopt them. |
| 1955 | The appointment of a Minister for Welsh Affairs in the Conservative Government has ensured that Welsh interests and problems are represented at the highest level with a force and directness which previous methods of co-ordination had been unable to achieve. At the same time, a steady policy of administrative devolution has been followed. This policy should go on and, if possible, go further. |
| 1955 | The Council for Wales and Monmouthshire is engaged in a detailed examination of the arrangements for conducting Government business in Wales, and we shall consider, in the light of the Council's advice, such further changes as it may be practicable and advantageous to make in the present system. |
| 1959 | We shall maintain our policy of giving special regard to the distinctive rights and problems of Scotland and Wales. Transfer of administrative work from London will be carried further as opportunity allows. |
| 1966 | Modernise local government and its finance. [Scotland] |
| 1966 | Maintain a Secretary for Wales in the Cabinet. |
| 1966 | Overhaul the structure and organisation of Local Government in Wales. |
| 1970 | The Report of the Committee set up under Sir Alec Douglas-Home offers a new chance for the Scottish people to have a greater say in their own affairs. Its contents, including the proposal for a Scottish Convention sitting in Edinburgh, will form a basis for the proposals we will place before Parliament, taking account of the impending re-organisation of local government. |
| Feb 1974 | We are studying the Report of the Kilbrandon Commission. |
| Oct 1974 | In Scotland we will: set up a Scottish Assembly; give the Secretary of State for Scotland, acting with the Scottish Assembly, the power to decide how to spend Scotland's share of the UK budget... |
| Oct 1974 | In Wales we Will: increase the powers and the functions of the Secretary of State for Wales and ensure that Wales' share of the UK budget is spent in accordance with decisions taken in Wales and the Welsh Office; |
| Oct 1974 | establish a new Select Committee of Welsh MPs entitled to meet in Cardiff as well as at Westminster; |
| Oct 1974 | strengthen the functions of the Welsh Council and reconstitute its membership so that the majority will be elected from the new County and District Councils. |
| 1979 | We are committed to discussions about the future government of Scotland, and have put forward proposals for improved parliamentary control of administration in Wales. |
| 1992 | Nationalist plans for independence are a recipe for weakness and isolation. Higher taxes and political uncertainty would deter investment and destroy jobs. The costly Labour and Liberal devolution proposals for Scotland and Wales have the same drawbacks. They do not intend to bring about separation, but run that risk. They could feed, but not resolve, grievances that arise in different parts of Britain. They would deprive Scotland and Wales of their rightful seats in the United Kingdom Cabinet, seats the Conservatives are determined to preserve. |

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| 1997 | We have given new powers to the Scottish Grand Committee and Welsh Grand Committee - enabling Scottish and Welsh MPs to call Ministers to account and debate legislation which affects those countries - something that would be impossible with separate Assemblies. For the first time, Welsh members of parliament can ask their questions to Ministers in Welsh in Wales... |
| 2001 | we will work to ensure devolution is a success. But we will restore balance to our vandalised democracy. |
| 2005 | We remain strongly committed to making a success of devolution in Scotland, so that it delivers for the Scottish people. |
| 2005 | In Wales we will work with the Assembly and give the Welsh people a referendum on whether to keep the Assembly in its current form, increase its powers or abolish it. But devolution has brought problems of accountability at Westminster |
| 2010 | We support the changes proposed by the Calman Commission for clarifying the devolution settlement and creating a relationship of mutual respect between Westminster and Holyrood: 'the Prime minister and other ministers will go to Holyrood for questioning on a regular basis. |
| 2010 | The Scottish Parliament should have more responsibility for raising the money it spends. We will produce our own White Paper by May 2011 to set out how we will deal with the issues raised by Calman, and we will legislate to implement those proposals within the next Parliament. |
| 2010 | Labour's constitutional vandalism has weakened Parliament, undermined democracy and brought the integrity of the ballot into question. Our unbalanced devolution settlement has caused separatism to gather momentum in Scotland, and separatists have propped up a weakened Labour Party in Wales. |
| 2010 | We will not stand in the way of the referendum on further legislative powers requested by the Welsh assembly. The people of Wales will decide the outcome and Conservatives will have a free vote. |
| 2015 | We will continue devolution settlements for Scotland and Wales... |
| 2015 | We will honour in full our commitments to Scotland. A new Scotland Bill will be in our first Queen's Speech and will be introduced in the first session of a new Parliament. We will implement the recommendations of the Smith Commission. We will provide the Scottish Parliament with one of the most extensive packages of tax and spending powers of any devolved legislature in the world. It was right to create the Scottish Parliament and Welsh Assembly, but the job was not finished. Without the ability to raise money, the devolved Parliaments were not accountable to taxpayers. Without devolution to local councils and communities, power felt as distant as ever. |
| 2015 | Referendum on Scottish independence... was the right thing to do, and the question of Scotland's place in the United Kingdom is now settled. We have made the Scottish Parliament and Welsh Assembly responsible for funding more of what they spend... |
| 2015 | We will go further in the next Parliament, pushing power out beyond Westminster, Cardiff Bay, Holyrood and Stormont, so we keep our United Kingdom strong and secure for the long term. We will strengthen and improve devolution for each part of our United Kingdom in a way that accepts that there is no one-size-fits-all solution: we will implement the Smith Commission and St David's Day Agreement or equivalent changes in the rest of the UK, including English votes for English laws. |
| 2015 | We will implement Wales' devolution settlement... We will clarify the division of powers between Wales and the UK Government... devolve to the Welsh |

