

WestminsterResearch

<http://www.westminster.ac.uk/westminsterresearch>

Resisting Executive Dominance: An assessment of executive-legislature dynamics during the United Kingdom's entry into, and withdrawal from, the European Communities

Mordue, C.

A PhD thesis awarded by the University of Westminster.

© Dr Chelsey Mordue, 2021.

<https://doi.org/10.34737/vx125>

The WestminsterResearch online digital archive at the University of Westminster aims to make the research output of the University available to a wider audience. Copyright and Moral Rights remain with the authors and/or copyright owners.

Resisting Executive Dominance:

An assessment of executive-legislature dynamics during the United Kingdom's entry into, and withdrawal from, the European Communities.

Chelsey Mordue

A thesis submitted in partial fulfilment of the requirements of the University of Westminster for the degree of Doctor of Philosophy

December 2021

Acknowledgments

A debt of gratitude is owed to my supervisor Dr Katja Seidel, without whom this thesis would never have made it to submission. Her expertise, patience, understanding and, above all, her unwavering belief in me and this project was critical to its completion.

Further, I would like to thank Baroness Hayter of Kentish Town for allowing me access to her work and the House of Lords. Beyond this, I thank her for teaching me so much about the Labour Party, for her support and care, and for her continued friendship.

Thanks go to Professor Pippa Catterall as my second supervisor and members of the History Department at the University of Westminster for their continued support and encouragement. I would also like to thank the University of Westminster and the Graduate School for affording me the opportunity to commence and complete my PhD.

Finally, I must thank the unending support and love given to me by my family over the course of this research. I could not have done this without you all.

Contents:

Introduction	7-19
Conceptual framework	20-57
Contextual background	58-63
The Opposition and the UK's accession to the European Communities, 1970-72	64-90
Labour's pre-notification activities	91-111
Legislating for notification	112-139
'You're joking! Not another one?' The 2017 General Election	140-158
The (not so) Great (not quite) Repeal Bill – Repealing the ECA	159-208
Conclusion	209-215
Bibliography	216-230

Glossary:

A50	Article 50 of the Treaty on European Union
CFR	Charter of Fundamental Right
CMSC	Common Market Safeguards Committee
DEFRA	Department for Environment, Food and Rural Affairs
DExEU	Department for Exiting the European Union
DPRRC	Delegated Power and Regulatory Reform Committee
DUP	Democratic Unionist Party
EC	European Communities
ECA	European Communities Act
ECHR	European Convention on Human Rights
ECSC	European Coal and Steel Community
EEC	European Economic Community
EDM	Early Day Motion
EFTA	European Free Trade Association
EM	Explanatory Memorandum
EOPP	Extra-ordinary policy programme
EPLP	European Parliamentary Labour Party
ERG	European Research Group
EU	European Union
EU(W)	European Union (Withdrawal) Act, 2018
EURATOM	European Atomic Energy Community

FTA	Free Trade Agreement
HLSCC	House of Lords Select Committee on Constitution
JMC	Joint Ministerial Committee
LCE	Labour Committee for Europe
NAFTA	North Atlantic Free Trade Association
NEC	National Executive Committee (Labour Party)
OEEC	Organisation of European Economic Cooperation
PMB	Private Member's Bill
PLP	Parliamentary Labour Party
SI	Statutory Instrument
SNP	Scottish National Party
UUP	Unionist Ulster Party

Abstract:

This thesis presents a critical assessment of the activities of the opposition bodies within the House of Parliament over the course of the United Kingdom's accession in to, and subsequent withdrawal from, the European Communities. This case study tracks the strategies employed by non-Governmental Parliamentarians, with a specific focus on the Labour Party, to challenge the Government's activities and ensure their own involvement in the associated political processes. The findings will demonstrate the effectiveness of the non-Government Parliamentarians in scrutinising, challenging, and altering the Government's activities with a view to highlighting the nature of executive-legislature dynamics and subsequently the extent of executive dominance present in the UK's political processes.

Chapter One:

Introduction

Scope of the thesis

This research is concerned first and foremost with the manner with which the British Government was challenged and held to account over the course of its endeavour to enter and then extricate the UK from the terms of its membership to the EU. What is presented is an analytical and critical account of the way in which the legislature, with a particular focus on the official opposition in the House of Commons, responded to Government activity during the negotiations, and relevant legislative processes, of 1970-72 and 2016-18. It is concerned too with the extent of reactionary versus pre-emptive activity of the opposition forces within the Houses of Parliament. This thesis provides coverage of the legislature as a whole, essentially all Parliamentarians minus the Government Front Benchers, in an attempt to evidence the changing dynamics of the relations between the legislature and the executive. There is particular attention paid to the Labour Party, given that they were in the position of the official opposition over the course of both time periods studied herein. However, there will be times when it proves necessary to consider the activities of the Government's own Back Benchers given their propensity to, and success in, challenging the Government. There is also some consideration of the members of the House of Lords; although not an official body of opposition within the legislature, they have a stated role of providing scrutiny of Government action.¹ The relative party balance, and presence of crossbenchers, in the Lords means that it can have the effect of acting as an oppositional force at times. There will, on occasion, be a need to look beyond the confines of Parliament to better identify all factors which play a role in limiting Government dominance or, as may be the case, increasing it; such factors may include the activities of non-Parliamentary actors and the media. There is some imbalance between the attention paid to each Chamber of the Houses of Parliament; the primacy of the House of Commons and the tendency of the Lords

¹ A summary of the activities of the second chamber as detailed by the body itself.
<https://www.Parliament.uk/about/faqs/house-of-lords-faqs/role/> Accessed 05/09/2018

to defer to that, places particularly emphasis on the Lower Chamber. At times, this is reflected within this research.

There are two periods studied within the research; first there is consideration of negotiations regarding British accession to the European Communities (EC) which covers 1970-72. There will be particular focus on the legislation involved in joining the EC; the European Communities Act, 1972. The second period studied is 2016-18, accounting for the period when the UK began to negotiate itself out of the EU. Specifically, this period ranges from the UK's referendum on continued membership (23 June 2016) to the passing of the European Union (Withdrawal) Act, 2018. Within these two periods, there will be three pieces of legislation under examination: the European Communities Act 1972, the EU (Notification of Withdrawal) Act 2017 and the 'Great Repeal Bill'/EU (Withdrawal) Act 2018. The motivation for this selection is two-fold; the focus of this research is on executive dominance and legislature-executive dynamics and the legislative process is where these issues are concentrated. Second, while it would have been advantageous to account for the whole of the Brexit process, up to and including March 2019, the scale of it is too large to do justice to it. Considering the extensions given to the initial two-year timeframe, it is not practical to attempt such an undertaking. Brexit will be the focus of fierce public and academic debate for years to come and so later research could pick up where this research ends. In essence, these two episodes of British History 'book-end' Britain's membership in the European Community and despite the forty intervening years, the 'European issue' proved at all stages to be politically challenging for the UK's mainstream parties. Beyond this, the analysis of these years, four decades apart, will add to the understanding of the evolution of political parties as opposition, the legislature as a body with the overall effect of attempting to identify the degree and evolution of executive dominance in the UK.

The research is not aimed at analysing, or making judgement on, the Government's activities in, and of, themselves. Despite this, given the nature of opposition and the requirement to have something to oppose, Government activity will be used to frame the responses and reactions of the oppositional forces. Rather this work is an attempt to identify what, if any, limitations are placed on Government autonomy, transparency, and accountability as a result of the actions of the legislature, notably the non-Government Parliamentarians in the Commons. The focus of such activity

will predominantly be on the necessary legislation introduced, debated, and enacted to complete the process on joining and leaving the community. The thesis accounts for the legislature as a whole and, as such, considers both the House of Commons and the House of Lords. On occasion, it is necessary when looking at both Houses to consider them as slightly separate entities; though they both form part of the same legislative process, they have roles and face pressures unique to them both. In consideration of the various pieces of legislation, it is more logical to consider the process as a whole and to look at the Houses of Parliament as a partisan body; each party having its own agenda regarding the legislation but from which individuals may deviate. There will be some consideration of the Committee work undertaken by the Houses and an assessment made as to the impact that such work had on the processes.

While there are two separate periods under consideration within the research, the work presented will not be equally weighted between the two. The rationale behind this is two-fold; the period in the 1970s covering British accession to the EC has been more widely studied and there is literature, both academic and biographical, to testify to the events of the domestic and international processes involved in accession; such literature will be introduced and assessed further on. While there is less in the way of an analysis on the nature of executive-legislature dynamics for the period, the totality of histories which exist to date provide coverage of multiple issues. The relative 'newness' of the Brexit process, at time of writing, means that while there are many varied sources of documentation, little has been produced in the way of historical inquiry into the topic. It is argued, in the chapter titled 'conceptual framework' of this thesis, that there is a necessity for Historians to produce work in their own time, as they experience it. It is argued in this research that due to the inescapable presence of perspective within one's work, histories written at a time contemporary to the events studied can produce clearer reflections of that period than histories written in the decades that follow it. In a development of work attributed to Historians and Philosophers, the research presents the notion of a perpetuity of historical perspective which suggests that historical representations are indicative of the author's perspective, thus for any history to be an honest recreation of a period, the first authors of the histories being produced ought to have shared commonality with those being studied.

The second reason for the imbalance is the result of relevancy; Brexit remains a dynamic and live issue and there will be few pieces of work in the immediate years to follow which observe the process and reflect the events in an historic manner. For several years to come Brexit will likely be confined to the realm of political science; such is the current fragmentation of knowledge via subject matter. This research is intending to close the gap between the disciplines and allow for a degree of 'earlier' historical analysis of the period. Carr's '*What is History?*' undeniably reinvigorated the theoretical and methodological landscape of the discipline of History and became a key piece of literature introduced to History students to encourage debate on the nature of the subject.² It provoked a flurry of debate and sustained a long-lasting curiosity about what we do, how we do it and why. There has been an increased tendency towards categorising the discipline, in both field and periodisation, creating fragmentations which do not travel well beyond national borders. In the UK, one reason for this has been the educational reforms of various Governments, which have increasingly attempted to rank universities according to outcomes and has required the demarcation of disciplines to facilitate the quantification of them. This research falls within, what is deemed by this researcher to be, contemporary history but some will find it jarring to witness ongoing current events treated with the same historic levity as far earlier periods; for those, this thesis will perhaps seem a misapplied political science. This unease will possibly be the result of the fact that this topic remains 'unfinished business' at the time of writing. The process of withdrawing the United Kingdom from the European Union is going to last longer than the timeframe provided for in this research but true also is that we may have to wait decades before seeing the full implications of Brexit. However, this is true of events far older than the Brexit process. For any event for which there remains sealed, or lost, documentation, there will remain unfinished business as far as the Historian is concerned. A document with a date stamp of ten days alongside one of ten years will hold the same historicity, what will differ between the two is the scholars' interpretation of them. Jackson is an advocate of the use of the present as history when he notes that 'events have historicity – an irreducibly historical character – at the very moment of their occurrence'.³ There is no set waiting period

² Carr, E. H., (1961) *What is History?* London: Penguin, 1961.

³ Jackson, P. T., (2008) 'The Present as History'. In: Goodin, R.E and Tilly, C. (eds.) *The Oxford Handbook of Contextual Political Analysis*, Oxford: Oxford University Press, p. 497.

that a historian must adhere to before proceeding with their study. Historians do not need to wait for the political scientists to have finished with a topic before commencing, such is the difference between the two that it is acceptable and perhaps preferable to work much more closely than has been traditionally espoused. The nature of contemporary history is explored in far greater depth in the next chapter.

Chapter structure

This introductory chapter is aimed at providing the rationale, scope, structure, and background of this research. It introduces, in summary only, some of the significant theoretical debates that will be used and developed in the research. The introduction is also intended to deal with the methodology and methodological challenges of the thesis.

The second chapter, titled conceptual framework, is an assessment of the existing literature and debates regarding executive-legislature relations, executive dominance, and contemporary history. There are three original concepts introduced and developed in this chapter; one concept is that a better way of conceptualising executive-legislature dynamics would be by advancing a more fluid notion of it and considering the relations between Parliament and the Executive as ever changing and moving along a sliding scale. This develops further the narrow view that executives are dominant and legislatures weak, or vice versa, but does not account for any difference between policies and party commitment within the same Parliamentary period. Secondly, the chapter introduces the idea that there exists a second type of legislative process, named herein as extra-ordinary policy programmes (EOPP), and provides detailed account of what an EOPP is and in what circumstances they emerge. This thesis evidences that while all pieces of legislation go through the same Parliamentary mechanisms to achieve royal assent, there are significant differences in the nature of some policy programmes which requires highlighting. The chapter suggests the minimum threshold that a policy programme ought to meet to be considered as extra-ordinary. The research highlights that the Brexit process has met such minimum threshold but that the accession period falls short of it. The chapter closes with a discussion of the philosophical background relating to the work of historians with the focus being on the debates regarding temporal distance and contemporary history. It is argued that, in combining the

philosophical accounts of history and the actual practicalities of the discipline, there arises a 'perpetuity of historical representation'. The details and implications of the cyclical and evolutionary nature of the discipline is detailed within the chapter.

Chapter three, although brief, provides for much needed contextual information, particularly in relation to Britain's relationship with Europe and the progression towards Brexit. Chapter four presents the accession period of negotiations with the European Union over the terms of the UK's membership, 1970-72 with a focus on the actions and strategies of the official opposition to influence this process. Initially, there is an account of the contextual background relating to the issue; this section takes a potted view of the years 1961-1971 which witnessed the UK's first and second application to the EC. This is necessary because of the influence that this earlier period had on the experience of the final years towards membership. This is then followed by the opposition's reaction to negotiations and an account of the legislative process involved, finalising with an assessment of the extent of Parliamentary versus Government control of this.

The chapters which follow will focus on the 2016-18 (Brexit) period and will be structured in a broadly chronological manner, charting the Brexit process from referendum (chapter five) to the passage of the EU (Withdrawal) Act 2018 (chapter eight). The chapters within this section are focused on key events or relevant pieces of legislation. The use of legislation to provide structure to the activity of the opposition is a result of the nature of this opposition; Bills provide a particular focus for the opposition to rally around. This can often highlight party discipline, or lack of, and the maintenance of party lines and policies. Legislation which is the focus of some of these chapters include issues relating to the invocation of Article 50 and the subsequent European Union (Notification of Withdrawal) Act 2017 (chapter six) and the EU (Withdrawal) Act. These pieces of legislation have the effect of allowing the United Kingdom to withdraw from the Union in a functional and constitutional manner; the latter of the two being the Act which repealed the European Communities Act 1972 and retained 43 years of EU law within the domestic statute. Beyond legislation, attention will be paid to other less formal activities within Parliament; this will include such things as Labour resolutions laid in the House of Lords, the subject of which were failed amendments to the 'Article 50 legislation'. These resolutions and similar strategies used in the House of Lords were often done

without seeking permission from the Party leader, Jeremy Corbyn, and added to the sense of separation between Labour's Parliamentary units within the Commons and the Lords. There will be consideration of other major events such as the snap general election called by Theresa May on 18 April 2017 for 8 June 2017; providing just 50 days for the campaigns (chapter seven). The focus of this section will be on the role that Brexit/negotiation issues played during the campaigns and how Labour (still in the role of opposition) used the withdrawal from Europe in its campaign, or not, given that Corbyn did not mention Brexit in his speech in response to May's unexpected call for an early election. There will be an assessment of the way in which the results of the general election altered the dynamics between the executive and the legislature.

Finally, the research will be concluded with the findings of this thesis and by detailing the trends witnessed over the course of the periods studied relating to the extent of executive dominance and the executive-legislature dynamics over that time. There is an application of the sliding scale of executive-legislative relations, introduced above and detailed in chapter two, to identify the tendencies and development of executive-legislative relations during the two periods.

Methodology

In general, this research has been conducted as a piece of historical inquiry. As such this follows, for the most part, standard historical practice relating to source selection, investigation, and inference. Attitudes towards source selection have been relatively open, with the belief propagated that any form of documented evidence ought to be used in history, rather than just Government or party documents. This results in the inclusion of such evidence as social media posts, particularly those from Twitter, and emails between agents where accessible. Documents used can, in general, be attributed to four particular sources: The Labour Party, the Government, the House of Parliament and external. 'External documents' generalises the documentation issued from non-Parliamentary sources such as that of activists and commentators, as well as the media at large.