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| | Assembly control over its own affairs – including the Assembly name, size and electoral system, Assembly elections and voting age’ implement other recommendations of the second Silk Report where there is all-party support as set out in the St David’s Day Agreement... introduce a new Wales Bill if these changes require legislation... Welsh Government to plan for the future, once it has called a referendum on Income Tax powers in the next Parliament |
| 2017 | The Scottish Parliament has become the most powerful parliament of its kind in the world, with It was the Conservative and Unionist Party that delivered the 2012 and 2016 Scotland Acts... We have been very clear that now is not the time for another referendum on independence. In order for a referendum to be fair, legal and decisive, it cannot take place until the Brexit process has played out and it should not take place unless there is public consent for it to happen. |
| 2017 | The Conservative Party has a proud record supporting devolution in Wales. The 2017 Wales Act, passed by a Conservative government, transfers significant new powers to the National Assembly for Wales and the Welsh Government. |
| 2019 | We are ambitious for the Welsh economy and for our Union. |

Table 9. Manifestos, 1966-1997.

| Year | Name of the Manifesto | Party Leader | Name of The Section (s) with The Main Constitutional Policies |
|---------------|--|-------------------|--|
| 1966 | Action Not Words: The New Conservative Programme | Edward Heath | Blueprint for a Parliament |
| 1970 | A Better Tomorrow | Edward Heath | Government and the Citizen |
| February 1974 | Firm Action for a Fair Britain | Edward Heath | Local Government and Britain, Europe and the World |
| October 1974 | Putting Britain First | Edward Heath | People in Scotland and Wales, People and the Law, People in Northern Ireland Speaker's Conference on Electoral Reform |
| 1979 | 1979 Conservative Party General Election Manifesto | Margaret Thatcher | Rule of Law sub-section ‘The Supremacy of Parliament’ |
| 1983 | The Challenge of Our Times | Margaret Thatcher | Law, Democracy, and the Citizen sub-section ‘The Supremacy of Parliament’ |

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| 1987 | The Next Moves Forward | Margaret Thatcher | Local Government and Inner Cities |
| 1992 | The Best Future for Britain | John Major | A United Kingdom |
| 1997 | You can only be sure with the Conservatives | John Major | The Constitution |

Table 10. Manifestos, 2001- 2019.

| Year | Name of the Manifesto | Party Leader | Name of The Section with The Main Constitutional Policies |
|------|---|----------------|---|
| 2001 | Time for Common Sense | William Hague | A Proud Democracy |
| 2005 | Are You Thinking What We're Thinking? It's Time for Action | Michael Howard | Accountability |
| 2010 | Invitation to Join the Government of Britain | David Cameron | Change Politics |
| 2015 | Strong Leadership. A Clear Economic Plan. A Brighter, More Secure Future. | David Cameron | Stronger Together: A Union for the 21st Century |
| 2017 | Together. Stronger Britain And Our Plan for A Prosperous Future | Theresa May | Home of Democracy and The Rule of Law |
| 2019 | Get Brexit Done Unleash Britain's Potential | Boris Johnson | Protect Our Democracy |

Table 11. Manifesto Quotes on England and the West Lothian Question

| Year | |
|------|--|
| 2001 | But only English and Welsh MPs will be entitled to vote on Government Bills relating to England and Wales. And English MPs alone will vote on the remaining laws which apply exclusively to England. |
| 2001 | Reform Parliament so that only English and Welsh MPs vote on exclusively English and Welsh matters |
| 2001 | We have the anomaly of MPs from Scotland and Northern Ireland voting on laws that apply only to England and Wales. |
| 2005 | English votes for English laws |
| 2005 | Now that exclusively Scottish matters are decided by the Scottish Parliament in Edinburgh, exclusively English matters should be decided in Westminster without the votes of MPs sitting for Scottish constituencies who are not accountable to English voters. We will act to ensure that English laws are decided by English votes. |
| 2010 | Labour have refused to address the so-called 'West Lothian Question': the unfair situation of Scottish MPs voting on matters which are devolved. A Conservative government will introduce new rules so that legislation referring specifically to England, or to England and Wales, cannot be enacted without the consent of MPs representing constituencies of those countries. |
| 2015 | ...we have set out clear plans for English votes for English laws |

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| 2015 | Give English MPs a veto over matters only affecting England, including on Income Tax... |
| 2015 | we will give English MPs a veto over English-only matters, including on Income Tax – answering the West Lothian Question. |
| 2015 | We will maintain the Westminster Parliament as the UK and England’s law-making body But we want Parliament to work in a way that ensures decisions affecting England, or England and Wales, can only be taken with the consent of the majority of MPs representing constituencies in England, or in England and Wales... We will end the manifest unfairness whereby Scotland is able to decide its own laws in devolved areas, only for Scottish MPs also to be able to have the potentially decisive say on similar matters that affect only England and Wales... We will maintain the integrity of the UK Parliament by ensuring that MPs from all parts of the UK continue to deliberate and vote together, including to set overall spending levels... But we will: We will give English MPs a veto over matters only affecting England change parliamentary procedures so that the detail of legislation affecting only England or England and Wales will be considered by a Committee drawn in proportion to party strength in England or England and Wales add a new stage to how English legislation is passed; no bill or part of a bill relating only to England would be able to pass to its Third Reading and become law without being approved through a legislative consent motion by a Grand Committee made up of all English MPs, or all English and Welsh MPs... |
| 2015 | we will introduce English votes for English laws, answering the longstanding West Lothian Question in our democracy. |

Table 12: Typology of Conservative Positions on the European Question

| Type | Position | Holder of the Views |
|-------------------|--|---------------------|
| Brexit First | The UK must leave the EU even by utilising unconstitutional language and the[means to push it though. | Rees-Mogg |
| Union first | The UK union must be preserved and leaving the EU is secondary. | May |
| Economy First | Economic growth over constitutional niceties | Osborne |
| Influence first | The ability to have influence over our European neighbours is more important than sovereignty or constitutional issues | Major, Clarke |
| Sovereignty first | Parliamentary Sovereignty over the relationship with the EC/EU | Bridgen |
| Trade first | The flow of goods from Europe is more important than constitutional niceties | Heath |

Table 13. Manifesto Quotes about the European Project

| Year | |
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| 1950 | A Conservative Government will go forward resolutely to build, within the framework of the United Nations, a system of freedom based upon the rule of law. For this Britain must continue in ever closer association with Western Europe and the United States. But in the fore-front of British statesmanship stands the vital task of extending the unity, strength and progress of the British Empire and Commonwealth. |
| 1950 | Hand in hand with France and other friendly powers we shall pursue the aim of closer unity in Europe. The admission of the Government of Western Germany into the Council of Europe. |
| 1951 | On these solid foundations we should all continue to labour for a United Europe, including in the course of time those unhappy countries still behind the Iron Curtain. |
| 1955 | We play a leading part in the Atlantic Alliance, the main shield of peace and the formal expression of Anglo-American solidarity. Britain too by her initiative has helped to create Western European Union, the hub of the alliance between the free peoples of the Continent. |
| 1955 | In Western European Union we have undertaken an act of faith without precedent in British history, in that we are pledged to keep our forces on the Continent so long as they are needed by our European allies. |
| 1959 | We are about to join an economic association of Seven European countries; our aim remains an industrial free market embracing all Western Europe. |
| 1964 | Entry into the European Economic Community is not open to us in existing circumstances, and no question of fresh negotiations can arise at present. We shall work, with our EFTA partners, through the Council of Europe, and through Western European Union, for the closest possible relations with the Six consistent with our Commonwealth ties. |
| 1964 | We remain convinced that the political and economic problems of the West can best be solved by an Atlantic partnership between America and a united Europe. Only in this way can Europe develop the wealth and power, and play the part in aiding others, to which her resources and history point the way. |
| 1966 | I want to see our country with confidence in itself and in the future taking its place in the European Economic Community. |
| 1966 | We are determined to give Britain a respected place in the world again and lead her into the European Community. |
| 1966 | Britain must be part of a wider grouping if she is to exert her full influence in the world. British industry must have far bigger markets if it is to develop on the scale required in so many cases by modern technology. This can best be achieved by Britain becoming a member of an enlarged European Economic Community to which she herself has so much to contribute. |
| 1966 | That is why we shall seize the first favourable opportunity of becoming a member of the Community. |
| 1966 | Work energetically for entry into the European Common Market at the first favourable opportunity. Prepare for entry by relating the development of our own policies to those of the Common Market, wherever appropriate. |

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| 1966 | Encourage co-operation with other European countries in joint projects which need not await our membership of the Common Market: particularly where large-scale scientific and technological resources are called for. |
| 1970 | These policies will strengthen Britain so that we can negotiate with the European Community confident in the knowledge that we can stand on our own if the price is too high. |
| 1970 | If we can negotiate the right terms, we believe that it would be in the long-term interest of the British people for Britain to join the European Economic Community, and that it would make a major contribution to both the prosperity and the security of our country. The opportunities are immense. Economic growth and a higher standard of living would result from having a larger market. |
| Feb 1974 | An important source of new help for the regions over the years ahead should derive from our membership of the European Community. We attach importance to a substantial fund devoted to Community Regional Development, and a decision is to be taken early this year. |
| Feb 1974 | Above all, by successfully negotiating British membership of the European Community, we achieved a major national objective which had eluded successive British Governments of both Parties for more than a decade. |
| Feb 1974 | We shall continue to work for ways in which the Community's institutions can be improved in order to make them more responsive to public opinion and to reinforce democratic control. |
| Feb 1974 | Meanwhile, we will ensure that Parliament at Westminster can play a full and effective part in the consideration of Community proposals in their formative stage. |
| Oct 1974 | ...we would like the Speaker's Conference to examine the question of representation in the European Parliament, which many people think should be decided by direct election. |
| Oct 1974 | But by far the most historic achievement of the last Conservative government was to bring about British entry into the European Community. Membership of the EEC brings us great economic advantages, but the European Community is not a matter of accountancy. There are two basic ideas behind the formation of the Common Market; first, that having nearly destroyed themselves by two great European civil wars, the European nations should make a similar war impossible in future; and, secondly, that only through unity could the Western European nations recover control over their destiny - a control which they had lost after two wars, the division of Europe and the rise of the United States and the Soviet Union. |
| Oct 1974 | Conservatives have been playing their full part in the European Parliament to protect British interests, improve Community policy and make Europe more democratic. A central part of future Conservative policy will be to work realistically for closer European unity in all the areas of Community policy which can be of benefit to Britain. In this way we can make our contribution to a peaceful, prosperous and democratic Europe. |
| Oct 1974 | Europe gives us the opportunity to reverse our political and economic decline. It may be our last. |
| 1979 | ..the relationship between Members of the European Parliament and Westminster... |