Some of the material was procured by the author during a 10-month period as Historian-in-Residence in the House of Lords, sponsored by Baroness Hayter of Kentish Town of the Labour Party, who, in this period, held the position of Shadow

Spokesperson for Exiting the European Union. During this period, the author accompanied Baroness Hayter to the meetings of the Shadow Brexit Department, led by Keir Starmer, Shadow Minister for Exiting the EU, as well as the Labour Lords meeting led by both Baroness Hayter and Baroness Smith of Basildon, Labour Leader of the House. When in attendance to these meetings, detailed minutes were taken, often verbatim, which were shared with Baroness Hayter, as well as Members more widely. The researcher did not play a more active role in any discussions and aimed to maintain an 'invisible' presence as possible, to not alter the agency of the individuals present in any way. During this time, the researcher also attended both select committee hearings and debates in person. This allowed for an appreciation of the mood of these events which is something that is not normally accessible from written documents. This role also had an administrative function relating to organisation of Brexit related material and research in preparation of some debates undertaken by Baroness Hayter, though largely this was the work of advisors. This provided a unique insight into the workings of the opposition; beyond access to documentation and events which might otherwise be lost or overlooked, the experience also informs debates on the 'perpetuity of historical representation' (detailed below).

Hansard (historic and current) is a key source of evidence for Parliamentary debates and activity during both periods of time, particularly the 1970s. Research relating to the negotiations of 1970-72 is multi-archival in nature and therefore adopts a more typically recognisable historic approach. There is also a large and varied consultation of existing literature. The presence of this is less obviously the case in the 2016-2019 period; the contemporary nature of subject made such comprehensive assessment difficult and there was minimal research (at least in length and depth) in the way of historical work on the period. Where academic work has been consulted and included, this originated from the work of political scientist and political commentators, who conducted research at a similar time to the production of this thesis. Largely, any reviews of existing literature included in the Brexit section have focused on the theories borrowed from political science, which have been used to provide some degree of theoretical contextualisation. Literature from multiple disciplines has been consulted in the development of this thesis including, but not limited to, scholarship relating to executive-legislature relations.

The use of media reports, news coverage and political commentary have been used but not lightly; the British media being, as it is, incredibly partisan and at times vitriolic towards perceived opponents or threats, the use of coverage has been done to reflect any bias present within. Such attitudes, particularly from the print media, can therefore make the use of such material difficult and dangerous for the objectivity of the research. Where this material was used it was done with that in mind and only when appropriate. For instance, on occasions when non-Governmental MPs were labelled as intending to frustrate the process of Brexit when calling for clarity or accountability from the Government. Or, when Peers in the House of Lords were called out for attempting to 'deny the will of the people' by blocking Brexit although many of them, including Baroness Smith of Basildon (Shadow Spokesperson of the House of Lords), openly and frequently stated that Labour Peers, as a collective, would not do so.⁴ A further example being the reaction of the press to the High Court ruling in November 2016 which stated that royal prerogative did not allow the Government to invoke Article 50 without a vote in Parliament. Hate-filled headlines such as "enemies of the people" aimed at the Judges were increasingly commonplace and defence of the independent judiciary was slow to come from the Government.⁵ It was in instances such as these where the ability of the opposition to challenge the Government's activities was hindered because of the perceived reactions of how opposition activities would be reported in the press, that media coverage has been used. When these instances have occurred, it is argued that it allowed for an increase in executive dominance by curbing the confidence of the Opposition (collectively or as individual Parliamentarians) to challenge the Government. It can be suggested that the media, directly or indirectly, were able to limit the activities of the opposition because Members feared being seen to be blocking the process of Brexit and thus rejecting the democratic 'will of the people'. This was particularly the case in the earlier period of the Brexit process and only witnessed some decrease when the Labour Party was strengthened as a result of the 2017 General Election, when the media at large were more willing to criticise the Conservative Party, as well as the Labour Party.

⁴ 'CRUSH THE SABOTEURS': Cover, *Daily Mail*. 19 April 2017

⁵ Slack, J. (2016) 'ENEMIES OF THE PEOPLE': Cover, *Daily Mail*. 4 November 2016

There were some challenges relating to the intended timeframe and in the experience of researching and writing historically about a current period. The research follows the traditional historic approach in relation to the collecting and analysing of primary source material. The 'easiest' and most straightforward section of the research in relation to this was that which investigated the accession era, 1970-73. Typically, the source material relating to this period has already been archived and the historical investigative work can be done with relative ease and few complications. Where the collating of source material can be an issue for this period, is in the use of material that someone else has deemed worthy of archiving. Historians would likely all wish to identify and select their own material from the periods that they study but this process is undertaken, normally in a period relatively close to the event, and is done so with a view as to what is assumed relevant to the individuals involved in their archiving. Often-time, lots of material is archived in bulk and it is not always an issue but where the researcher is looking for specific information, it may not always be available; this is more the case when political parties are in opposition than in Government, when a more official record of documents are kept for later release. When in opposition there is no formal requirement for the depositing of material and can therefore result in a 'mixed-bag' of available material. That being said, there are large amounts of source material available for this period including the personal papers of key individuals within the party such as Harold Wilson, as well as biographies created after the fact.

The later period (2016-18) is approached in the same manner but the key difference being that the curating of source material is down to the researcher. In part, this was achieved during the period as Historian-in-Residence during which there was access to some information not publicly available, as well as materials which might otherwise be lost, such as emails and conversations. Otherwise, this was achieved through extensive and close focus on the developments of the Brexit process. However, the key challenge of this being that as a singular individual, collecting all material is not a perfect system as the sheer amount of information at any given time is vast and one person is unlikely to be able to cover everything. There is an attempt to combat this by focussing on key aspects such as Labour's Brexit department meetings, Labour Lords Frontbench meetings and the Parliamentary Labour Party documents, notably 'top lines'. Framing the research with an analysis of executive

dominance also allowed for some boundaries to be established as to what should and should not be deemed as appropriate for the purpose and scope of this research. Other material is used where it has been deemed to be of value, this is especially the case in relation to emails. The second issue relating to the nature of this type of source collection is the risk of 'information bias' given that there is no other person to challenge or balance potential subjectivities and triangulation is limited in this respect; it is possible for a researcher to see importance only in material that point to a specific issue/argument. While this can be the case in almost every type of research conducted, the risk could be higher when an individual is solely in charge of curating and subsequently archiving of material. Simply maintaining awareness of the risks of information bias is a key way to minimise them. Also, while working closely, and spent time with members of the Labour Party, I have no stake in making the party appear 'better' than they have been, but rather to produce the most accurate account and assessment of their activities throughout the time studied. The heart of this thesis relates to executive dominance rather than specific political parties or people.

Another methodological challenge came as a direct result of my role as Historian-in-residence in the House of Lords. The challenge posed by this is in the role that I played on a day-to-day basis and the impact that my activities may have on that which I am researching. Generally, my role here required close working with Baroness Hayter, Shadow Minister for Exiting the EU and Shadow Deputy Leader of the House and is essentially one in which I shadowed her activities. Generally, I ensured that I had no input in policy making or other decisions and attempt to fill the role of 'fly-on-the-wall'. In some instances, this is easy; in my attendance to Brexit Department meetings and Labour Lords Frontbench meetings, I was afforded the role of note-taker. There was no expectation for my inclusion in discussions and it would, from my perspective, have been inappropriate to do so. This is true also of email communication where I was included in email threads but did not respond where I was not expected to do so. Methodologically speaking, the curation of material in this manner is more akin to anthropological studies than history. The approach of 'participant-observation' (PO) somewhat fits the role that I played as historian in residence; I had to fit in well enough to not stand out and cause any aversion to my presence. Most often the PO approach is used in more domestic

settings than professional ones, but the methodology remains the same; I was still an outsider being immersed in a culture that was not my own. Where my role as participant-observer became challenging was in more intimate situations such as private conversations or small meetings. If my input was factual, I saw no issue with sharing it however, when asked to express a personal view of an issue, conflict could arise. To make clear, I am a passionate believer in the European project, though not blind to its flaws, and voted to remain within the Union. This put me alongside many of the individuals with which I was integrated. Jarvie characterises this as a 'curious problem' in that the participant-observer is required to be 'both a stranger and a friend among the people he is studying', adding that a person cannot be both and so performs both roles inefficiently.⁶ This was somewhat true of my period in the House, though at various times, as explained above, I was afforded the ability to play 'the stranger' unimpeded. One way to challenge this was in labelling myself as a participant-observer and maintaining a strength of awareness around this, in order, to better guard my boundaries against influencing that which was occurring around me and to guard against being influenced in return. As suggested, participant-observation theory is more readily used in anthropological studies, the re-application of the method works well here. It is not usual for Historians to experience so closely the period that they study and therefore the awareness of such issues was necessary. Ethically speaking, it was appropriate, during my time on the House, to raise awareness of what my purpose was to those I was meeting with. This was to ensure that the individuals working around me were aware that I was there to take account of what was going on, rather than allowing them to act without knowing that some reportage of their actions would potentially happen. With regards to PO theory, such action can have the consequence of causing the subjects being researched to alter their natural behaviours and have the result of obscuring the truthfulness of the situation. However, there were at no stages any objections to my presence, and from my perspective, no sense that individuals were holding back, though I can never be certain of that.

It should be noted that an effort has been made to avoid the use of material which could not be independently corroborated. Where information (personal beliefs or opinions of those around me) has been encountered, these have been treated with

⁶ Jarvie, I. (2012) 'Thinking about Society: Theory and Practice', London: *Springer*. P.152

caution. Where it has been felt that inclusion is necessary, the evidence has been demarcated appropriately, i.e., 'in the opinion of...'. In the case of opinions, these have most often been excluded particularly in instances where it was felt that ethical issues may arise or if the individuals involved were unaware of my role. While access to significant individuals might have resulted in 'newsworthy' details, if the information fell outside of the scope of this thesis it was excluded.

Another challenge worth considering was the imbalance that exists between the two periods of time being researched for this project. This imbalance exists because the first period under study, 1971-73, is a period which has long since passed and one that I have no personal connection with. The second period is entirely contemporary to me and, as discussed above, there are differences in how the two periods are viewed. The first benefits from the application of hindsight and the second from the raw experience. Also, the evidential source material used for both periods have been handled and curated differently. Beyond this, there are different forms of communication used in each period; emails are frequently used to communicate in the current period, and they may have a different intention behind them than, say, letters between individuals.

This research is essentially a case study into how the legislature, with particular focus on those labelled as opposition, were able to reduce the levels of executive dominance at both times in its history, this is less a close comparison of the activities of the opposition at two different stages. Such issues are important to take note of and there may well be similarities in the choices taken by the opposition at both times. Consequently, there may be ways to evidence the evolution of the Labour Party over the course of over 40 years but that is not the initial intention of this thesis. Rather, this is an attempt to understand the tendencies of the legislature-executive dynamics at various stages, with a view to understanding how such dynamics can affect the individuals, the agency and ultimately the outcomes of the policy process in the United Kingdom.

Chapter Two:

Conceptual Framework

Outline:

This research is a study into the nature and degree of executive dominance in the United Kingdom's political system. Consequently, it is necessary to establish the current debates surrounding executive dominance in order to ascertain the true nature of executive-legislative dynamics over the course of the two periods under study. This chapter will provide a detailed account of the current literature associated with executive dominance, executive-legislature relations and Westminster democracy and contemporary history.

The country's entry into, and exit from, the European Community is used as a backdrop for the exploration into the matter for the purpose of this research. However, the theory as identified within, and as developed by this research, is applicable to all activity involving the Government and the Houses of Parliament. The focal point of the thesis is the manner in which the Labour Party, as the Official Opposition, alongside other non-government Parliamentarians attempted to limit or resist the dominance exerted by the Government on issues relating to the nation's terms of membership and withdrawal from the European community. The thesis provides an innovative analysis on the extent of any successes or failures that the Members experienced in its attempts to force defeats over the Government or apply pressure on it during these two distinct timeframes. This research has been posited alongside other factors which can also be seen as having the effect of resisting, reducing or, in some circumstances, increasing the levels of executive dominance in the UK political system. The factors studied within are broadly organised into two categories: the first are those internal to the governing party and stem from, or are initiated by, the governing party itself. These include the activities of its own backbench MPs, the impact of public opinion and potential upcoming electoral contests on government activities, and the reliability of a secure, working majority, particularly in the Commons. In instances of internal factors having the effect of reducing the degree of dominance of the executive branch, it is indicated that these are often the result of perceived instability felt by the ruling party that continued or further use of such dominance would have the potential to risk its ability to govern.

The second of the two categories are those considered to be external to the governing party and include other bodies in operation with the Parliamentary system including the Official Opposition, activities of Peers in the House of Lords and also Select Committee enquiries. Most often, it is seen that the capability of these bodies to resist executive dominance comes in the form of pressure applied on the Government, via the media, debate or threat of defeat, which encourages the Government to mediate its activities or compromise on its policy agenda. There are factors and other bodies which fall outside of the remit of this research which, in the real world, also have an ability to curb the use of government dominance and include the media, and lobbying practices of interested parties but these have been considered as non-Parliamentary for this thesis and will only be used intermittently where appropriate.

It is useful at this point to borrow categorisation from Auel *et. al.* in their work relating to national parliaments in the EU.⁷ The comparative study is aimed at assessing the relative strength and influence of individual parliaments within the forum of the EU. The work points to two categories which, when combined, account for the 'full picture of parliamentary strength': formal and behavioural.⁸ Formal factors relate to institutional opportunities afforded by parliamentary structures and the mechanisms established by the system. Behavioural factors account for the activities of individuals within the Parliament. For the purpose of this thesis, these categories will be considered as institutional (formal) and political (behavioural). The institutional opportunities in the case of this research will relate to the parliamentary procedures available for use by Members of the Houses of Parliament. Political factors will therefore relate to the use of these, as well as extra-parliamentary activities of Members either individually or collectively. Political factors may be limited to conventional measures in used by the institutions and Members may not make use of all available means where these are deemed to be extreme. This will be witnessed during the passage of legislation when government backbenchers found themselves at odds with the Government but declined to vote against them. Equally, there will be

⁷ Auel, k., Rozenburg, O. and Tacea, A. (2015) 'Fighting Back? And, if so, how? Measuring Parliamentary Strength and Activities in EU Affairs' in Heffler, C., Neubold, C., Rozenburg, O. and Smith, J. (2015) *The Palgrave Handbook of National Parliaments in the European Union*, London: Palgrave Macmillan: pp.60-93.

⁸ *ibid.*

times when Members use non-conventional apparatus to achieve a goal such as the use of the Humble Address (a motion for a return) by Keir Starmer as a mechanism to force the Government to publish papers it had been withholding.⁹ Alternatively, there will be instances where the political will of the Members exceeds the institutional opportunities available to them. This will be witnessed most plainly evident within the activities of the Official Opposition when their ability to influence government activity is undermined by the institutional parameters in which they must operate. UK governance in totality (institutional and political factors) favours the presence and use of executive dominance as will be demonstrated throughout this thesis.

The purpose of this research is to establish several issues relating to executive dominance including whether the official opposition has any realistic chance of impeding a highly dominant ruling party, whether internal or external factors have a greater influence and as such, whether the use of executive dominance is a self-limiting practice in which the Government, in order to use it, cannot use it excessively or inappropriately. It thus provides a contribution to scholarship on the activity of the Houses of Parliament during Brexit, executive-legislature dynamics within the Westminster model, and furthers an understanding of factors which inhibit or encourage executive dominance.

Further, the thesis will establish that the legislative process in the UK is not one standard practice and can be considered as having two separate streams for policy programmes, dependent on their nature. Though all legislation goes through the same stages, i.e. First Reading, Second Reading and so on, there are key differences between the way these two policy types are treated in the intervening stages, as well as differences in their nature and associated activities. The first of the streams would be the commonly accepted policy process that most individuals would be aware of, whereby a policy issue is transfigured into a Bill and introduced to the House (either in the Commons or the Lords) and follows the bill procedures as established by the House. This is in essence the standard practice and is the one detailed by the UK Parliament website as being the 'passage of a Bill'.¹⁰ Importantly,

⁹ House of Commons (HoC) Debate (1 November 2017) vol. 630, col. 884

¹⁰ For the steps involved in the passage of legislation refer to information supplied by the Houses of Parliament. UK Parliament (2018) 'How does a Bill become law?', Available from: <https://www.Parliament.uk/about/how/laws/passage-bill/> [Accessed 08/08/2018]

the Bill introduced at the start of the programme, even if amended during the process, is a completed or finalised version of a specified policy. The policy issue most likely has a foundation within the election manifesto of the previous election or is the result of a new circumstance or event. Only if the Bill faces substantial amendment would the outcome be far removed from the Bill as introduced; substantive amendments to legislation, particularly that of the Government, are rarely successful. Most Bills, particularly those which achieve Royal Assent, are introduced by the ruling party, though there are some opportunities for members to introduce legislation of their own usually in the form of a Private Member's Bill (PMB). This is, to many people, an acceptable practice as the Government is expected to pursue its promised policy agendas and, as the 'winning' party in the election, it has a mandate from the majority of the public to pursue such a policy. It may be in the Official Opposition's interest to resist or reject such policies. This can pose a threat to the Government's policy (in its idealised form) if the opposition is combined with rebellious government backbench MPs. On these occasions non-government MPs may significantly amend, or overturn entirely, the Government's Bill - though this is rare - and to avoid such defeat, the Government may offer varying degrees of compromise. This, albeit brief, is the basis of the process that most pieces of legislation will go through regardless of where it is introduced and by whom. The second type of legislative process that a policy agenda may be subject to is established by this research as an extra-ordinary policy programme (EOPP). A legislative programme would be considered as an EOPP if its conditions meet the minimum threshold required; such criteria are as follows:

- There needs to be an agreement by the majority of Parliamentarians that the policy programme is a necessary pursuit.
- There can be no specific pre-established intended policy outcomes i.e., manifesto pledges, though there may be some generalised commentary regarding the issue.
- There will be a degree of simultaneity of the work carried out by the executive and legislative branches over the programme.
- There will be some conflict between the operational strategies pursued by both branches, nominally that the Government will endeavour to operate a

high degree of secrecy and the bodies within Parliament will pursue transparency for the purposes of scrutiny, accountability, and involvement.

- Throughout most of the policy programme there will not be a clear idea of what the outcome will specifically involve.

As a consequence, much of the bill processes of individual pieces of legislation will be completed without an understanding of what completion truly means for the programme. The legislative process and activities of Members can be considered as blinkered or blind during the passage of the individual Acts. There will be multiple pieces of legislation required, as well as non-legislative Government activity required to complete the process. The withdrawal of the UK's membership from the European Union is a clear example of how an EOPP might operate. Other scenarios which have met the minimum threshold include war time, with World War Two being a key example. The bodies involved in an extra-ordinary policy programme do not necessarily have to be in conflict or competition with one another but can involve cooperation between major parties, as in war time with the establishment of National (coalition) Governments. Brexit can be identified as an EOPP in which there was no such cross-party collaboration but rather the maintenance of party competition that exists in most ordinary policy scenarios. The UK's entry into the European Community does not meet the required threshold necessary to be considered as extra-ordinary as the process for entering the bloc, as will be shown, was a far simpler legislative process than was subsequently required when the nation withdrew from its membership. Combined with this, the terms of entry into the EC were largely known to Parliamentarians when they passed such legislation. This research suggests that when there is an instance of an extra-ordinary policy programme combined with the maintenance of party competition and conflict, there will be increased levels of executive dominance with regards to the issue. In the instance of Brexit, where the issue has dominated entire Parliamentary sessions, there can be evidenced a prolonged period of executive dominance compared with ordinary programmes in which the extent of executive dominance is more likely to fluctuate.

This research operates on the basis of several assumptions being made about executive dominance and its use; first, that the use of executive dominance is a negative practice and that unimpeded it can be a symptom of an unhealthy

democracy. This assumption is based, in part, on the absence of any constitutional mechanism that could stop a ruling party from legislating in favour of its own survival, i.e., any government, given the right circumstances, could legitimately pass primary legislation guaranteeing the maintenance or extension of its time in office. Most would be inclined to believe that such a scenario is unlikely within the UK's political system, but such a belief does not negate the fact that it is theoretically possible. Arguably, the country could be a single national emergency away from a one-party state. A further issue related to this assumption is the degree of representation present in the country's political system which fluctuates with every election and can vary from highly representative of society to far less so because of the nation's voting system, but the belief that the ruling party, being the one which has returned the most seats, has right of legislative freedom never changes. This belief has little regard for vote share among other telling factors relating to representation. The second assumption made during the research is that the Parliamentary rules and procedures in place, overseen by the Speaker's position, are in place to ensure that parties other than the Government can achieve fair and equal representation and opportunities. As a result, there is already a recognition that executive dominance is not always a positive device and some practical restrictions have been put in place to avoid a highly dominant government from being too powerful in the Houses of Parliament. Such limitations are generally adhered to by the Government, but there are occasions when these conventions are ignored, or limitations pushed, particularly as much of the parliamentary schedule is decided by the ruling party. Additionally, it is assumed that the executive will operate a practice of dominance unless there is something which causes it to reduce the practice. This assumption is based on the notion that every ruling party will pursue an agenda of implementing its manifesto promises to appear successful in delivering the wishes of the public. Further, any 'watering down' of their ideal policy agendas through compromise or acceptance of oppositional amendments will serve as proof of being unsuccessful in office and any defeats could mean outright failure. As such, governments will make use of their dominance, as the largest party and that in power, to avoid such a scenario. It is assumed also that any party, irrespective of political ideology, has the capacity to use (and potentially abuse) its dominance when in government as the political system of the UK allows for the existence and use of executive dominance. It happens that both of the periods under study are ones which were occupied by a

Conservative Government and the Labour Party as the Official Opposition, but there is nothing to suggest that executive dominance is more evident in these periods than during a Labour Government.¹¹

This research will suggest that above all it is the Government itself which decides how much the executive can dominate proceedings and that where it is reduced, this has resulted from some form of pressure exerted on the Government or an awareness of a potential threat. Actors external to the Government will have the ability to raise awareness of and apply pressure on the Government's practices but they have little in the way of institutional resources to halt the Government. Additionally, there are few mechanisms in place to stop the Government from ignoring the activities of parliamentary bodies if it should choose to do so. Many of the reasons as to why a government would restrict its use of executive dominance stem from internal issues and can be described as posing a risk or threat to the Government's ability to govern effectively should the risk or threat not be managed appropriately. The potential to lose its position in office or suffer electoral losses should it experience serious policy defeats at the hands of other parties or even its own rebellious MPs can encourage the ruling party to compromise on its ideal policy to mitigate such potential. There are two ways in which compromises can be made; in the first instance the Government can include opposition party policy stances and Select Committee recommendations within the Bill prior to its introduction. This is likely to be the case when the Government is not certain of the reliability of its working majority or cannot ensure party discipline on the issue. Adoption of such a strategy will reduce the levels of active opposition and the potential for public defeats that the ruling party experiences in the House of Parliament but will mean that the Government is not introducing its policy agenda in its purest form. Such practice can occur in both ordinary and extra-ordinary policy programmes, but they are less likely to occur over the process of an EOPP due to the higher levels of justifiable executive dominance.¹² Compromises can also be made following the introduction of the Bill to the House through the acceptance of amendments prior to allowing them to go to

¹¹ Since 1945, there have been nine Conservative Governments (including 2010 Coalition Government with the Liberal Democrats, amounting to 38 years as the ruling party. There have been eight Labour Governments, amounting to 30 years as the ruling party. Removing the Coalition Government, this equates to a near balance between the two parties being in Government. However, alternation does not occur with every electoral round.

¹² The notion of executive dominance as being justifiable is developed later in the chapter.

a division. There are various stages of the legislative process when amendments can be accepted by the Government, and these can have their origins in both the Commons and the Lords and culminate in 'ping-pong' at the end of the Bill process. However, the later the Government accept such changes, the least secure in their power they are likely to appear, and they may choose to accept the amendments at the earliest possible point rather than face actual defeat if amendments are taken to a division and pass. The most favourable time for a government to accept such an amendment, if it feels that it is necessary to do so, will be to accept it prior to the amendment being put to a division so that there will not be such a visible defeat that will likely be reported more heavily by the media at large. The Government's ability to read the mood of the house will be a key determinant in whether, and when, the Government are willing to accept compromises. As such, in the face of potential threats the Government will operate a check on its use of executive dominance to avoid possible defeat. In such scenarios, the Government cannot actively use the fullest possible extent of executive dominance and the mood of the house can act as a barometer for what could be the acceptable level of use. Subsequently, the role of the Whips' office can be integral to how well such a mood is being assessed. Tension arises when the Government, wishing to maintain or even increase the level of dominance in operation, issues threats to force compliance primarily among its own benches but also in manner that might impede the activities of the opposition and the House of Lords. For example, threats used over the course of May's Government against her own MPs included the threat that their disloyalty could well result in Corbyn being elected as Prime Minister, such was the tenuous grasp that the Party had over its leadership of the nation.¹³ Threats used against the opposition when they were indicating that they would actively vote against the Government was the suggestion that they were subverting the will of the people, jeopardising the success of the Brexit negotiations and that they were trying to stop the withdrawal process altogether. Since Brexit had its origin in a referendum, though not legally binding, any suggestion that an MP or Party was attempting to overturn the decision was met with a severe response. These sentiments were aimed at Members in both Houses but those within the Lords faced further issues relating to their role and

¹³ This was presented as a 'communist in Downing Street' such was the perception of Corbyn among the Conservatives. Pollard, S. (2018) These Tory Rebels Could Put Corbyn in Downing Street Blasts Stephen Pollard, 25 April 2018. *The Express*. London.

position. It was levelled at the Lords, on several occasions, that as the unelected house it was not in a position to overrule the Commons and to do so would highlight the undemocratic nature of their position and the extent of their powers, with a view to calling for restrictions on such powers. On occasion such protestations went so far as to call for the abolition of the second chamber altogether. Threats such as these did have the effect of forcing members of the Lords to mediate their activities and decision-making. This was particularly visible when amendments passed in the Lords were not pursued so vigorously during the ping-pong stage and there was a collective willingness to accept that the Commons would not be moved on the issues. It would not be fair to suggest that the Lords routinely override the will of the Commons but on other legislative issues there is an appetite to push the lower Chamber more emphatically to consider the changes proposed by the Lords.

This thesis will highlight that there are few, practical resources available to the Official Opposition to force, or place limitations on, the extent of executive dominance in use. It will show that the most influential way that the opposition can perform successfully in this regard is through the application of pressure on the Government and to continually raise awareness of, and make public, Government practices, particularly when they are operating with a high degree of secrecy. By raising public awareness of such activities, the Government may find itself in a position of facing increased accountability over its actions. Internal factors have a far greater influence over the degree of executive dominance in use and this suggests that use of the practice is a self-limiting activity; the Government will use it to ensure its success but must use it in a manner which does not jeopardise its future prospects, and as such must not use it excessively and without reproach. Its own backbench MPs can pose a greater risk to government success than the opposition can in the Commons. Numerically, the Government dominates the Commons and with complete party discipline can realistically expect to pass legislation of its choosing. Much of the Government's secrecy, during the Brexit agenda in particular, was in many ways justified by the Government; generally speaking, dominance and secrecy, it was argued, were excusable on two fronts. First, that the UK public had voted for the withdrawal from the Union via a device of direct democracy (referendum) and so it was levelled at opposition that the people had spoken and the Government was acting. Secondly, it was argued that divulging information during

the negotiating process would 'weaken the Government's hand' and would result in a bad deal for the UK. It will be shown in the thesis that any moments achieved whereby the levels of executive dominance were reduced, came with the specific involvement and, occasionally, the leadership of the Government's own backbench MPs being willing to 'cross the floor' to vote with the opposition. While this was a relatively rare experience in the early Brexit period (with the exception of Kenneth Clarke) the threat of the action could be potent enough to result in compromise. On occasions when the Government misjudged backbench commitment to rebel, they were most likely to suffer defeat than on any other occasion.

While the House of Lords has the practical ability to defeat Government legislation, largely due to the presence of the Crossbench Peers and a balance of party numbers, there is significant pressure on them to not execute the full extent of this power and to maintain the conventions relating to the primacy of the Commons. The Select Committees also have a greater ability than the official opposition to raise awareness of the practices of dominance. This is due to the ability, and expectation of, the Select Committees to call upon the Government Ministers to provide testimonies and evidence for the purpose of its enquiries. The key functions of scrutiny and Government accountability has ensured that the levels of secrecy in operation are made evident to all. During ministerial evidence sessions, avoidance of questions or unsatisfactory answers are challenge by the committee's members and will be made apparent in its reports. This is not to say that the governing party will be forced into taking a more open approach, but it will make apparent the activities of Government more acutely than is achieved elsewhere. The Prime Minister is subject to questioning on a weekly basis when the House sits, primarily by the Leader of the Official Opposition, followed by leaders of marginal parties and then MPs more generally. However, this does not necessarily have the effect of forcing either information or compromise from the Government benches and often relies on the oratory skills of the individuals involved. The inability to force information from the PM is particularly the case in instances where there is a high degree of secrecy in operation as the opposition simply will not have access to information which would result in more effective probing. Questions may be too general or simply go unanswered. Winning a PMQs session is as much a result of the skill of the individuals involved than any mechanism designed to force transparency from the

Government benches. In the presence of an EOPP, such withholding of information and secrecy can be deemed justifiable by the governing party and in the case of Brexit was deemed appropriate by many members of the House of Parliament, as well as the media. In the presence of an EOPP, the Government will have its own activities to pursue that fall outside of the remit of Parliament. In the case of Brexit, these were the negotiations being held between the Government and the European Union. While the final deal to be reached had to be put to

Parliament for approval, the negotiations and any future trade agreements made, fall within the remit of the Government departments under crown prerogative. Due to such activity, the Government maintained that too much information on its position or anything related to the negotiations would have the effect of weakening its 'negotiating hand' and have the overall effect of jeopardising the success of the UK's eventual deal. The ability to justify its secrecy and dominance allows the use and practice of these to increase. It will be suggested that the use of executive dominance by a minority Government should, in most instances, be limited by the fact that to maintain power and subsequently the Office of Government, a party which cannot always guarantee a working majority will have to be in a position to accept more compromises than would ordinarily be the case. However, agreements negotiated with minor parties, but which would not fall within the realms of a Coalition Government, are an example of executive dominance in practice and this, too, is a symptom of an unhealthy democracy; in this instance, the 2017 general election resulted in a minority Government for May and given that agreements with any mainstream opposition party were seemingly out of the question, the PM agreed a 'confidence and supply' agreement with the Democratic Unionist Party (DUP) – ostensibly the Government supplied a large sum of money for the Northern Ireland Executive and in exchange votes would be 'given' to the ruling party, particularly those relating to Brexit. Officially, though, the DUP were never to be considered as part of the Government. A minority Government is, by the very nature of its election, highly unlikely to be representative of the nation and therefore any ability to operate without reproach has the potential to undermine the democratic practices in place. Significantly, it will be shown that the presence of an extra-ordinary policy programme during a minority Government poses the greatest threat to the health of the Westminster democracy. This is the result of the propensity of an EOPP to be

used to justify the use of executive dominance as indicated above. This is particularly the case in instances when normal party competition remains, as opposed to some degree of cross-party cooperation.

Existing body of literature:

Before focussing in significant depth on literature related to executive-legislature dynamics, it is important to make note of a relevant body of literature relating to the relationship between the United Kingdom and the European Union. While such scholarship falls outside of the remit of this research as they do not focus in depth on issues relating to executive dominance or executive-legislature dynamics with UK governance, they do provide an essential foundation and context to our understanding of nature of UK-EU relations in the lead up to accession to, and withdrawal from, the bloc. Wall's *Reluctant European* identifies the challenges that some British politicians had in trying to deal with the European question within British politics in the face of openly hostile opinion which came from the Press, politicians and the Public which seemingly never disappeared.¹⁴ Three official histories have been produced by Milward and Wall to account for the presence of Britain within the European Communities; these provide significant coverage of the accession period and help to develop an understanding of the protracted journey that the UK had into the bloc and the obstacles, such as de Gaulle's vetoes, that it faced along the way. It also helps to form an understanding as to why the original members of the EEC were sceptical themselves about the extension of membership to the United Kingdom.¹⁵ Such scholarship can help to understand why some strands of British opinion of the EEC/EU remained so sceptical throughout its membership. In turn this can help us to understand how the nation arrived at the need for a referendum in 2016.

What follows is a detailed account of the two prevailing schools of thought on the relations between the executive and the legislature in the so-called Westminster model of democracy. Such an account is necessary to press for the need, as identified by this research, to develop a far more fluid notion of such relations. At

¹⁴ Wall, S. (2020). *Reluctant European: Britain and the European Union from 1945 to Brexit*. Oxford University Press.

¹⁵ Milward, A. S. (2013). *The Rise and Fall of a National Strategy: The UK and The European Community: Volume 1*. Routledge; Wall, S. (2012). *The official history of Britain and the European Community, vol. II: from rejection to referendum, 1963-1975*. Routledge; Wall, S. (2018). *The Official History of Britain and the European Community, Volume III: The Tiger Unleashed, 1975-1985*. Routledge.

current the scholarship takes an either/or approach to the issue; either the executive is dominant, or the legislature is more powerful than it seems. The view projected, from either side, can be seen as strikingly parochial. The adoption of a sliding-scale approach, as will be detailed following an examination of the literature, will provide a much more colourful picture as to the true nature of executive-legislature relations, incorporating the nuances which are evident even within the same Parliamentary sessions.