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| 1987 | The battle we had to fight to ensure that Britain paid no more than its fair share of the European Community Budget. We now get automatic rebates - this year, over £1.3 billion. |
| 1987 | Britain has led the way in establishing a genuine common market, with more trade and services moving freely across national boundaries. We will campaign for the opening of the market in financial and other services and the extension of cheaper air fares in Europe. We will also continue to work with our European partners to defend our own trading interests and press for freer trade among all nations. All of this will help safeguard existing jobs and create new ones. |
| 1992 | The Conservatives have been the party of Britain in Europe for 30 years. We have argued when argument was necessary; but we have not wavered nor changed our views. We have ensured that Britain is at the heart of Europe; a strong and respected partner. |
| 1992 | It was a British initiative which launched the Single Market programme and our insistence which reformed the Community's finances. |
| 1992 | The Maastricht Treaty was a success both for Britain and for the rest of Europe. British proposals helped to shape the key provisions of the Treaty including those strengthening the enforcement of Community law defence, subsidiarity and law and order. But Britain refused to accept the damaging Social Chapter proposed by other Europeans, and it was excluded from the Maastricht treaty. |
| 1997 | EUROPE. Seek a partnership of nation states in Europe, and not allow Britain to be part of a federal European state. |
| 1997 | The government has a positive vision for the European Union as a partnership of nations. We want to be in Europe but not run by Europe. We have much to gain from our membership of the European Union - in trade, in co-operation between governments, and in preserving European peace. We benefit from the huge trade opportunities that have opened up since Britain led the way in developing Europe's single market. We want to see the rest of Europe follow the same deregulated, enterprise policies that have transformed our economic prospects in Britain |
| 1997 | However, in June, the nations of the European Union will gather in Amsterdam to negotiate possible amendments to the Treaty of Rome. It is a moment of truth, setting the direction in which the European Union will go. It will also be crucial in ensuring that we have a relationship with the rest of Europe with which we can be comfortable. |
| 1997 | We will argue for a flexible Europe which fully accommodates the interests and aspirations of all its member states and where any new proposals have to be open to all and agreed by all. We will not accept other changes to the Treaty that would further centralise decision-making, reduce national sovereignty, or remove our right to permanent opt-outs. |
| 1997 | If, during the course of the next parliament, a Conservative government were to conclude that it was in our national interest to join a single currency, we have given a guarantee that no such decision would be implemented unless the British people gave their express approval in a referendum. |
| 2001 | The next Conservative Government will secure our independence and use Britain's great strengths to help create a flexible Europe of nations... |

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| 2005 | We will settle our relationship with the European Union by bringing powers back from Brussels to Britain. |
| 2005 | And our relations with the European Union have been mismanaged in a way which threatens not just British interests, but the capacity of the continent to adapt flexibly to the future. |
| 2005 | Conservatives support the cause of reform in Europe and we will co-operate with all those who wish to see the EU evolve in a more flexible, liberal and decentralised direction |
| 2010 | We will introduce a United Kingdom Sovereignty Bill to make it clear that ultimate authority stays in this country, in our Parliament. |
| 2010 | a Conservative government will not agree to the UK's participation in the establishment of a European Public Prosecutor's Office or permit its jurisdiction over the UK. |
| 2010 | ...the Lisbon treaty contains a number of so- called 'ratchet clauses', which allow the powers of the EU to expand in the future without a new treaty. We will change the 1972 act so that an act of Parliament would be required before any 'ratchet clause' could be used. Additionally, the use of a major 'ratchet clause' which amounted to the transfer of an area of power to the EU would be subject to a referendum. |
| 2010 | Negotiate guarantees – on the Charter of fundamental rights, with our European partners to return powers that we believe should reside with the UK, not the EU. We seek a mandate to negotiate the return of these powers from the EU to the UK. |
| 2010 | We will be positive members of the European Union but we are clear that there should be no further extension of the EU's power over the UK without the British people's consent. We will ensure that by law no future government can hand over areas of power to the EU or join the Euro without a referendum of the British people. We will work to bring back key powers over legal rights, criminal justice and social and employment legislation to the UK. |
| 2015 | The EU needs to change. And it is time for the British people – not politicians – to have their say. Only the Conservative Party will deliver real change and real choice on Europe, with an in-out referendum by the end of 2017. |
| 2015 | We want to see powers flowing away from Brussels, not to it. We have already taken action to return around 100 powers, but we want to go further. We want national parliaments to be able to work together to block unwanted European legislation. |
| 2015 | we want an end to our commitment to an 'ever closer union,' |
| 2017 | White Paper on the United Kingdom's Exit from, and a new relationship with, the European Union, during the passage of the European Union (Notification of Withdrawal) Act, in the prime minister's letter to the president of the European Council invoking Article 50, and in the Great Repeal Bill White Paper. |
| 2017 | We will enact a Great Repeal Bill. Our laws will be made in London, Edinburgh, Cardiff and Belfast, and interpreted by judges across the United Kingdom, not in Luxembourg. The bill will convert EU law into UK law, allowing businesses and individuals to go about life knowing that the rules have not changed overnight. The bill will also create the necessary powers to correct the laws that do not operate appropriately once we have left the EU, so our legal system can continue to function correctly outside the EU. Once EU law has been converted |

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| | into domestic law, parliament will be able to pass legislation to amend, repeal or improve any piece of EU law it chooses... |
| 2019 | Once we get Brexit done, Britain will take back control of its laws. As we end the supremacy of European law, we will be free to craft legislation and regulations that maintain high standards but which work best for the UK. We want a balance of rights, rules and entitlements that benefits all the people and all the parts of our United Kingdom. |
| 2019 | After Brexit we also need to look at the broader aspects of our constitution: the relationship between the Government, Parliament and the courts; the functioning of the Royal Prerogative; the role of the House of Lords; and access to justice for ordinary people. |