Academic and public interest into the power structures, relationships and influence of the UK legislature has a longstanding history being as it is the 'Mother of Parliaments'. The dynamics of power sharing between the executive and the legislative bodies of policy making have been both studied and commented on for several centuries. Low stated that the 'House of Commons no longer controls the executive; on the contrary, the executive controls the Commons'.¹⁶ Hollis argued that MPs had simply become 'obedient servants of the party machine' and Lord Hailsham described the executive-legislative relations as being akin to an 'elective dictatorship'.¹⁷ Such sentiments, on the decline of Parliament, have been pervasive in the literature on the matter for large parts of the 20th century and are surviving into the 21st century. Academic investigation into the various 'models' of legislature have not often been very kind to Westminster's policy-making process and have largely criticised it as marginal, ineffective and irrelevant. Richardson and Jordan described the UK as being a 'post-Parliamentary democracy' based on the notion that most policy making decisions were carried out in the shadows and behind-the-scenes, owing more to informal policy networks than to the formal legislative procedures carried out in the two chambers.¹⁸ King and Crewe went so far as to say that Parliament 'might as well not exist' and assumed true the notion that if a British Government wished to pursue a policy it could do so given that 'UK Governments are very rarely dependent on the votes of minor parties', and they likened Parliament to a dog that 'occasionally barks, frequently nips at the heels of its master but very seldom actually bites'.¹⁹ Damgaard would likely agree with such a sentiment given his assessment that 'British MPs are there to talk, whereas members of working

¹⁶ Low, S., (1904). *The Governance of England*. London: T. Fisher Unwin.

¹⁷ Hollis, C., (1950). *Can Parliament Survive?* London: World Affairs Book Club.

¹⁸ Richardson, J.J. and Jordan, A.G. (1979). *Governing under pressure*.

¹⁹ King, A. and Crewe, I. (2014). *The blunders of our Governments* Oneworld Publications.

Parliaments are there do legislative work'.²⁰ The school of thought which paints the UK Parliamentary system in such light has been dominated by several key academics. Lijphart's *Patterns of Democracy* assessed a variety of legislatures and made broad comparisons between majoritarian and consensus models of Parliamentary systems. Lijphart judged that the Westminster model was the epitome of Majoritarianism, so much so that he used the terms interchangeably in his work.²¹ Lijphart's analysis identified five defining features of the executive-legislature dimension in majoritarian models of Parliament (or federal-unitary dimension within consensus models), namely that:

1. There is a concentration of executive power in single party majority cabinets versus executive power sharing in broad multiparty coalitions.
2. Executive-legislative relationships in which the executive is dominant versus executive-legislative balance of power.
3. Two-party versus multiparty systems.
4. Majoritarian and disproportional electoral systems versus proportional representation.
5. Pluralist interest group system with free-for-all competition among groups versus coordinated and corporatist interest group systems aimed at compromise and concentration.²²

On the face of it, the UK Parliamentary system would fit such a characterisation and indeed Lijphart presented it as the ultimate majoritarian democracy and, at the other end of the spectrum, suggested that the US Congress represented the ultimate consensus model. Lijphart suggested that majoritarian systems were in nature exclusive, competitive, and adversarial comparative to the consensus model which is inclusive, bargaining and compromising.²³ However, Lijphart's studies almost always took a theoretical, abstract approach to the workings of parliamentary systems and in such a scenario the UK Parliament can appear to be the ultimate majoritarian, executive-dominant, legislative-weak polity. The first-past-the-post voting system is used to determine electoral victory with the largest party forming the executive, the

²⁰ Damgaard, E. and Jensen, H. (2006). Assessing strength and weakness in legislatures: The case of Denmark. *The Journal of Legislative Studies*. 12 (3-4), 426-442.

²¹ Lijphart, A. (2012). *Patterns of democracy: Government forms and performance in thirty-six countries* Yale University Press.

²² *Ibid.*

²³ *Ibid.*

leader of which is selected by the party and its members and not the legislature. Rae described the system as one of 'manufactured majorities' based on numerical pluralities in the House of Commons and one not necessarily reflective of voting preferences or representative. Shugart has furthered the notion that the UK executive does not adequately reflect the electorates' preferences in an assessment of voting (turnout) decline in electoral competition and suggesting that the 'majority of the electorate is utterly unrepresented'.²⁴ Lewis indicated that such a system was inherently undemocratic because of the contradictions made apparent between the definitions of democracy and the extent of exclusionary practice in the parliamentary model. Lijphart mitigated the ideas that the public's interests were not well served with two assessments; first, that the possibility to alternate between minorities at each electoral round gave rise to the opportunities for voting preference to be reflected in removing unsatisfactory executives. Further, the relative homogeneity and the tendency of the two main parties to produce policy programmes which stayed close to the political centre resulted in interests being generally well served. However, Lijphart concluded that consensus models were the preferable of the two systems.²⁵

When Polsby assessed the many varied types of legislatures and the nature of their policy-influencing capabilities, he categorised them into two types: 'Arena Legislatures' and 'Transformative Legislatures'.²⁶ Of the two types, he assessed that the UK model had to be considered an arena legislature, and an 'ineffective' example of one at that.²⁷ His judgement being that the Houses of Parliament was a forum of debate, objection-raising and obstruction but was not a policy-initiating body. This assessment has been echoed by others who have doubted the extent of policy-making powers in the legislative branch. Norton claimed that the House of Parliament was a 'policy-influencing' body and overall it had 'limited capacity to affect outcome'.²⁸ Martin and Vanberg argued that its role in the policy-making process

²⁴ Shugart, Matthew S., and Carey, John M. (1992) *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*, Cambridge: Cambridge University Press.

²⁵ Lijphart, A. (1992). *Parliamentary Versus Presidential Government—Oxford Readings in Politics and Government* Oxford: Oxford University Press.

²⁶ Polsby, Nelson W. (1975) 'Legislatures'. In Greenstein, Fred I. and Polsby, Nelson W. (eds), *Handbook of Political Science*, Reading, MA: Addison-Wesley.

²⁷ *ibid.*

²⁸ Norton, P. (2013). *Parliaments in Contemporary Western Europe* Routledge.

was 'marginal', and Anderweg described it as a 'standout case of negative, rather than constructive, oppositional politics'.²⁹ Mezey also sought to characterise the nature of legislatures, in order to advance comparative legislative studies and create a common taxonomy across the subject. In his typology of legislatures Mezey identified three types of legislatures according to their policy making power: strong, modest and, little or none. These were categorised into subsets according to the extent of support the legislatures enjoyed and subsequently identified five types; vulnerable, marginal, minimal, reactive, and active.³⁰ Mezey typified the UK as being reactive in nature given that it enjoyed higher levels of support but only had modest policy-making power. Norton stated that by Mezey's criterion, the UK could not be considered a policy-making polity at all given that the power to reject legislation could not equate to the ability to produce it.³¹ Mezey, as with Lijphart, identified the US Congress as being both well supported and as having far stronger policy making capabilities. There has been consensus among these academics that on a spectrum of legislature types the systems of the UK and the USA should be placed at opposite ends when it comes to policy-making power and influence.

Many of the academics who have tended to agree with the ideas demonstrated above, have also tended to take a more theoretical methodological approach, and have compared legislatures using their general characteristics. They have on the whole neglected detailed empirical analyses, which produce quite different results, in an attempt to standardise legislatures globally. There is a tendency in this type of scholarship to focus only on institutional or formal capabilities as provided by the legislatures. Non-existent is any attempt to assess the human activity within them. The major flaw in such an approach comes down to the unique characteristics of each Parliamentary system which results in unique executive-legislative relations and legislative capabilities. These differences are based on, and propagated by, domestic histories, social and political cultures, among other things. The UK Parliament evolved over hundreds of years, being shaped by both crises and pressures to modernise and adapt and has done so within the flexibility of an

²⁹ Martin, L. W. Vanber, G. (2011) *Parliaments and Coalitions: The Role of Legislative Institutions in Multiparty Governance*. Oxford: OUP; Andeweg, R.B. (1992). *Executive-Legislative Relations in the Netherlands: Consecutive and Coexisting Patterns*. *Legislative Studies Quarterly*. 17 (2), 161-182.

³⁰ Mezey, M.L. (1979). *Comparative legislatures*. Duke University Press.

³¹ Norton, P. *op. cit.*

uncodified constitution. Other younger legislatures, such as those in post-communist Central and Eastern Europe, have been designed to reflect the constitutional and aspirational aims of these 'emerging' democracies, resulting in very deliberate executive-legislative relations. There have been, on occasion, instances when established democracies have developed or reformed their constitutional arrangements to reflect a perceived better model.³² Such deliberate orchestrations may originate from experiences which propel the desire to have clear, legal separation between the executive and the legislative and explicit balance of powers between the legislative and the executive branches. Despite the emphasis placed on the American legislature as being strongly influential and consensus-seeking, there have been no exact replicas produced, suggesting that deliberate design of legislative institutions, even where pre-existing models are available, relies heavily on the domestic situation and not sheer intent or design. Consequently, the ability to create a standardised criterion for comparison across legislatures has proved difficult, even when the nations are geographically, or otherwise, assessed to be of a similar nature. Such pattern-seeking activity is natural but the lack of precision in the studies result in monochromatic representations, neglecting the nuances of each polity. Collier and Mahon described such a task as the 'perpetual quest for generalisation'.³³ The analysis of such activity became the focus of Sartori's work. Sartori developed two notions relating to the extension of models and concepts to new cases with his ideas on conceptual travelling and conceptual stretching.³⁴ Stretching refers to the application of existing concepts and structures to new cases and stretching refers to distortions which can arise when such concepts do not fit the new cases. Sartori noted that while it may be technically possible to compare rabbits with stones, such a comparison in the end would be pointless.³⁵ So, while it is possible to compare a legislature with any other, will the task always prove fruitful? Ultimately, conceptual travelling would be a useful exercise to generate 'meaningful dialogue' between cases, but conceptual stretching can result in the loss of detail about each case which may serve to ensure that the case fits the existing concept

³² See: 'Grundgesetz' in post-war Germany and the constitution of 1958 of the Fifth Republic in France.

³³ Collier, D. Mahon, J. E. (2013) Conceptual "stretching" revisited: Adapting Categories in Comparative Analysis. *American Political Science Review*. Vol. 87 issue 4. Pp.845-855

³⁴ Sartori, Giovanni. 1970. "Concept Misformation in Comparative Politics." *American Political Science Review*, 64:1033–53.

³⁵ *Ibid.*

but distort the exact nature of it and undermine the concept completely. Often, with the generalised, theoretical, or abstract studies outlined above, there has been a large degree of 'conceptual travelling' and 'stretching', which has resulted in sweeping assumptions made as to the exact nature of executive-legislative relations across various types of democracy. Once it has been accepted that the UK and US systems are the polar opposite examples of democracies, work that has been done on one has often been applied as meaning the opposite for the other.

Empirically based studies have tended oppose many of the ideas presented above and represent a different school of thought relating to executive-legislative dynamics. These have often provided a much more detailed and balanced representation of the true nature of the dynamics involved. However, as with those detailed above, there seems to be a tendency to take an all-or-nothing approach; legislatures are powerful, or they aren't. Arter speaks out against the perpetuation of 'legislative stereotypes' created in comparative studies, which have "clustered" legislatures for convenience but loading them into 'large Ikea-style...baskets' does not accurately depict the actual mechanics of the bodies.³⁶ Arter adds that the tendency to conflate legislative capacity with legislative performance has been one cause of such perpetuation; that is to compare an institution's potential policy power with its actual policy output, which Arter suggests is the better criterion to measure legislatures by. Those who have studied legislatures in singular, national contexts would likely agree with such an outlook and have challenged the broad-brush technique often applied in comparative studies. Russell described such visions of 'Westminster democracy as adversarial, zero-sum and elitist' as being 'crude interpretations' and Riddell describes such an approach as producing a 'gross oversimplification' and one which has failed to 'provide an accurate or sufficiently sophisticated account of Westminster politics'.³⁷ Academics of this vein have tended to identify that the House of Parliament has a far greater influence over the policy-making process than has been otherwise identified.

³⁶ Arter, D. (2006b). Introduction: Comparing the legislative performance of legislatures. *The Journal of Legislative Studies*. 12 (3-4), 245-257

³⁷ Russell, M. and Gover, D. (2017). *Legislation at Westminster: Parliamentary actors and influence in the making of British law*. Oxford University Press.

Blondel identified two types of influence at play in the Westminster system: reactive and preventive.³⁸ These have the effect of being visible and invisible and each occurring at different stages in the policy process. Reactive influence includes that which occurs within the programme of a Bill and can include amendments being placed and moved or the Bill being delayed or rejected. Preventive influence is likely to occur prior to the programme being presented to Parliament and as such its presence is less obvious. Such influence occurs when the executive includes in the Bill any opposition policy preference, impedes the extent of its policy programme, or accepts Select Committee recommendations. Such elements present in the Bill would not result in conflict or defeat as they are desired by opposing individuals and would therefore likely be accepted. Mezey identified that institutions may 'appear to pass the legislation unopposed or unamended simply because the Government avoids introducing those things which may provoke legislative resistance, or because they acceded to changes privately'.³⁹ Such activity initiated by the Government can be attributed as influence stemming from the legislative branch as governments are constant in keeping check on the mood of Parliament and submitting proposals appropriate to the mood, particularly during times of heightened opposition or threat. Blondel describes this type of influence as potentially being more important than reactive influence and McGann suggests that when there are instances of such influence at work, it can 'appear that the legislature was a rubber stamp' simply implementing the will of the executive due to a lack of apparent conflict.⁴⁰ However, Russell highlights that 'measuring legislative influence through looking for conflict is fundamentally to misunderstand how such systems work' and that such limited conflict and few defeats could be symptomatic of a strong legislature given that in normal circumstances Governments are unlikely to present proposals to Parliament that are going to be rejected.⁴¹ That being said, because of the executive control of the agenda and the primacy of Government business in the House, it will likely appear, at least superficially, that the executive dominates the policy-making process. Olson proposed the 90 percent rule; the Government proposes 90 percent

³⁸ Blondel, J. (1970). Legislative Behaviour: Some Steps towards a Cross-National Measurement 1. *Government and Opposition*. 5 (1), 67-85

³⁹ Mezey. *Op. cit.*

⁴⁰ McGann, A.J. (2006). *The logic of democracy: reconciling equality, deliberation, and minority protection*. University of Michigan Press.

⁴¹ Russell, M. and Cowley, P. (2016). The policy power of the Westminster Parliament: the "Parliamentary state" and the empirical evidence. *Governance*. 29 (1), 121-137

of business, and 90 percent of the business that it proposes is subsequently accepted.⁴² The Government would likely appear to dominate the Bill process too due to the extent of tabled amendments emanating from them but many of these are technical rather than substantial amendments. Griffith argued that while there was indeed some presence of non-Governmental influence in the process, concessions are ultimately given on the Government's own terms.⁴³ Such non-Governmental influence has generally been attributed to various bodies within the House including majority party backbench MPs, the opposition MPs (Shadow and/or backbench), House of Lords and Select Committees. King identified various modes of executive-legislative relations and of the seven modes that he proposed, three were considered to be the most important.⁴⁴ The intra-party mode, or that between the Government and its own backbench MPs, was identified by King as the most important mode to the Government but also the most threatening when the relations turn sour and the body poses a threat given that a reliable majority in the House requires party cohesion. Beyond this mode is the opposition mode when the opposition front and backbenches unite in opposition against the Government. This mode is typified by conflict and there are few incentives for the two factions to agree and with little motive to accommodate one another, the aim is to conquer. King describes this mode as a 'war-game' in which the dice 'are loaded in the Governments favour'.⁴⁵ The third mode of significance here is the unification of the two relations above; the mode in which members of the Government backbench are unified with the opposition benches. It is during these situations, as will be evidence by this research, that opposition bodies, in the form of non-Government Parliamentarians, are able to force the Government to limit its use of executive-dominance; if the Government is prepared for the collaboration of its backbench with the opposition bench, it can take measures to avoid it. If, in instances where the mood of the house is misread, the Government will likely face a defeat of some kind. Such a situation is threatening to the executive's policy agendas, but King identifies that this would equate to two separate pressures on the Government which would

⁴² Olson, D.M. (2015). *Democratic Legislative Institutions: A Comparative View*: A Comparative View Routledge

⁴³ Griffith, G. (2005). *Parliament and accountability: The role of Parliamentary oversight committees*.

⁴⁴ King, A. (1976). *Modes of Executive-Legislative Relations: Great Britain, France, and West Germany*. *Legislative Studies Quarterly*. 11-36

⁴⁵ *Ibid*.

consequently result in separate strategies for its resolution. According to King, the presence of the Government in Parliament requires that the House of Commons should be considered as Parliament minus the Government and that the seven identified modes constitute 'distinct political relationships, each with its own membership'.⁴⁶ Naturally however, there is a great degree of fluidity to each model and membership of them is conditioned by factors arising at any given time. Membership can be the result of party membership or principle, or previous electoral promises made by MPs. Naturally, not all members associated with the various modes will operate in a unified manner at all times and it is in instances where the pluralities shift from Government majority to a united opposition as the larger body that the executive risks being defeated, and its dominance ended. Such examples of legislative defeat are relatively rare in the House of Parliament and while most executives have experienced at least one defeat, the power to do so is not often executed, suggesting that there is a higher degree of consensus building and policy-influencing than is expressed in some discourse because without such inclusion in the legislative process there would be far greater levels of conflict arising from the Houses.