Table 14. Indicative Quotes about the Courts, Law and Rights

| Year | |
|------|---|
| 1997 | A new Bill of Rights, for example, would risk transferring power away from parliament to legal courts - undermining the democratic supremacy of parliament as representatives of the people... we do not believe it is appropriate to the UK.' |
| 2005 | with clear guidance for police and our review of the Human Rights Act, this will ensure fairness for all |
| 2010 | 'Labour have subjected Britain's historic freedoms to unprecedented attack. they have trampled on liberties and, in their place, compiled huge databases to track the activities of millions of perfectly innocent people, giving public bodies extraordinary powers to intervene in the way we live our lives.' |
| 2010 | We will replace the Human Rights Act with a UK Bill of Rights |
| 2015 | We will scrap Labour's Human Rights Act and introduce a British Bill of Rights which will restore common sense to the application of human rights in the UK The Bill will remain faithful to the basic principles of human rights, which we signed up to in the original European Convention on Human Rights It will protect basic rights, like the right to a fair trial, and the right to life, which are an essential part of a modern democratic society But it will reverse the mission creep that has meant human rights law being used for more and more purposes, and often with little regard for the rights of wider society Among other things the Bill will stop terrorists and other serious foreign criminals who pose a threat to our society from using spurious human rights arguments to prevent deportation. |
| 2015 | Scrap the Human Rights Act and curtail the role of the European Court of Human Rights, so that foreign criminals can be more easily deported from Britain. all the problems created by Labour's human rights laws The next Conservative Government will scrap the Human Rights Act, and introduce a British Bill of Rights This will break the formal link between British courts and the European Court of Human Rights, and make our own Supreme Court the ultimate arbiter of human rights matters in the UK. |
| 2017 | the laws that we make form the basis of judgments in our courts, which are respected around the world. This unequalled democracy and legal system is our greatest national inheritance. |
| 2017 | 'We will not bring the European Union's Charter of Fundamental Rights into UK law. We will not repeal or replace the Human Rights Act while the process of Brexit is underway but we will consider our human rights legal framework when |

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| | the process of leaving the EU concludes. We will remain signatories to the European Convention on Human Rights for the duration of the next parliament.’ |
| 2017 | ‘strong criminal justice system requires a good legal system. We cherish our strong and independent judiciary. Our courts and judiciary are respected as the finest in the world. Legal services are a major British export and underpin our professional services sector’ |
| 2019 | We will update the Human Rights Act and administrative law to ensure that there is a proper balance between the rights of individuals, our vital national security and effective government. We will ensure that judicial review is available to protect the rights of the individuals against an overbearing state, while ensuring that it is not abused to conduct politics by another means or to create needless delays. |
| 2019 | After Brexit we also need to look at the broader aspects of our constitution: the relationship between the Government, Parliament and the courts; the functioning of the Royal Prerogative; the role of the House of Lords; and access to justice for ordinary people. |

Table 15. Quotes about Electoral System and Franchise

| Year | |
|------|--|
| 1997 | ‘Nor do we favour changes in the system of voting in parliamentary elections that would break the link between an individual member of parliament and his constituents. A system of proportional representation would be more likely to produce unstable, coalition governments that are unable to provide effective leadership - with crucial decisions being dependent on compromise deals hammered out behind closed doors. This is not the British way.’ |
| 2001 | We reaffirm our commitment to keeping Britain's voting system for general elections. |
| 2010 | Labour have meddled shamelessly with the electoral system to try to gain political advantage. |
| 2010 | support the first-past-the-post system for Westminster elections because it gives voters the chance to kick out a government they are fed up with. |
| 2010 | a Conservative government will ensure every vote will have equal value by introducing ‘fair vote’ reforms to equalise the size of constituency electorates, and conduct a boundary review to implement these changes within five years |
| 2010 | individual voter registration, giving everyone the right to cast their vote in person and making it easier for UK citizens living overseas to vote. |
| 2010 | ‘having a single vote every four or five years is not good enough – we need to give people real control over how they are governed.’ |
| 2010 | ‘our political system has betrayed the people’ ‘together we can even make politics and politicians work better’. |
| 2015 | We will also continue to reform our political system: make votes of more equal value through long overdue boundary reforms... |
| 2015 | Building on our introduction of individual voter registration, we will continue to make our arrangements fair and effective by ensuring the Electoral Commission puts greater priority on tackling fraud and considers insisting on proof of ID to vote. |
| 2015 | We will complete the electoral register, by working to include more of the five million Britons who live abroad. We will introduce votes for life, scrapping the rule that bars British citizens who have lived abroad for more than 15 years from voting. |

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| 2015 | We will respect the will of the British people, as expressed in the 2011 referendum, and keep First Past the Post for elections to the House of Commons |
| 2015 | We will address the unfairness of the current Parliamentary boundaries, ...the cost of politics and make votes of more equal value. We will implement the boundary reforms that Parliament has already approved and make them apply automatically once the Boundary Commission reports in 2018. This will deal with the fact that the current electoral layout over-represents parts of the country where populations have been falling and under-represents parts where populations have been rising |
| 2015 | We have also passed the Fixed Term Parliament Act, an unprecedented transfer of Executive power. |
| 2017 | We will repeal the Fixed-term Parliaments Act |
| 2017 | We will retain the first past the post system of voting for parliamentary elections and extend this system to police and crime commissioner and mayoral elections. |
| 2017 | We will legislate for votes for life for British overseas electors |
| 2017 | We will continue to modernise and improve our electoral registration process, making it as accessible as possible so that every voice counts. |
| 2017 | We will continue with the current boundary review, enshrining the principle of equal seats |
| 2017 | We will retain the current franchise to vote in parliamentary elections at eighteen. |
| 2017 | We will legislate to ensure that a form of identification must be presented before voting, to reform postal voting and to improve other aspects of the elections process to ensure that our elections are the most secure in the world. We will retain the traditional method of voting by pencil and paper, and tackle every aspect of electoral fraud. |
| 2019 | In our first year we will set up a Constitution, Democracy & Rights Commission that will examine these issues in depth, and come up with proposals to restore trust in our institutions and in how our democracy operates.' |