Amendment analyses of the UK legislature can provide perhaps the clearest picture as to the extent of executive dominance, and subsequent executive-legislature relations, over a specific period or issue. One of the first amendment analyses to be carried out on the UK legislature was Griffith's *Parliamentary Scrutiny of Government Bills*, which assessed amendments tabled over three Parliamentary sessions. The study identified that while Government amendments were dominant, at least fifteen percent of those agreed at Commons report stage were directly the result of backbench or opposition policy demands at previous stages. He assessed then that there were 'hidden' non-Government influences at work during the policy process.⁴⁷ While outdated now, Griffith's study has informed later studies which have taken similar approaches in the study of legislative influence within the politics of Westminster. Thompson's study of the Commons Committee stage 2000-2010 found almost 1000 occasions in which ministers responded to concerns raised during the

⁴⁶ *Ibid*

⁴⁷ Griffiths., *op. cit.*

stages and at the very least considered to review potential policy changes.⁴⁸ Brazier *et al.* used five Bills in a case study approach, by following their passage it was found that Parliament was influential. However, unlike most studies of the kind they did not attempt to quantify the extent of the influence.⁴⁹ Russell and Sciara's amendment analysis of the House of Lords (post-1999 reforms) found that 40 percent of amendments passed by the House would later be passed by the executive and the Commons.⁵⁰ Amendment analysis studies have been conducted across a wide variety of legislatures, with particular interest garnered by the European Parliament.⁵¹

Russell has been particularly active in assessing the degree of influence of the UK legislature. In a large-scale amendment analysis carried out, 4361 amendments made to 12 Bills were analysed, alongside 120 interviews, in an attempt to quantify the extent of Government dominance during the legislative process using largely quantitative methods. The study followed 12 Bills through the entire process and in *Does the Executive Dominate the Westminster Legislative Process?* Russell *et al* expressed six reasons to doubt commonly held beliefs that the UK executive is an over-dominant body. The six reasons identified were as follows:

1. Most Government amendments were of little substance.
2. Most substantive Government amendments responded to Parliamentary pressure.
3. There may be several non-Governmental amendments on the same issue.
4. Many non-Governmental amendments do not aim to change the Bill.
5. Parliament influences policy before the formal legislative process begins.
6. Parliament influences policy after the legislative process is complete.⁵²

Throughout the course of the twelve Bills, it was stated that the process 'exhibits few signs of conflict' and that because 'few non-Governmental amendments are passed in either chamber...[and] many hundreds of Government amendments are agreed'

⁴⁸ Thompson, L. (2013) "More of the Same or a Period of Change? The Impact of Bill Committees in the Twenty-First Century House of Commons." *Parliamentary Affairs* 66 (3): 459–479.

⁴⁹ Brazier, A., Kalitowski, S. and Rosenblatt, G. (2008) *Law in the Making: Influence and Change in the Legislative Process*. London: Hansard Society.

⁵⁰ Russell, M. and Sciara, M. (2008). The policy impact of defeats in the House of Lords. *The British Journal of Politics and International Relations*. 10 (4), 571-589

⁵¹ Tsebelis *et al.* 2001; Kreppel, 1999; Kasack, 2004.

⁵² Russell, M., Gover, D. and Wollter, K., (2016), "Does the Executive Dominate the Westminster Legislative Process? Six Reasons for Doubt." *Parliamentary Affairs*, 69 (2): 286-308

there can be an 'impression' created which would seem to promote the idea that the executive is dominant in Westminster politics.⁵³ On the face of it the numerical data produced by the study would appear to prove just that. Of the 4361 amendments analysed, 22 percent were agreed, and a small number were rejected (3 percent) and 75 per cent were neither accepted nor rejected.⁵⁴ Of the amendments, 775 were sponsored or co-sponsored by a government minister while 3374 came from non-Governmental Parliamentarians. Looking at success rates of these, 94 per cent of Government amendments were successful while just 24 non-Governmental amendments were agreed and not overturned.⁵⁵ By taking a superficial view of such information, it would appear as though the executive has dominated the process; however, a more detailed analysis of amendment type identifies otherwise, suggesting that the legislature can appear weaker than it actually is. Russell *et al.* assessed both number and type of amendments and found that the Government appears dominant because most of the amendments passed are of a technical or cosmetic nature and are designed to make the Bill function rather than being of substantive policy issue. Codification of amendments by substantiveness found that 29.5 per cent of Government amendments could be considered as substantive compared to 71.2 per cent of the amendments put forward by non-Governmental Parliamentarians.⁵⁶ Many of the Government's substantive amendments have their origins in other non-Government amendments which had not been carried by their original proposer because of some kind of Government promise to act on the issue. Thus, it was found that 51 per cent of substantive Government amendments were the result of earlier non-Governmental ones.⁵⁷ Only 77 (11 per cent) of successful Government amendments were found to be both substantive and untraceable to any form of Government pressure. Further, 50 substantive Government amendments were found to have their origins in Select Committee recommendations.⁵⁸ It is fair to suggest then that broad brush approaches to the study of the UK legislature (as well as others) has the capacity of overstate the extent of executive dominance in the legislative process and that more detailed studies are required to identify the more

⁵³ *Ibid.*

⁵⁴ Or not selected outright.

⁵⁵ Russell, M. *et. al. Op. cit*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ *Ibid*

nuanced activities, which have the effect of undermining generalisations regarding policy-influence and power in the House of Parliament. It is thus necessary to identify a more effective way to assess the nature of executive-legislature dynamics at any given point than has so far been identified.

Russell and Cowley describe those who believe and propagate the 'stereotypes' of the UK legislative as ineffective as 'Parliamentary detractors'.⁵⁹ They criticise them for focusing only on formal policy stages and on visible, measurable influence. Russell and Cowley emphasise the influence of the 'less visible' aspects of the policy process and take account of the extent that Governments will mediate their own activities and 'not put proposals to Parliament that it will not accept'.⁶⁰ While other academics, like King, tend to believe that the Parliament 'rolls over' and passes legislation at the will of the Government due to the lack of adversary and conflict that can be evidence, Russell and Cowley believe that 'if conflict within a Parliament is limited, and defeats unusual, this does not necessarily indicate the institutions weakness – but instead potentially its strength'.⁶¹ This is due to the idea that conflicts arise when one side is unwilling to yield to the other. In scenarios when a Bill passes with little conflict, it is indicative of one side having yielded (nominally the Government) and as such is suggestive of a far greater degree of consensus during the process than is often espoused. Conflict may not be necessary in some cases when the Government has not put controversial proposals to the House because its assessment of the mood of the House, as well as the public's 'will' on issues, is suggestive that such proposals would face resistance or run the risk of rejection. Application of the principal-agent theory, as applied by many in comparative legislature studies would fit the position made by Russell and Cowley; the more that the agent (Government) does as the principal (Parliament) desires, the less likely that there will be visible signs of conflict. Russell calls the dynamic between the executive and legislative in the policy process as being one of 'fusion' which can make it difficult to identify (with clear distinction) who controls whom in the process.⁶²

⁵⁹ Russell, M. and Cowley, P. (2016). The policy power of the Westminster Parliament: the "Parliamentary state" and the empirical evidence. *Governance*. 29 (1), 121-137

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

It is clear from the existing literature on legislatures and policy influence that there are two prevailing and conflicting schools of thought. There are those detailed above who agree with the notions of Parliamentary decline theories and argue that, as a legislature, the UK's model is weak and ineffectual comparative to consensus models around the globe. These ideas suggest high levels of executive dominance within UK governance. Alternatively, there are those who believe that the Westminster model is indicative of a far greater degree of policy influence and cooperation than is superficially apparent.

This thesis and its findings will suggest that elements of both discourses are true and that the extent of executive dominance and Parliamentary influence are fluid, not concrete, concepts. The thesis will demonstrate that executive dominance of the legislative process should in fact be considered as a spectrum or sliding scale, ranging from complete control by the Government (executive dominance) at one end, consensual governance (multi-party cooperation) as a 'middle ground', to dominance by the legislature (opposition control). The sliding scale should be utilised in an ascending manner; in the first instance, identification of executive-legislative dynamic along the spectrum should be applied to single legislative processes or Bills, such as the European Union (Withdrawal) Act, 2018. Beyond this it can be applied to whole policy programmes (the UK's withdrawal from its membership of the EU) or Parliamentary sessions (2017-19) to examine the trends relating to executive dominance over a course of time and then finally applied to whole Governments. The nature of executive-legislature relations and consequently executive dominance will be assessed through a number of measures aimed at identifying where on the sliding scale these can be found during the UK's accession into, and exit from, the European Communities; such measures include the number of tabled opposition amendments against legislation, the success of such amendments, Government compromise in the face of potential threat and willingness of Parliamentarians to rebel against their party, particularly where such activity can be seen to effect the level of dominance by the Government. Such necessity is the result of the ever-varying dynamic of executive-legislature relations; different pieces of legislation passed in the same Parliamentary session will likely experience strikingly different degrees of Parliamentary influence or executive dominance. This may be due to the nature of the Bills, the relative importance of the Bill for those involved and each

party's commitment to their policy ideals regarding the issue. It can also be the result of factors outside of the policy programme itself, such as the cohesiveness and unity of the parties and the subsequent strength and reliability of the executives working majority.

Instances of complete control of the legislature by the Government (executive dominance) would be typified by a higher number of non-Government amendments being moved for a vote owing to the fact that the Government is less likely during these times to accept, or even promise to consider, amendments which are stemming from Parliamentarians outside of its front bench. The Government, in this scenario, will not consider it necessary to include any pacifying measures within proposed legislation during its creation. Of the amendments put to vote, it is unlikely that they would be successfully passed, or adopted. Amendments made to the Bill in the House of Lords may have a higher chance of being passed in the Chamber, owing to the general maintenance of party balance, and the presence of Crossbenchers in the House. However, when the Bill is returned to the Commons, at ping-pong stage, any successful Lords amendments would likely be rejected. The Lords can, of course, return the Bill back to the Commons to 'think again' but at this point it would be under pressure to respect the primacy of the House of Commons as the elected Chamber. Failure to do so can result in additional Parliamentary, party and public pressure on its position as the unelected Chamber. When this position is accepted by the Lords and amendments dropped, the system appears barely bicameral.

During periods when a consensual governance approach is adopted, there would likely be fewer votes put to the House since more policy recommendations from non-Government Parliamentarians would be considered or accepted by the Government. Policy preference of non-government parliamentarians may not be overtly obvious due to the preventive influence of Members during this and the efforts during bill formation to include pacifying measures. Government amendments put forward would have a greater chance of including non-Government policy agendas as a result of reactive influence and Parliamentary pressure. It is more probable during these periods that informal influence would be present in the Bill prior to its introduction to the House. Successful Lords amendments are more likely to be accepted at ping-pong stage also. Dominance by the legislature (opposition control)

is taken as meaning episodes when legislative activity is dominated by Parliamentarians outside of the Government's ministers and would be typified by the successful passage of non-Government amendments, the rejection of Government amendments or whole pieces of legislation. This would have the impact of calling into question the ability and stability of the Government which could lead to the dissolution of the Parliament session and the calling of general election.

Acceptance of the notion of executive-legislative dynamics as a spectrum bridges the gap between the two existing schools of thought on executive dominance and legislative influence. As this thesis will show, there will be times when the Parliamentary decline thesis would appear to be true and that the executive does indeed control the legislature. However, there are also instances during which the legislative processes associated with Brexit are dominated by non-government Parliamentarians. It is suggested here that the level and result of conflict during the legislative process can be indicative of where on the spectrum the executive-legislative dynamic can be found; limited or no conflict being evidence of consensual governance whereas both executive and opposition control would be symptomatic of high levels of conflict. High conflict and opposition failures would signify executive dominance and high conflict and Government failure would be indicative of opposition control.

The policy programmes under investigation in this study, particularly that which has been classified as an extra-ordinary policy programme, will evidence that the executive-legislative dynamic for large portions of the Brexit agenda could be found at the executive dominance 'end' of the spectrum. While there were instances during the passage of individual pieces of legislation in which the Government yielded to other Parliamentarians, often its own backbenchers, when considered as a whole policy programme the trend suggests the executive was dominant over the legislature on the issue. It will be shown also that during the accession period, demarcated as 1970-1972, there existed a high degree of executive dominance however, the reasons for this, as can be seen in chapter two, were vastly different than the circumstances prevalent during the withdrawal period.

The questions that such findings raise relate to two issues: the role of the opposition within the Parliament and the overall 'health' of Westminster democracy. One of the

main roles of the opposition, particularly the Official Opposition as the second largest party, is to exemplify its own policy agenda as an alternative to Government. This is to provide the electorate with an alternative during the next electoral round. However, much of the activity of the opposition in Parliament is not merely to raise its policy agenda as the alternative but to increase conflict and to defeat the Government, or make successful its amendment, so that its policy no longer remains the alternative but becomes the conventional. Moving beyond this there can be occasions when the opposition seek to remove the ruling party outright. This would seem to highlight an apparent clash between the role of the official opposition and its activities. A stated, and accepted, role of the opposition is to examine and scrutinise the activities and policies of the Government, this fits with the stated role of the House more widely, however there are times when this activity is made difficult, seemingly impossible, in instances of significant executive dominance. When the Government maintains high levels of secrecy over its activities, can do so justifiably and with popular support, the capabilities of bodies within Parliament to scrutinise executive activities are effectively reduced to nil. Such issues highlight significant questions regarding the role and activities of the opposition and the extent to which they should strive to defeat Governments. Additionally, highly secretive Government practices which are shrouded in silence raise questions about the democratic health of Westminster politics.

Contemporary history

It is necessary at this point to depart from the issue of executive-legislative relations specifically, to initiate some debate on the nature of contemporary history. The main purpose of this is a practical one, stemming from the belief that from the research there may arise some scepticism relating to the ability to describe much of it as history at all. A large portion of the study's timeframe was researched and written at in a period very close to the events occurring. This coverage of the near-past and of ongoing phenomena will, for some, not fall within the remit of the historian for several years after its conclusion and/or passing; generally, there has been an acceptance within the discipline that it is necessary to allow the passing of 'enough' time before the historian 'takes over' from political or social scientists. The origins of such a belief can be found in Rankean notions of objectivity, authority, and validity, despite the discipline having undergone much reform since Leopold von Ranke revolutionised

the profession.⁶³ Ranke's insistence on using documentation as primary source evidence, and predominantly state papers at that, for the basis of historical inquiry became the minimum standard for professional historians. He emphasised the necessity for historians to write outside of their contemporary world, effectively removing oneself from the process, in order to produce history 'as things really were'.⁶⁴ While Ranke's methods have been challenged and reformed over the course of almost two hundred years, especially by the *Annales* school who have devoted their methodology to the acceptance of all manner of source material and the view of history as the 'synthesis of all social sciences turned toward the past',⁶⁵ there has been a lingering trace in the discipline that state papers equate to the most valid source type – particularly in history education – and within British political history scholarship there remains the tendency to wait until Government papers are released before a period ought to be considered as an acceptable historical period, worthy of study. However, in the intervening 20, 30, 50 or 100 years that it can take for Government papers to be released, many other sources, especially oral testimonies, can be lost. This may become a more acute problem for historians given that history now 'happens' in a world filled with technology which can make information-gathering instantaneous, but we may well find that these sources become more ephemeral than material traditionally used in the scholarship. Communication has changed dramatically between individuals; what once may have been a letter or a telegram, may now be a 140-character tweet seen by millions or an email between counterparts of which there exists no 'hard' copy.⁶⁶ Consequently, the 'communication' that exists between the historian and the past ought to change with it.

The period identified somehow as being 'enough' time, between past events and their eventual recreation in historical works has long been the discussion of historians and philosophers of the discipline. Many have been inclined to believe that there is indeed a period that has to pass before historians attempt to study it, though it ought to be added that no one has been able to quantify or concretely define how

⁶³ Arguably created the profession as we can identify it today.

⁶⁴ Von Ranke, L. (1915). *History of the Latin and the Teutonic Nations, 1494 to 1514* G. Bell.

⁶⁵ Ladurie, L. R. (1979) *The Territory of the Historian*. Chicago: Univ. of Chicago Pr.

⁶⁶ This also creates new challenges for the historians relating to the agency of the individuals using these communication methods.

much distance is prerequisite. Barraclough argued that 'it was the business of historians, looking back over events from a distance, to take a wider view than contemporaries, to correct their perspectives and draw attention to developments whose long term bearing they could not have expected to see'.⁶⁷ It is argued here that there cannot be enough focus if the object (historian) is too close to the subject (event) to see it for what it 'really' was and also that without distance there cannot be an appreciation of the entirety of events. However, there is consequently the assumption that the perspectives of those contemporary to the period under study need to be corrected; an odd notion given that those perspectives would likely be the closest reflections of the cultural and ideological perspectives of the studied period available. Hobsbawm felt that 'retrospective is the historian secret weapon because it is the chronological distance that stabilises perspective'.⁶⁸ There is tacit agreement amongst many that temporal distance is an absolute precondition for rigorous historical study. Phillips has characterised this by stating that the 'interval has not seemed problematic given that it is a necessary condition of historical work' and that many 'accept that increased temporal distance can mean a loss of valuable information but posterity is often able to access documents not generally available to contemporaries' but that there were subsequent 'compensatory gains in clarity and perspective'.⁶⁹ The crux of this argument, however, appears to be that there can only exist one type or source of information that the historian ought to use to be considered worthy of the scholarship, documents which are not available around the time of these events or shortly after and in most instances such source material fitting this bill would be state or Government papers; a highly Rankean notion.

There are those who believe that, while some passage of time is inevitable due to the necessary time it takes to conduct rigorous research, the time between event and written history need not be so long. Added to this, there are some who maintain that the working historian ought to conduct studies in their own time. Hobsbawm in balance with his beliefs expressed above, suggested that we should 'write about the recent past too to provide historians with a good picture of our time' and with a view

⁶⁷ Barraclough, G., (1967). *An introduction to contemporary history*. London: Penguin.

⁶⁸ Hobsbawm, E., (2011). *On history*, London: Hachette UK

⁶⁹ Phillips, M.S., (2004). Distance and historical representation. *History Workshop Journal*. Oxford University Press, 123-141.

to 'securing source material which is increasingly ephemeral'.⁷⁰ Arguably, the historian, given their years of training and belief in objectivity, is perhaps in a better place than any to provide such accounts. Roth would be inclined to agree given his beliefs in the synonymy of contemporary history and 'one's own time'.⁷¹ Rather than the tendency to believe that contemporary history (at least in British scholarship) ought to be anything post-1945 to early 2000s (at a push). Hockert's believed that the practice of writing within the space of the near past had the capacity of preventing the 'creation of myths and legends' within popular belief and went so far as to say that it was the historians' 'political and moral responsibility' to do so. In a post-truth world filled with 'fake news', this may be truer than ever. Hollander (2011) challenged the basis on which the notion of a necessary distance is placed; that we need such distance to see the past more clearly. He called this presupposition 'plainly false' given that no circumstances could result in our seeing the past and that much of the metaphorical justification for presence of the distance was vague at best.⁷²

Many of the discussions and debates relating to the issue of distance found new impetus following the opening of Soviet archives following its collapse.⁷³ It appeared that the epoch characterised by communist rule was in fact closed and this resulted in new historical studies into the era and Governments.⁷⁴ This was despite there having been a much shorter period of time lapsed than in other historical fields. There are other eras which despite being 'older' than the fall of the Soviet Union, still to this day have the feeling of lacking some sort of definitive closure; the Second World War is perhaps the best example of this currently. Despite the passing of over 70 years since the war was officially concluded, the 'living memories' associated with the period give the subject a sense of its continuation. This is in part achieved through the erection of memorials, and annual remembrance activities; it is also partly due to the presence in society of individuals who lived through the experiences

⁷⁰ Hobsbawm, E. (1993). The new threat to history. *New York Review of Books*. 16 62-64.

⁷¹ Roth, P.A. (2013). HISTORY AND THE MANIFEST IMAGE: HAYDEN WHITE AS A PHILOSOPHER OF HISTORY 1. *History and Theory*. 52 (1), 130-143

⁷² Hollander, J. D., (2011), Contemporary History and the art of self-distancing. *History and Theory*. 50(4), pp.51-67

⁷³ Spohr Readman, K., (2011), Contemporary History in Europe: from mastering national past to the future of writing the world. *JCH*, 46(3), pp.506-530

⁷⁴ Such as the German Government who published collections of documents on German unification much earlier than the usual 30-year period

directly. It is also because there remains some documentation associated with the war which remain private and not subject to public scrutiny and therefore historical inquiry. The effect of generational and collective memory plays a key role in the continuation of academic and popular interest in World War Two, which has ensured that there remains a continual regurgitation of material relating to World War Two. Readman understands why many historians would be hesitant to tackle the near past in their work stating that it may be 'easier and more tempting' to study these relatively 'closed' periods in which there are 'detectable starting, turning and end points'.⁷⁵ The uncertainty inherent in these 'open' periods require a high degree of flexibility in the manner in which they are approached; developments may occur which result in the historian having to reconsider, on a large scale, his or her original assumptions, as well as their inferences and interpretations of past events in light of new information. Readman recognises that 'tendencies of development may be harder to detect' and it can be 'more difficult to establish the significance and direction of emergent trends'.⁷⁶ However, those who have lived through the 'realities' of the near past, will not have themselves been aware of such trends and subsequently they would more likely be the result of the agency of these individuals rather than having played a role in decision-making during the period. Also, it should not necessarily be assumed that historians of the near past must account for everything. There are few historians of any persuasion that would write entire chronicles of nations or centuries and feel that they could do necessary justice to all of the events and individuals contained within. We simply should not hold very contemporary historians to such a standard that does not exist elsewhere in the discipline and level charges at them that they do not have the necessary perspective or focus to consider the whole of the history. Every topic of historical inquiry is subject to multiple studies, each with a unique view of the events, the totality of which provides an understanding of the period under study; it comes not from one but all and the wider the range of perspectives, the deeper the picture created by the totality of histories.

To account for the challenges that arise as a result of the proximity between events having occurred and conducting historical inquiries into them, this thesis has been

⁷⁵ *Ibid*,

⁷⁶ *Ibid*.

framed within an exploration of executive dominance in the UK legislature. Such a framework acts as a boundary within which the research, despite the uncertainties and the 'unendedness' of the period, can be conducted with the same rigour as was applied to the earlier period studied within the work. This piece can be considered as having multiple purposes; it is a study which will inform later histories on the issues related to the UK's accession and withdrawal from the European Communities, as well as being a primary source of information in and of itself, and thirdly it is an original contribution to, and development of, qualitative studies on executive dominance and legislature-executive dynamics. The research will become part of the totality of histories on the UK's entry into, and subsequent withdrawal from, the European Community.

There is another, more philosophical, purpose behind the belief that historians should practice history within the sphere of their own lived experience. It is accepted by most that there are two definitions for the term history; the first is that which relates to the entirety of lived human experience that has passed, the second is the discipline of history accounted for in (mostly) narrative constructs which attempt to reflect the lived experience. Most would agree that historians, however capable, cannot recreate these lived experiences exactly but rather, through rigorous academic scholarship, they can accurately represent and do appropriate justice to the past. Many would further agree that the historian constructs a narrative through investigation, interpretation and inference that is capable of reflecting information about the past into the current period. There are many philosophers (Collingwood being a key example) who would argue that any history is written only from the perspective of the historian; that the historian, as much as anyone else, is incapable of removing completely, their cultural and ideological perspectives – simply put, you cannot work from a space outside of your own personality and so it will remain in one manner or another inherent within the work created by individuals.⁷⁷ Such perspectives are individual but there is an element that cultural perspectives are present within communities which can be generational, as such histories written within the same period, particularly those produced in similar domestic settings, will contain a degree of similarity in the perspectives inherent within the work, given how

⁷⁷ Collingwood, R.G. (2005). *An essay on philosophical method* Clarendon Press. And: Collingwood, R.G. and Collingwood, R.G. (1999). *The principles of history: and other writings in philosophy of history*, London: Clarendon Press

shaped we are by the world around us. That this is the case is not necessarily a weakness rather, in the right context, could be considered a strength. There are two scenarios in which such perspective can act as a strength of the piece; when it is accounted for by the scholar and/or when the work is produced within the same context as the history itself. Subsequently, historians of the near past, who have direct experiences of the 'realities' passed and are producing work which would include the (collective) perspectives of others who also experienced the near past would, arguably, better capture and do greater justice to the past as experienced than a historian studying the events at a much later point and as such could not hope to reflect the collective perspectives, beliefs, hopes and feelings expressed in that period.

Bouton, in his work on critical theory of history, developed an idea of the three stages of history; lived, sedimented and known.⁷⁸ He developed this notion from the work of historians and philosophers, such as Koselleck and Heidegger.⁷⁹ The three stages of history begins with the first definition of history as described above (as life experienced and passed) and looks at how this transitions into the second accepted definition of history (the re-construction of past events into historical inquiry). For Bouton the process begins with the lived history, which he describes as 'history in progress' and 'a rather confusing experience'.⁸⁰ It is in this context that individuals (actors and witnesses) experience an 'inexhaustible profusion of inter-connected events, a complex multiplicity "small" or "great" events, events that may be significant or decisive'. On a similar topic, Mink wrote that 'there are hopes, plans, battles and ideas, but only in retrospective stories are hopes unfilled, plans miscarried, battles decisive and ideas seminal'.⁸¹ In essence, the personal stories that we fabricate about our own lives can only be 'produced' with retrospect and that these are as much the product of what didn't happen as what did happen. It is during the second, and third, stages that this fabrication can occur. The second type of history, according to Bouton, is sedimented history during which 'past events are sedimented into psychic and physical traces' and that history is 'conserved in the individual and

⁷⁸ Bouton, C. (2016). The critical theory of history: Rethinking the philosophy of history in the light of Koselleck's work. *History and Theory*. 55 (2), 163-184

⁷⁹ Koselleck, R. (2004). *Futures past: on the semantics of historical time* Columbia University; Heidegger, M. (1996). *Being and time: A translation of Sein und Zeit* SUNY press.

⁸⁰ Bouton, C. *Op. cit.*

⁸¹ Mink, L.O. (1987). *Historical understanding*, Cornell University Press

collective memory, and/or deposited in material objects'. For Ricoeur this was considered the 'documentary phase', though in his work this stage is the first of the three phases of historiography in operation.⁸² Bouton was influenced here by Husserl who wrote of the 'conservation' and 'reactivation' of meaning. However, Bouton clarified that such objects, material or psychologically, can never ascertain the same meaning that they carried prior to their preservation; they are, in essence, relics. Despite the loss of meaning, 'traces are our only access to the past' and it is with these objects that historians have their 'conversations'. This communication with the past can never, as a result of the loss of meaning during sedimentation, capture the past to produce a mirror-image but can only ever reach a level of re-presentation of events as they were. When historians take up these traces and sedimented history they are transformed into what Bouton describes as known history in which these traces are 'embedded and organised in a narrative structure'. The stories told using these documents are created by the historian through a process of question-asking and source selection; the narration of the events by the historian were not 'stories' present during the lived history phase but created by historians through inference and interpretation to provide answers to the questions created by them. Bouton's deviation from the use of the term philosophy, in its place using theory, is an attempt to bridge the gap between the philosophy of history and history as two separate disciplines; theory is, according to Bouton, more inclined toward interdisciplinarity. Beyond the stages of history, Bouton clarifies Koselleck's historical concepts into three types; singular concepts, general categories and universal categories.⁸³ Singular historical concepts are those which refer to a series of events over a single given period e.g., the reformation, French Revolution or Cold War. The given name used to denote this become a 'synthetic representation'. General categories are those which refer to various events and at different times. This is exemplified by terms such as development, freedom, tendency, and so on. Universal categories are those which are transcendental or metahistorical in nature. These categories function at a far higher degree of generality than those found to be general categories. Koselleck associates these as being anthropological in nature; Koselleck, in a development from Heidegger's existential analytic, forms five oppositions to be

⁸² Ricoeur, P. (2010). *Time and narrative*, University of Chicago Press

⁸³ *Op. cit.*

considered as the basic anthropological structure of any possible history. They are, 'capacity to die and capacity to kill', 'friend and foe', 'inside and outside', 'generativity' and 'master and servant'.⁸⁴ For Bouton, the theory of history concerns all of the historical concepts outlined above and arguably, brings together the historian and the philosopher whether they want to acknowledge it or not. Most often, histories of any given topic begin as singular concepts, given that most in the discipline will begin with close inspection of events, agents, or issues rather than generalised notions associated with the period. It is with the passage of time and with further seemingly similar singular concepts occurring that generalities can be formed. Naturally, this study is of singular concepts; Britain's entry into, and exit from, the European community. In future works, the period will likely be considered within general categories, perhaps of tendency, development, decline or some such. There is potential for the subject to be considered within the wider, universal categories (oppositions), created by Koselleck; the angle of the study being the deciding factor for which opposition the topic would take.

If we are to accept that the individual cannot but help to write from a particular perspective (and we generally do), then it is better that the first histories on any given topic are written from the period contemporary to the events so that the perspectives of the age are included with the histories. Bouton's three phases of history are transitional and progressive: beginning with the lived experiences and eventually becoming the accepted historical narrations of them. During the process, the experience occurs and is then followed by a passage of time in which the sedimentation of the historical traces occurs. This is then followed by historical practice which transforms the traces into narrative constructs (historical works). Put another way:

Event (+ distance) = source material + examination = History.

This, for many, would seem like a logical way to envisage the development of historical inquiry and the production of Bouton's known history.

However, Bouton's historical process stops at this point but if we consider the practices of historians in their production of History, there appears to be a further

⁸⁴ Koselleck, R. *Op. cit.*

stage. Historians rarely, unless through lack of choice, produce their work without taking into account the work created by other scholars previously. New works are informed by old ones and as such, they eventually form part of the body of sedimented traces. Consequently, the final stage of history should be one of perpetuality; there is a continuing cycle of History produced from evidence (traces) and the History produced of evidence (traces) and History. Put another way:

$$\textbf{Event (+ distance) = evidence + examination = History + evidence = History}^2$$

With each revolution of the cycle, the history that is produced moves further from the events as experienced both in time, representation and importantly perspective. As identified above, it is generally accepted that History is inclusive of the perspectives of those who produce it and as such the first History of a topic should, from the perspective of this researcher, be produced within the same historical context of the period studied; historians should study events of the near past. This is the result of the idea that every revolution of the historical process moves further from the event as experienced and as such 'first order' Histories produced by its contemporaries are the only ones capable of reflecting the perspectives of the period within the works. With regards to perspective, histories move into the next order (new revolution of the cycle), when there is any inclusion of a perspective not typical of the previous order. Such changes to perspective could be the result of a significant rupture or epoch which have a profound effect on the ethical and moral values of individuals within a collective. The greatest example of this would be the effect that the final solution and the Holocaust had on the humanity's psyche globally. Changes to perspective may also occur generationally dependent on the extent of change between the experiences of one generation to the next. It is arguable, that this process has sped up significantly since the technological advances since the industrial revolution generally but specifically in the last few decades. Life is experientially more instantaneous for those involved than in any period beforehand and this in itself is a self-fulfilling concept. Every order of history then will be inclusive of the perspectives inherent in the period within which it is produced and given that historians use existing histories to inform their inquiry, we can assume that they include perspectives of previous orders too. Subsequently, the perspectives of those at event level can be included in all histories later produced but only in the instance that the first order of History is produced within a context of that perspective. With each

revolutionary turn of the cycle, the potential to move from singular concepts to general categories is greatly increased; as accepted above, historians of the near past cannot have a wide-angle view of the events, their inspection is a close and focused one, but only with time can trends be identified and developments seen. The amendment and development of Bouton's work can help to identify why the historical process ought to start far earlier than has generally been accepted by the discipline to date.

Summary of theoretical developments:

There are three unique ways in which the work presented here has established original concepts: the executive-legislature dynamic sliding scale, the introduction of the concept of an extra ordinary policy programme and the perpetuity of historical representation. The first two of these are practically applicable to the research presented within the thesis and will be used throughout the research as both evidence and explanation. The third of the original contributions made by this research is rather more abstract and as such will not feature more widely within the work beyond this chapter.