Table 16. Quotes about the House of Commons in the Manifestos

| Year | |
|------|--|
| 2001 | we will reduce the size of the House of Commons. |
| 2005 | cut the number by 20 per cent |
| 2010 | reduce the number of MPs by 10 per cent |
| 2015 | reduce the number of MPs to 600 |
| 2017 | While reducing the number of MPs to 600 |

Table 17. Quotes about the House of Lords in the Manifestos

| Year | |
|------|---|
| 1874 | impugn the independence of the House of Lords |
| 1997 | opposition proposals on the House of Lords - would be extremely damaging. |
| 2001 | We will strengthen the independence of the House of Lords as an effective revising chamber by requiring new members to be approved by an independent appointments commission. |
| 2001 | We will set up a Joint Committee of both Houses of Parliament in order to seek consensus on lasting reform in the House of Lords. |

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| 2001 | We would like to see a stronger House of Lords in the future, including a substantial elected element. |
| 2001 | The House of Lords, historically a source of balance and independence, has suffered a botched reform. |
| 2005 | We will seek cross-party consensus for a substantially elected House of Lords. |
| 2005 | proper reform of the House of Lords has been repeatedly promised but never delivered |
| 2010 | work to build a consensus for a mainly-elected second chamber to replace the current house of Lords, recognising that an efficient and effective second chamber should play an important role in our democracy and requires both legitimacy and public confidence |
| 2015 | While we still see a strong case for introducing an elected element into our second chamber, this is not a priority in the next Parliament. |
| 2017 | Although comprehensive reform is not a priority we will ensure that the House of Lords continues to fulfil its constitutional role as a revising and scrutinising chamber which respects the primacy of the House of Commons. We have already undertaken reform to allow the retirement of peers and the expulsion of members for poor conduct and will continue to ensure the work of the House of Lords remains relevant and effective by addressing issues such as its size. |

Table 18. Quotes on Referendums in the Manifestos

| Year | |
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| 2005 | ‘Within the first day, we will set a date for the referendum on the European Constitution, in which we will campaign for a “no” vote.’ |
| 2015 | ‘give you a say over whether we should stay in or leave the EU, with an in-out referendum by the end of 2017. ‘We believe in letting the people decide: so we will hold an in-out referendum on our membership of the EU before the end of 2017. ‘We will legislate in the first session of the next Parliament for an in-out referendum to be held on Britain’s membership of the EU before the end of 2017 We will negotiate a new settlement for Britain in the EU And then we will ask the British people whether they want to stay in on this basis, or leave We will honour the result of the referendum, whatever the outcome’. |

Table 19. Indicative Quotes on Local Government

| Year | |
|------|--|
| 1997 | Regional government would be a dangerously centralising measure - taking power away from elected local authorities. We wish to go in the opposite direction, shifting power to the local neighbourhood - for example, by giving more power to parish councils. |
| 2001 | The next Conservative Government will revolutionise the attitude of central government to local government. Conservatives believe that councils that have such a track record of success should be trusted with more power. They will be able to become ‘free councils’. We will devolve financial and administrative power from central government to them, and establish a stronger link between the money they raise and the money they spend |

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| 2001 | The next Conservative Government will not use its powers to cap local council budgets. |
| 2001 | But real communities are being weakened by too much government from Whitehall, and by the imposition of artificial new layers of government with which people don't identify... |
| 2001 | We will abolish many of the national targets and plans that local councils are forced to follow by Whitehall.' |
| 2001 | Transfer power from central government to effective local councils: Local referendums before large increases in Council Tax: Abolish artificial regional tiers of administration in England |
| 2001 | we will look at ways in which local councils proposing increases in their budgets significantly above the rate of inflation can be obliged to hold a local referendum on the increase in the Council Tax' |
| 2001 | We will abolish the Regional Development Agencies that the Government has introduced and scrap Labour's plans for new Regional Assemblies. |
| 2001 | give responsibility for enterprise and development back to county councils, and to unitary authorities where appropriate |
| 2001 | We will abandon the Government's plans for a new tier of regional politicians in England |
| 2001 | People identify with their local communities. But under this Government they are being marginalised by alien new regional bureaucracies that are costly, unaccountable and unnecessary |
| 2005 | Under Mr Blair, the way we are governed has become less accountable, more complex and, ultimately, less democratic.' 'Ministers don't take responsibility for their failures. Unprecedented powers have been given to new, unelected and remote bodies, including regional assemblies for which there is no popular support. |
| 2005 | 'The most powerful form of devolution is to individuals and families. 'Conservatives understand that people identify with their town, city or county, not with arbitrary "regions". We will abolish Labour's regional assemblies. Powers currently exercised at a regional level covering planning, housing, transport and the fire service will all be returned to local authorities.' We believe in devolving power down to the lowest level so that local people are given greater control over their own lives' 'Local communities will have a greater say over planning decisions. We will also give new powers to help local councils to deal with those incidents, such as illegal traveller encampments, which breach planning laws' |
| 2005 | 'Abolition of regional assemblies' |
| 2005 | 'Local councils should be accountable to voters. But under Labour, people's priorities have taken second place to centrally imposed targets and Whitehall inspection regimes. The cost to local taxpayers has increased rapidly, with council tax levels up 76 per cent since 1997. It has been a vicious circle – less representation and more taxation'. |
| 2010 | 'Using decentralisation, accountability and transparency, we will weaken the old political elites, give people power, fix our broken politics and restore people's faith that if we act together things can change.' |
| 2010 | 'local government much more power, allow communities to take control of vital services, and give people the chance to have a powerful, elected mayor in England's largest cities.' 'over the last forty years, governments of all colours have been guilty of weakening local government'. 'bureaucratic control has replaced democratic accountability' ' activities of councils are micro-managed by unelected quangos.' |