Chapter Three:

Contextual background

The United Kingdom's decision to enter the European Economic Community (EEC) was to be a protracted affair. In 1961, under the leadership of Harold Macmillan, the country began exploratory talks with the founding six members of the then EEC with a focus on the possible terms of entry to the bloc that the nation could achieve.⁸⁵ Macmillan told the Commons on 31 July 1961 that preliminary discussions had begun with the Six.⁸⁶ It is arguable that Britain's desire to form part of a larger entity of states for economic purposes began at a far earlier date. Negotiations with European nations to form a Free Trade Area (FTA) which, in many ways, mirrored some of the tariff and customs behaviour of the EEC were established in 1959; a year after the Six had established the EEC. As the six members associated with the European Coal and Steel Community (ECSC) and the European Atomic Energy Community (EURATOM) merged their economic interests with the signing of the Treaty of Rome (1957) and the creation of the EEC in 1958, the UK became increasingly concerned by the economic, and political, threat posed by the bloc as evidenced by its early successes. It had been the UK's intention, as early as 1957, to create a trade association with the six and wider members on the continent who were members of the Organisation of European Economic Cooperation.⁸⁷ The country's motive behind such a move was to create free trade in manufactured goods alone, with a specified exclusion of agricultural goods, but more importantly to be at the forefront, and arguably leading member, of such a group. This notion however did not meet the integrationist ambitions of the EEC founding members who desired a far greater degree of economic integration beyond manufactured goods, and for some members, France in particular, there were concerns regarding Britain's involvement in the process. As the EEC moved away from the UK's preferred position, the nation continued discussions with a further six European countries and, at the Stockholm Convention in July 1959, the seven nations agreed upon the

⁸⁵ France, (West) Germany, Italy, Belgium, Luxembourg and the Netherlands

⁸⁶ Macmillan, H. House of Commons Debate (hereon HC Deb) 31/07/1961 Vol. cols.

⁸⁷ Camps, M., (1959) 'History of the Free Trade Area Negotiations', *PEP Planning*, Vol. XXV, No. 432, 13 April 1959.

creation of the European Free Trade Association (EFTA) to be ratified in November of the same year.⁸⁸ For the UK, the creation of EFTA was not the desired outcome but a second-rate option however it was hoped that such an entity could be used to create an eventual agreement with the EEC. What was to eventuate, however, was two competing economic blocs in operation on the continent with a politically and economically strengthened EEC and an influence-weak EFTA.⁸⁹ Dissatisfied with the association it managed to negotiate, the UK Government turned toward membership of the EEC. The tariff reduction operation of the six put greater pressure on British exporters and in May 1960 a committee of senior civil servants, under Sir Frank Lee, was created to explore the benefits and costs of joining the community.⁹⁰ The interdepartmental report advocated for British membership to the EEC as a way to improve the economic conditions of the country and to ensure that the Community did not diminish the United Kingdom's international influence. Macmillan's announcement to the Commons that Britain would be exploring the prospect of membership was unenthusiastic and tempered; it emphasised the political advantages of joining in the context of the wider Cold War and 'communist threat'.⁹¹ On the other hand, he downplayed the constitutional implications of the inevitable loss of sovereignty in joining the supranational entity. Negotiations with the six began in October 1961 and were to continue until January 1963 when the French, under President Charles de Gaulle, vetoed Britain's application to join the Community.⁹² The reasons given for the veto came as no real surprise to the British, who were long aware of de Gaulle's objections towards them. Primarily, there were concerns with the protection of French agriculture, Britain's relations with her Commonwealth, the breakdown of cohesion between the six as established by the Treaty of Rome and ultimately Britain's guile at asking to enter with her own conditions attached.⁹³ It was not until the summer of 1967 that the UK attempted to submit another application to

⁸⁸ Founding members of EFTA: Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the United Kingdom.

⁸⁹ President Eisenhower gave little support to any association between the six and seven with no desire to see a 13-strong economic bloc on the continent.

⁹⁰ Camps, M., (1964) *Britain and the European Community 1955-1963*, Princeton: Princeton University Press, pp. 280-2.

⁹¹ HC Deb *op. cit.*

⁹² Ludlow, N.P., (2006), *The European Community and the Crises of the 1960s: Negotiating the Gaullist Challenge*, London: Routledge

⁹³ De Gaulle, C (1963). *Discours at messages. Tome IV: Pour l'effort (1962-65)* [online] Paris: Plon. 14/01/1963

join the EEC. Over the course of this time, there had been leadership changes to both parties, Harold Wilson assuming leadership of the Labour Party and Edward Heath becoming Leader of the Conservatives, as well as a change in Government with Labour now in charge of the nation. Many of the motives behind the first application, such as political and economic pressures, still existed with the additional pressure of a crisis within the Labour Party resulting largely from divisions over the European question.

The United Kingdom's relationship with the European Community has since been consistently dogged by difficulties following its accession to the bloc in 1973; though it is clear from the outline above, the difficulties between the two sides pre-date this by a decade at least or arguably longer still. The UK's attitude to its membership in the EEC and later the European Union (EU) has arguably been one which has valued the benefits of the bloc while maintaining an overall negative attitude domestically, with politicians consistently and publicly challenging the country's need to continue its membership.

2016 undoubtedly proved pivotal for the United Kingdom's relations with the bloc. On 23 June 2016 the UK's public voted in favour of withdrawing from the EU and thus change the course the country had set itself on 43 years earlier. Many commentators over the course of the year suggested that Britain was headed for its most challenging period in the 70 years since the end of World War Two, perhaps because war rhetoric was never far from the minds of many Brexiters; the blitz spirit, Hitler and Churchill were all referenced by prominent Leave supporters.⁹⁴ This was owed largely to the fact that the UK Government had not had to negotiate or handle such a large undertaking since 1945, including during its accession period.⁹⁵ Others, of course, were exhilarated by the changes that the UK was set to undergo. The referendum, whilst not in the least bit legally binding, instructed the British Government on its course of action; the Government having vowed to fulfil the result, regardless of the outcome. Despite the close nature of the result on a turnout of 72 per cent, 51.9 per cent having voted to leave and 48.1 per cent to remain within the Union, there had been no parameters set out in the European Union Referendum

⁹⁴ Ross, T. (15 May 2016) Boris Johnson: The EU wants a superstate, just as Hitler did. *The Telegraph*.

⁹⁵ Rogers, I., (2019) *9 Lessons in Brexit*, London: Hatchette.

Act 2015 which required a minimum percentage of votes in order for the Government to follow the instruction. Not only was the result a 'bitter pill' for 'The 48 per cent' to swallow, but it was also an unprecedented situation for both the UK and the EU to find themselves in. No member state had ever committed themselves to leaving the Community. In fact, prior to 2007 there was no specific treaty provision affording any mechanism for the withdrawal of a member state. Article 50 of the Lisbon Treaty was the first time a process was established for what was to be done in the instance of a state wanting to withdraw.⁹⁶ Even with the process outlined, albeit vaguely, the triggering of Article 50 raised further issues: who had the right to trigger it? When was the most appropriate time for it to be done? And once it was triggered, was it a revocable course of action? And what kind of relationship would that state have or be able to negotiate with the EU?

Further to the events of the referendum, turmoil was evident in the two mainstream political parties. On 24 June 2016, Prime Minister David Cameron announced his resignation as Conservative Party Leader and Prime Minister. Having led the remain campaign, he felt his obligation to lead the country out of the EU was not tenable.⁹⁷ The Conservative Party leadership contest which followed was over in less than a month following the announcement, although it had been anticipated to last until October 2016. To call it a contest would be overstating the events somewhat; Theresa May very quickly became the most viable party leader. With other contenders such as Liam Fox, Michael Gove, Stephen Crabb and finally Andrea Leadsom dropping out of the race, only May remained. On 13 July 2016, the United Kingdom heralded its new Prime Minister, Theresa May, formerly Home Secretary.

While this occurred, Her Majesty's Official Opposition, the Labour Party, appeared to be suffering from its own major crisis. In the wake of the referendum result the Party looked to be devastated, or at the very least as a party fractured by infighting. By 26 June 2016, the Labour Party suffered a wave of resignations in quick succession from its shadow cabinet; junior shadow ministers and frontbenchers alike revolted against the leadership of Jeremy Corbyn. Numbering 51 resignations or dismissals

⁹⁶ European Union, (2007), *Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community*, 13 December 2007, 2007/C 306/01

⁹⁷ Cameron, D. (2016) Speech, 'EU referendum outcome: PM statement' Downing Street, London. 24 June 2016.

over the course of a day, the party conveyed the picture of an official opposition on the brink of collapse. The Labour leadership race that followed witnessed the re-election of Jeremy Corbyn with 308,209 votes (61.8 per cent) to his challenger's, Owen Smith, 193,229 (38.2 per cent). With such a significant proportion of Labour Party Members behind him, many of those who had resigned, (reluctantly) re-announced their support of the leader or at the very least decided against being so vocally against his leadership. It could not be ignored that party members were in no way ready to return to the centre-ground and the left-wing Corbyn was to be retained. The leadership coup may have strengthened Corbyn's mandate, but it did little to heal the divisions of the party and the whole process rendered it virtually politically redundant as a functioning opposition between June and September 2016.

May faced divisions within her own party. As a somewhat 'reluctant remainer' during the referendum campaign (she delivered just one fairly ambiguous and unconvincing speech), as Prime Minister, she too was faced with a cabinet reshuffle. Her choices for the top jobs indicate that perhaps she was keen to keep high-profile and potentially dangerous politicians at her side including Liam Fox, Boris Johnson and David Davis. This triumvirate represented some of the fiercest activists of the official Leave campaign during the referendum. With party divisions apparently healed, at least superficially, attention then turned more thoroughly to the issues surrounding the 'exiting' of the UK from the European Union.

Over the course of these few months during which neither the Government nor the opposition were in a position to form significant policies on the issue of Brexit, outside of agreeing to commit to withdrawing from the bloc, the House of Lords commenced a series of thorough reports, along sectoral lines. The European Union Select Committee, alongside its six sub-committees, focused first in broad terms on the processes and the role that Parliament ought to play over the course of Brexit. Beyond this, the Committees focused on economic, social, agricultural and security implications of the UK's withdrawal from the Union. By December 2016, the first 6 of 28 scheduled reports were published. It would be fair to say that the Committees' remit of scrutinising EU activities quickly turned inward in an attempt to fully scrutinise Government activity during the process of withdrawing from the

Community.⁹⁸ This decision highlighted the degree of importance given to Brexit related issues given that the UK, until the official date of departure, was still very much a full-fledged member of the Union and, as such, needed to continue its usual handling and scrutiny of EU derived activities. It would also be appropriate to suggest, and will be demonstrated in this thesis, that in this period and despite the workload, the House of Lords and its Select Committees provided the most in the way of factual analyses on the implications of Brexit on both the UK and the EU. It became apparent shortly after the referendum that David Cameron had explicitly ordered the Civil Service and his Cabinet to make no contingency plans in the instance that the population should vote to leave.⁹⁹ This action, alongside the shock of many in the official Leave camp following the announcement of the result, notably Boris Johnson, suggests perhaps that there were few who anticipated the UK voting to leave; including those who campaigned so vociferously for it. Also quickly apparent was the lack of a clear Labour Party policy or position in the instance of a vote to leave which was to remain the case for the remainder of 2016 and evidently much later.

⁹⁸ Whitty, L. *in conversation with* Mordue, C. 20 March 2017.

⁹⁹ Islam, F. (2016) reporting on a conversation with a senior Conservative MP, 26 June 2016. <http://www.independent.co.uk/news/uk/politics/Brexit-eu-referendum-campaigners-there-is-no-plan-next-pm-tory-leadership-contest-a7104711.html> [Accessed 29 November 2016]

Chapter Four:

Accession to the EEC

To fully understand the United Kingdom's withdrawal from the European Union it is invariably essential to understand the journey it took into the community. This is true also of any attempt to understand the dynamics between the executive and the legislature during the Brexit years. As explored briefly in the introduction to this work, the UK's journey toward membership of the EEC was a protracted affair. What follows in this chapter is a brief exploration into the general histories of the 1961 and 1967 applications for membership. Though these applications proved unsuccessful much of the information and detail present in the final application can be seen in these earlier incarnations. What can be seen during the decade leading to accession was the extent of the challenges posed by the question of membership to the EEC and that this issue, not just at the point of entry and exit but throughout its history, proved to be one which would test party loyalties far more than most other issues. True too is the notion that issues relating to membership of the European Communities have appeared to stress the executive-legislature dynamics more acutely than issues of a purely domestic nature.

The Labour Party over the course of the 1960s can be said to have 'flip-flopped' between maintaining positions of promoting membership to the community and opposing it; from having submitted its own application in 1967 to enforcing a three-line whip on voting against the European Communities Bill, 1972. The apparent contradiction of Labour's positions before 1970 had significant effects on the short period to follow, when 69 Labour MPs broke the whip in 1971 to vote with the Conservative Government in order to join the European community and then later on those who left the party in 1981 to form the Social Democratic Party.¹⁰⁰ Most academic attention paid to the period has tended to focus on the Conservative Government, its negotiations to join the community and ultimately the nation's accession to the bloc. There has been less attention paid to the activities of the Labour Party during this time and even less given to any significant assessments of the relationship between the executive and the legislature throughout this period.

¹⁰⁰ HC Deb (28 October 1971) vol 823 col 2217; Jenkins, R., Owen, D. Rodgers, W. and Williams, S. (1981) Limehouse Declaration, 25 January 1981.

Those who have studied the period have tended to look at the changes and developments of Labour Party policy on Europe throughout the 1960s and 70s. This is true of Daniels who has endeavoured to chart the course of changing Labour Party attitudes to the community in what he describes as the 'Europeanisation of the Labour Party' and, generally speaking, accounts for the trend of the Party leadership towards making a positive case for membership, particularly after accession and the 1975 referendum.¹⁰¹ He suggests that this trend was one of "electoral imperative" and was pursued for the maintenance of party unity.¹⁰² The endeavour to hold the Labour Party together over the issue of Europe can be seen most acutely during the party's periods as the Official Opposition between 1961-4 and 1970-4; arguably, during their time on the shadow benches the Party opted for a compromised approach to its position on European membership which it clearly hoped would engage the entire spectrum of views within the party. In contrast, Labour's time in office during this period can be seen to have been embodied by a more positive attitude toward membership of the EEC. These differences are indicative of the notion that policy formation in opposition is a more complicated and complex affair than it can be when in Government. The election of a party into the office of Government is primarily based on the party's manifesto which subsequently provides a mandated framework through which policy formation can flow. A party in opposition has effectively had their policy ambitions rejected by the electorate and so forming an effective alternate plan to the Government is complex work. Such work may not necessarily involve the complete abandonment of the party's policy ambitions especially in cases where the results of an election are deemed to be close. Many historians who have occupied themselves with the Labour Party in this period have tended to focus on what seems to be a reversal of Labour's policy on membership during these years; in 1967 Prime Minister Harold Wilson tabled the second membership application of the decade. This same application, initially rejected by French President Charles de Gaulle, lay dormant for three years and would become the eventual foundation for accession to the EEC initiated by Labour but continued under the Conservative Government led by Ted Heath. However, Wilson declined to

¹⁰¹ Daniels, P. (1998) From hostility to 'constructive engagement': The Europeanisation of the Labour Party. *West European Politics*, 21:1, pp.72-96.

¹⁰² *Ibid.*

provide his party's support to the conservative attempt to secure membership once negotiations started in 1970. This according to Parr, resulted from an intense need to avoid being seen as propping up a Conservative Government.¹⁰³ Beyond the changing nature of Labour's official party lines on membership, focus has inevitably fallen on Wilson, the self-confessed anti-marketeer prior to 1967, and his decision to table the second application in the first place. Roger Broad suggested that it was due to shrinking opportunities to remain an international powerhouse that ensured that Britain had no choice but to seek membership to the EC for the second time.¹⁰⁴ While Thorpe has posited that the application was made with the full understanding that de Gaulle would veto it.¹⁰⁵ Such a move provided Wilson with an opportunity to quieten the calls of his pro-EEC MPs but without completely losing support of the anti-marketeers. Labour's activities pertaining to Europe over its course of time in, and out of, Government resulted in significant difficulties during the final attempt at joining the European communities. Further, it was to prove another challenge when trying to mount any form of tangible opposition to a Conservative Government's attempt to join Europe. The challenges in offering an effective opposition as the second largest party to Heath's Government, combined with such significant divisions within the Labour Party itself over the topic, was to have a very real impact on the UK's accession to the EEC and on the executive-legislature dynamics after 1967.

“The end of a thousand years of history...”¹⁰⁶

Macmillan's attempt to join the common market, 1961

As expressed previously, Britain was to face an arduous, and at times embarrassing, journey into the EC. When the country signed the Stockholm convention in 1959, creating EFTA, her attempt to lead a European-wide free trade agreement inclusive of the six EEC members had failed. Arguably, EFTA could have been considered a

¹⁰³ Parr, H. (2005). *Britain's Policy Towards the European Community: Harold Wilson and Britain's World Role, 1964-1967* Routledge

¹⁰⁴ Broad, R. (2001). *Labour's European Dilemmas: From Bevin to Blair*. London: Springer

¹⁰⁵ Thorpe, A. (2015). *A history of the British Labour Party*. London: Palgrave.