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| | <p>‘We need a totally different approach to governing, one that involves people in making the decisions that affect them. this is what we call collaborative democracy – people taking the kind of powers that until now have been exercised only by governments.’ ‘individuals, and in those cases we need to push power down to the most appropriate local level: neighbourhood, community and local government.’</p> |
| 2010 | <p>Local government should be at the heart of our economic recovery, so we will:</p> <ul style="list-style-type: none"> • allow councils to keep above-average increases in business rate revenue so that communities which go for growth can reap the benefits; • give councils new powers to introduce further discounts on business rates; and, • introduce an immediate freeze of, and inquiry into, the government’s punitive programme of back-dating business rates on ports. |
| 2010 | <p>We will give democratically accountable local government much greater power to improve their citizens lives by:</p> <ul style="list-style-type: none"> • giving local councils a ‘general power of competence’, so that they have explicit authority to do what is necessary to improve their communities; • scrapping Labour’s uncompleted plans to impose unwieldy and expensive unitary councils and to force the regionalisation of the fire service; • ending the ‘predetermination rules’ that prevent councillors speaking up about issues that they have campaigned on; and, • encouraging the greater use of ward budgets for councillors. |
| 2010 | <p>give councillors the power to vote on large salary packages for unelected council officials.</p> |
| 2010 | <p>over the last forty years, governments of all colours have been guilty of weakening local government. but what was a gradual centralisation has accelerated dramatically under Labour. bureaucratic control has replaced democratic accountability. the wishes of local people are second-guessed by bureaucrats; the activities of councils are micro-managed by unelected quangos. this hoarding of power by distant politicians and unaccountable officials in Whitehall has damaged society by eroding trust.</p> |
| 2010 | <p>Developers will have to pay a tariff to the local authority to compensate the community for loss of amenity and costs of additional infrastructure. the tariff will replace the payments and levies on development that have grown up under Labour. a portion of this tariff will be kept by the neighbourhoods in which a given development takes place, providing clear incentives for communities which go for growth.</p> |
| 2010 | <p>We have seen that a single municipal leader can inject dynamism and ambition into their communities. So, initially, we will give the citizens in each of england’s twelve largest cities the chance of having an elected mayor. big decisions should be made by those who are democratically accountable, not by remote and costly quangos. We will abolish the Government Office for London as part of our plan to devolve more power downwards to the London boroughs and the mayor of London.</p> |
| 2010 | <p>Decentralising control must go hand in hand with creating much greater transparency in local government. Power without information is not enough. We will implement fully the Sustainable Communities act, and reintroduce the Sustainable Communities act (Amendment) Bill as government legislation, to give people greater information on, and control over, what is being spent by each government agency in their area.</p> |
| 2010 | <p>Our plans to decentralise power will only work properly if there is a strong, independent and vibrant local media to hold local authorities to account. We will sweep away the rules that stop local newspapers owning other local media platforms</p> |

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| | and create a new network of local television stations. and we will tighten the rules on taxpayer-funded publicity spending by town halls. |
| 2015 | We will let local people have more say on local planning and let them vote on local issues We will not let anyone impose artificial regions on England – our traditional towns, boroughs, cities and counties are here to stay |
| 2015 | We support policies that grow the economy as a whole, generating new jobs and higher wages for everybody.’ ‘We will devolve powers and budgets to boost local growth in England. |
| 2015 | We will devolve far-reaching powers over economic development, transport and social care to large cities which choose to have elected mayors. We will legislate to deliver the historic deal for Greater Manchester, which will devolve powers and budgets and lead to the creation of a directly elected Mayor for Greater Manchester. In Cambridgeshire, Greater Manchester and Cheshire East, we will pilot allowing local councils to retain 100 per cent of growth in business rates, so they reap the benefit of decisions that boost growth locally. We will devolve further powers over skills spending and planning to the Mayor of London. And we will deliver more bespoke Growth Deals with local councils, where locally supported, and back Local Enterprise Partnerships to promote jobs and growth. |
| 2015 | We want local councils to help manage public land and buildings, and will give them at least a 10 per cent stake in public sector land sales in their area. |
| 2015 | It was right to create the Scottish Parliament and Welsh Assembly, but the job was not finished. Without the ability to raise money, the devolved Parliaments were not accountable to taxpayers. Without devolution to local councils and communities, power felt as distant as ever. |
| 2017 | This Conservative government has devolved more power to English local authorities, closer to local people, than any previous government in over a century: across England, newly elected mayors, combined authorities, local councils and local enterprise partnerships are being empowered to improve local growth and public services.’ ‘With devolution now established in London and other parts of England, we will consolidate our approach, providing clarity across England on what devolution means for different administrations so all authorities operate in a common framework. We will support those authorities that wish to combine to serve their communities better. For combined authorities that are based around our great cities, we will continue to support the adoption of elected mayors, but we will not support them for the rural counties. |
| 2017 | We will continue to give local government greater control over the money they raise and address concerns about the fairness of current funding distributions. |
| 2017 | We will build on the Cardiff Capital region and Swansea Bay City region deals, and bring forward a North Wales Growth Deal, connecting north Wales with northern England. |
| 2017 | We will publish operational performance data of all public-facing services for open comparison as a matter of course – helping the public to hold their local services to account, or choose other better services. |
| 2019 | Local people will continue to have the final say on council tax, being able to veto excessive rises. |
| 2019 | Our ambition is for full devolution across England, building on the successful devolution of powers to city region mayors, Police and Crime Commissioners and others, so that every part of our country has the power to shape its own destiny. We will publish an English Devolution White Paper setting out our plans next year. |

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| 2019 | Through bodies like the Northern Powerhouse, Western Gateway and Midlands Engine we will drive greater levels of foreign investment into the UK, promoting our towns, cities and counties around the world. As part of our plans for full devolution we will also invite proposals from local areas for similar growth bodies across the rest of England, such as the Oxford-Cambridge Arc. |
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Table 20. Constitutional Rhetoric

| Year | |
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| 1992 | The costly Labour and Liberal devolution proposals for Scotland and Wales have the same drawbacks. They do not intend to bring about separation, but run that risk. |
| 1997 | ‘In a world where people want security, nothing would be more dangerous than to unravel a constitution that binds our nation together and the institutions that bring us stability’ |
| 2001 | Our constitution is being perverted... |
| 2001 | ‘Because Labour do not understand how the history and stability of our democratic structures have underpinned our national life, they have altered them in a crude, unthinking way, often for narrow party advantage.’ |
| 2005 | Under Mr Blair, the way we are governed has become less accountable, more complex and, ultimately, less democratic. |
| 2010 | Labour’s constitutional vandalism has weakened Parliament, undermined democracy and brought the integrity of the ballot into question. |
| 2015 | We will end the manifest unfairness whereby Scotland is able to decide its own laws in devolved areas, only for Scottish MPs also to be able to have the potentially decisive say on similar matters that affect only England and Wales. |
| 2019 | One of the strengths of the UK’s constitution is its ability to evolve – as times have changed, so have Parliament, government and the judiciary. Today, that need is greater than ever. The failure of Parliament to deliver Brexit – the way so many MPs have devoted themselves to thwarting the democratic decision of the British people in the 2016 referendum – has opened up a destabilising and potentially extremely damaging rift between politicians and people. |

Table 21. Frequency Table of Constitutional Rhetoric

| Manifestos | Constitution (al) | Democracy | Parliament | Politics |
|------------|-------------------|-----------|------------|----------|
| 1992 | 1 (3) | 1 (7) | 3 (27) | 0 |
| 1997 | 11 | 2 (4) | 20 (42) | 0 (1) |
| 2001 | 3 | 6 (9) | 10 (15) | 2 (3) |
| 2005 | 0 (3) | 1 (4) | 2 (8) | 0 (3) |
| 2010 | 2 | 6 (11) | 10 (34) | 12 (54?) |
| 2015 | 1 | 2 (4) | 6 (65) | 3 (6) |
| 2017 | 2 | 7 (10) | 6 (33) | 0 |
| 2019 | 3 | 8 | 6 (32) | 1 (5) |

Appendix B. Questions for Interviewees

Could you give an outline of your view of Conservatism?

For example, what is conservatism?

What are its core principles?

If one wanted to be informed about conservatism what should one read? Which authors or books?

How does Conservatism and its principles inform your view of the British constitution? Which principles would inform your view of the constitution?

Could you provide an overview of the constitution and its distinctiveness?

Can you tell me about the constitutional changes that have happened since 1970s? Or the ones that have happen during your time in parliament?

The constitution has been through many changes since the 1970s and especially since 1997 how do you think this has impacted on the constitution as a whole?

To what extent were the debates about constitutional changes couched in constitutional terms, forms or ideas? Rather than let's say economic or political ideas?

Can you think of a time and by whom the changes to the constitution were debated in relation to what type of constitution is right for the United Kingdom?

Do you think that a coherent conservative view has been articulated either from the backbenchers or from the frontbenches? If so, by whom. If not, why not?

Can you think of a time during the debates about the constitution that a Conservative approach was articulated in constitutional terms based on first principles? If not, why not? If yes, when and by whom was this done?

How did the Conservative Party react to these changes broadly speaking?

How have these changes impacted on the Conservative Party's policy platform and have these changes caused problems for the Party? If not, why not? If so, why and what kind of problems?

Do you think that any MP or Peer has shown an interest in the constitution from first principles?

Do you think there has been a coherent response to the changes since 1997 by the Party or and of the leaders or by any MP or Peer?

What is your personal view on these changes in our constitution? Which changes do you think were mistakes? And how would you solve them?

What do you think a coherent Conservative policy platform towards the constitution is and what Acts do you think need replacing and which if any needs reform?

What type of constitution do you think is most suitable to the UK?

Interviewees

Alan, Lord Haselhurst

Cliff Grantham

Danny Kruger MP

David Lidington

David Melding

Douglas Carswell

George, Lord Young

Gillian, Baroness Shephard (x2)

Iain Stewart MP

Ian, Lord Lang of Monkton

Jacob Rees-Mogg MP

Jesse Norman MP

John Hayes MP

John, Lord Patten

Andrew, Lord Dunlop

Lord Naseby

Stephen, Lord Parkinson

Lord Salisbury

Lord Strathclyde

Lord Tebbit (x2)

Matt, Viscount Ridley

Michael, Lord Howard

Murdo Fraser MSP

Nick Timothy

Will Tanner

William, Lord Waldegrave

Four interviewees wished to be anonymous:

A Conservative MP from the Midlands

A Conservative MP and a junior Minister

A previous Conservative MP and Cabinet Minister

A Conservative Cabinet Minister

Archives

The Conservative Party Archive in the Bodleian Library, Oxford

The Churchill Centre Archive at Churchill College, Cambridge

The Margaret Thatcher Foundation Archive,

The Times Archive

The British Newspaper Archives.

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