¹⁰⁶ Gaitskell, H. Speech: 'Against UK membership of the Common Market', 3 October 1962. Found in: Britain and the Common Market, Texts of speeches made at the 1962 Labour Party Conference by the Rt. Hon Hugh Gaitskell M.P. and the Rt. Hon. George Brown M.P. together with the policy statement accepted by Conference. London: Labour Party, 1962. 40 p. p. 3-23

poor man's EEC both economically and politically. The then Conservative Government, under Prime Minister Harold Macmillan, ordered a reassessment of her European policies, while also attempting to get EFTA up and running. Reginald Maudling, MP for Barnet, who had led the OEEC intergovernmental committee on the establishment of a European free trade area, the Maudling committee, returned to the Commons to discuss the state of European trade, as he saw it. He stated on 25 July 1960 that an FTA had been pursued, and the Stockholm Convention ultimately ratified, for several reasons, the most important of which were the expansion of trade, "to prevent the further disintegration, or fragmentation, with the western European Community", and to create a situation which could "provide a more practical base of further negotiations with The Six".¹⁰⁷ There were few who believed that the creation of EFTA, informally known as The Seven, had been Britain's sole purpose rather than a means to an end but, once in, she had to show she was committed to the group. Within a few short months of this, Macmillan himself came to reconsider the traditional British attitude towards membership to the EEC. He put a series of questions to the Economic Steering Committee to establish information regarding the maintained position, future alternatives, and the cost versus benefits of attempting to join the bloc.¹⁰⁸ The review concluded that there were political costs associated with the exclusion of the UK from the European community and The Six would likely become the "dominating influence" in Europe; a position once reserved for Britain. The influence of the UK "would correspondingly decrease" as the European community was "approaching influence with the big two" (USA and the USSR).¹⁰⁹ It is important not to underestimate the influence of the post-war and cold-war context in which Britain found herself. Macmillan himself came to the view, late in 1960, that the best course of action for the United Kingdom was indeed to seek membership to the EEC for reasons which were predominately political at that stage but Britain's decreasing industrial output and balance of payment issues were convincing factors too. On 31 July 1961 Macmillan officially announced the Government's plan to seek membership, if conditions favourable to the country could be met.¹¹⁰ The response of the Labour Party leader, Hugh

¹⁰⁷ HC Deb (25 July 1960) vol 627 col 1211

¹⁰⁸ National Archive (hereafter NA) CAB 134/1852

¹⁰⁹ *Ibid.*

¹¹⁰ Macmillan, H. HC DEB (31 July 1961) Vol. 645, col. 928-42

Gaitskell, was seemingly non-committal at that stage. In response to Macmillan's announcement, Gaitskell admitted that he himself sat between the two ever present extreme views on European membership; he noted that:

"The majority of us in both parties...suspect that both extremes are wrong, that the issue is not as clear cut and that more careful analysis will show that it is much more a matter of balance...above all, those of us who take this intermediate position, and who cannot accept either extreme, say that before we make up our minds you must know the conditions".¹¹¹

To this effect the Labour Party policy was to abstain from voting on the Government motion in support of the application at the end of the debate; the motion was successfully passed with 313 voting in favour against just 5 dissenting voices.¹¹² Harold Wilson, who would later become Leader of the Labour Party in January 1963, was very much a Commonwealth man. During the debate he described the application as an "exercise in economic escapism" but went further still in stating that "if there were a choice, we're not entitled to sell our friends and kinsman down the river for a problematic and marginal advantage of selling washing machines in Dusseldorf".¹¹³ Acknowledging that there were political motivations as well as economic ones for joining the bloc, Wilson took umbrage with those who used a rhetoric that such relations were incompatible with the United Kingdom's national sovereignty; he argued that "the whole history of political progress is a history of gradual abandonment of national sovereignty...we abrogated it - some would say we did not abrogate it enough - when we joined the United Nations. One cannot talk about world Government in one breath and then start drooling about the need to preserve national sovereignty in the next".¹¹⁴ Wilson was to later oppose legislation that permitted the UK's accession to the EEC, the European Communities Act 1972, on the grounds that it gave sweeping rights and supremacy to EU law which jeopardised Parliamentary sovereignty. It was the result of such changing attitudes that was to cause problems for Wilson as Leader of the Official Opposition during the UK's final application to the bloc. The Labour Party's inconsistent attitude towards Britain's membership to the European Community suggested, or at least could be

¹¹¹ Gaitskell, H. HC Deb (02 August 1961) vol. 645, col. 1495

¹¹² HC Deb Division (03 August 1961) vol. 645, col. 1778-85

¹¹³ Wilson, H, HC Deb (03 August 1961) vol. 645, col. 1653

¹¹⁴ Wilson, H. *Ibid.* col. 1667

used to suggest, that they were unprincipled on the matter. It was not accepted, or indeed deemed acceptable, for the leader of a party to flit between the extremes on such an important matter. There were many within his own party who were unwilling to accept such behaviour.

It was at the 1962 Labour Party conference that Gaitskell was to officially declare the Labour Party as being opposed to membership. It was during his Leader's speech that he declared that membership would not safeguard British interests that it would mean the end of Britain as an independent state; the end of the Commonwealth, the end of 1000 years of history.¹¹⁵ The key British issues to which he was referring were the basis of the five conditions for membership that were developed by the National Executive Committee (NEC) and overwhelmingly approved by the Conference. Labour's five conditions for joining the EEC were:

- strong and binding safeguards for the trade, and other interests of, our friends and partners in the Commonwealth
- freedom as at present to pursue our own foreign policy
- fulfilment of the Government's pledge to stand by members of the EFTA
- the right to plan our own economy
- guarantees to safeguard the position of British agriculture.¹¹⁶

Such strategy adopted by the Labour Party was one which would be redeployed over 40 years later when the party once again struggled with its policy over Europe. While on the surface the speech provided some clarity as to Labour's position on the upcoming negotiations between a Conservative Government and the six of the European community, largely speaking it maintained a middle ground between the two extremes of his party. It did not necessarily reject the notion of membership outright and therefore did not alienate the Europhiles. Neither was it in any way a celebration of the nature and ambitions of the bloc, as it was clear that all five conditions would not be met despite some of them being near replicas of Government policy at the time. Maintaining the middle ground as a strategy to unify an ailing and divided party was one which was replayed throughout the course of the UK's membership to the EU and one which would be played by both sides. To give

¹¹⁵ Gaitskell, H. Speech *op. cit.*

¹¹⁶ *Ibid.*

Gaitskell some credit his strategy had some success, at least at that stage, with those members of the NEC who most ardently opposed membership under any circumstance such as Barbara Castle, Anthony Greenwood and Ian Mikado, abstained from voting on the statement; better that those who opposed abstained from voting, than voting against it outright.¹¹⁷ British membership to the European community on the basis of Macmillan's application was not to be when, on 14 January 1963, President de Gaulle rejected the UK's application.¹¹⁸ The issue itself would not resurface in UK politics until 1967 when Wilson submitted the second application.

Harold Wilson became leader of the Labour Party in 1963 following the sudden and unexpected death of Hugh Gaitskell. The Conservatives too had a leadership change following the resignation of Macmillan with the remaining years of the Conservative Government being overseen by Alec Douglas-Home who was to suffer a series of disasters and scandals both domestically and internationally. A General Election was held in 1964 which, despite the difficulties faced by the Conservative Party over the previous year, the Conservatives were favoured to win, and Labour found themselves slipping in the opinion polls.¹¹⁹ The question of Europe was a relative non-issue of the 1964 general election; both parties commented, in their manifestoes, on future relations with the Six, but discussion of membership was muted or dismissed outright. It was the Conservative Party that rejected membership to the EEC outright in stating that entry into the community "was not open to us" and that "no question of fresh negotiations can arise at present" but that the party would work to achieve the closest possible relations with the Six.¹²⁰ The only significant commitment to Europe in the Labour Party election manifesto was a pledge that the party would "seek to achieve closer links with our European neighbours", but that they were convinced that the "first responsibility" of Government was still to the Commonwealth.¹²¹ Despite the poor performance in the polls during the autumn of 1964, 15 October proved to be a momentous day for Wilson's party who won the election with a small majority. On a turnout of 77.09 per cent, Labour returned 317

¹¹⁷ Steinnes, K. (1998). The European Challenge: Britain's EEC Application in 1961. *Contemporary European History*, 7(1), 61-79

¹¹⁸ De Gaulle, C. Press Conference. 14 January 1963. Elysee Palace.

¹¹⁹ Butler, D., & King, A. S. (1965). *The British General Election of 1964*. London: Macmillan

¹²⁰ Conservative Party Manifesto (1964) *Prosperity with a Purpose*

¹²¹ Labour Party Manifesto (1964) *THE NEW BRITAIN*

seats, an increase of 59 seats, on a 44.1 per cent UK vote share.¹²² This equated to a majority of 4 seats for Wilson's first Government.¹²³

In the first few years of his Government Wilson was to experience a series of political and economic difficulties both at home and abroad and by 1966 he was beginning to reassess the relationship that Britain held with her closest neighbours, namely the European Community. The circumstances in which the first British application was made in 1961 was still, largely speaking, applicable in 1966; Charles de Gaulle was still President of France, Britain's economy appeared weak, she still had enormous global obligations through the role of Sterling as a reserve currency and maintained her ties to the Commonwealth. For Wilson, however, much had changed. It was clear that the EEC was growing in confidence and power as a collective bloc and it was equally clear that Britain's global, political influence was losing ground against other larger and more powerful entities. George Brown was instructed in 1965 to conduct a series of studies into the Government's European policy, with a view to highlighting the economic costs and benefits of seeking entry.¹²⁴ The results of these studies were overall in favour of entry on predominantly political grounds. The Foreign and Commonwealth Office was also keen for Britain to seek membership at some point due to the risk of increasing political neutrality in the prospect of becoming a "greater Sweden" should the nation not act or remedy its problems and remain outside of the EEC.¹²⁵ Concurrently, Wilson had met the heads of the EFTA nations in a move which has been described as bridge building in an attempt to forge closer links between the Seven of the EFTA and the Six of the EC.¹²⁶ In January 1966, Wilson endorsed starting of a further series of studies, on the provision that they were kept away from ministers.

In October 1966 Wilson ordered an analysis into the alternatives to common market membership. The report, released the following month, suggested the UK had three choices; GITA, NAFTA or the EEC. GITA, or 'going it alone', NAFTA, a North Atlantic free trade area or membership of the European community.¹²⁷ GITA and NAFTA,

¹²² 316 seats were required at this time to form a majority Government

¹²³ D, Butler. & A.S, King. *Op. cit*

¹²⁴ Parr, H. (2005). A question of leadership: July 1966 and Harold Wilson's European decision. *Contemporary British History*, 19(4), 437-458

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

¹²⁷ Parr, H. *Op. cit.*

though options, posed their own problems. The Commonwealth Secretary, Herbert Bowden, described the Commonwealth as a wasting asset, a loose body of dissimilar states and the leadership of which lacked coherence.¹²⁸ Many of the Commonwealth nations such as Australia had begun to establish their own regional trading patterns; opting to trade locally and diversifying their trading partners. This continued to reduce the dependence of these nations on their Commonwealth links and so too diluted the strength of their relationship with the UK. This made the prospect of going it alone a weak one, marginalising the UK economically and doing little to stop the dwindling of its international influence. NAFTA, a proposed economic arrangement with developed nations to the West, notably Canada and the United States, would open access for British industry to a wide but loose market. The emphasis of NAFTA would be on trade in manufactured goods as had been envisioned in the late 1950s for European nations in the failed Free Trade Area negotiations.¹²⁹ The report concluded that NAFTA was an impractical option, and, more alarmingly, would demote the UK into the position of being a 51st state, akin to a satellite nation, of the United States. The UK it was felt would find itself in a position of doing the United States' bidding in matters far wider than the economy; it would be difficult to resist pressure to join the United States in issues such as military intervention. Fundamentally concern was raised that Britain's international influence would be subsumed by the United States and this issue had been one of the reasons why Britain was reassessing its global options in the first place.

Throughout the difficulties the Government faced, Wilson had to rely on a four-seat majority which dropped further when Labour lost a safe seat (Leyton) in a byelection in January 1965 having tried to engineer a win for Patrick Gordon-Walker.¹³⁰ By spring 1966 Wilson was ahead in the voting intention polls and with faith in their accuracy called an election for 31 March 1966. By this time, the Conservatives had yet another new leader, Edward Heath. While the Labour Party had been in office only a relatively short time and could do little to prove their stamina as a governing party, the Conservatives faced the challenge of diminishing the record of a

¹²⁸ E. Bowden, (1967) 'The value of the Commonwealth to Britain': Cabinet memorandum 24 April 1967. NA CAB 129/129/9

¹²⁹ The Free Trade Area negotiations were driven by the British Government as an alternative proposal to the more closely integrated European Economic Community.

¹³⁰ Bush, S. (2014) 15 by-elections that shook Britain. 9 October 2014, *The Telegraph*

comparatively short Labour Government in which the many problems they faced had been directly or indirectly inherited from the Conservative Government in the first place.

Unlike the earlier election campaign, the one in 1966 witnessed both parties committing, in some way, to a future within the EEC and this cannot be seen as wholly surprising; Labour's experience in Government had taught her that Britain's future outside of the EEC could be less certain and desirable than its future within it. In as much as Wilson can be seen as an advocate of the Commonwealth, Heath was very much, and always had been, pro-European. He had led the country's negotiations with the Six during the first application and his maiden speech in the House of Commons, as MP for Bexley, denigrated the Government for not committing to the Schuman Plan in order achieve peace in Europe.¹³¹ The Conservative Party under Heath revitalised its commitment to achieving membership and their manifesto stated that the Conservatives wanted to see the UK regain her confidence in herself and "in the future taking its place in the European Economic Community" and later stating that the party would work energetically to achieve membership at the earliest possible point.¹³² The Labour Party commitment to the EC was in many ways lacking the conviction of the Conservatives. The manifesto stated that Britain, in consultation with her EFTA partners, should be ready to enter the EEC but added that the conditions to safeguard national interests had to be reflected by the membership.¹³³ They were the very same conditions that the party had adopted during the first application. Heath was able to challenge Labour's, and Wilson's, commitment to entering the EEC based on the inclusion of these conditions and on the Prime Minister's changing attitudes towards membership of the Community. Wilson, on the other hand, could claim that without such safeguards a Conservative Government under a Europhile like Heath, would be willing to accept any conditions of entry even if they would be detrimental to the country's interests. It was Wilson and the Labour Party who the electorate found the most convincing and on 31 March 1966 they were returned to Government with a huge majority. On a turnout of 75.8per cent, Labour won 363 seats with a vote share of 47.9per cent,

¹³¹ Heath, E. HC Deb (26 June 1950) Vol. 476, col. 1959-65

¹³² Conservative Party Manifesto (1966) *Action Not Words: The new Conservative programme*

¹³³ Labour Party Manifesto (1966) *Time for decision*.

gaining 48 seats.¹³⁴ This produced a working majority of 98 seats for the Labour Government.

In preparation for the decision to seek accession and the subsequent application, Wilson alongside Economics Minister George Brown went on a tour of the capitals of the Six to see if the conditions existed for a new membership bid. Upon returning, Wilson was confident that the member states were receptive to the notion of UK membership but without a formal application the conversations could not go into any great deal of detail about the terms.¹³⁵ The issue of membership was debated in meetings of the Parliamentary Labour Party on the 6, 20 and 27 April 1967 and Wilson spoke to the group on the final occasion; he told members that the application had to be a once and for all exercise which explained why he never withdrew the application when it was later rejected.¹³⁶ He announced to the Commons more widely on the 2 May 1967 that his Government had decided to submit the application.¹³⁷ He was to present the application to the House in a relatively balanced way; representing the benefits as he saw them, he did not seek to misrepresent the potential disadvantages. Of the benefits he said that the UK would be in a position to help to determine the direction, the pace and the development of the institutions but added that the balance will be unfavourable at least in the early years for some industries and the cost of living in food prices would increase.¹³⁸ He stipulated that there were necessary safeguards that were required to guarantee British entry. At that stage Wilson noted the necessity to accept the Treaty of Rome, if the application were to be successful, but he indicated that the Government would hope to see some adaptations to the arrangements and that the conditions identified by the Government were met.¹³⁹

Heath, as one might expect, responded to the statement positively and welcomed the decision. His main challenge to Wilson focused on the application and the

¹³⁴ King, A. S. (1966). *The British General Election of 1966*. London; Melbourne [etc.]: Macmillan; New York:

¹³⁵ Indeed this approach was re-adopted by the EU when the UK decided to exit the group; they refused to have any conversations regarding the substances of the UK's withdrawal before the Government triggered Article 50 and formally declared its intention to leave.

¹³⁶ Wilson, H. Speech to Parliamentary Labour Party. 27 April 1967. As found in: Broad, R. (2001). *Labour's European Dilemmas: From Bevin to Blair*. Springer

¹³⁷ HC Deb 02 May 1967 Vol. 746, col. 310

¹³⁸ *Ibid.*

¹³⁹ Heath, E. HC Deb (02 May 1967) vol 746 col 315

intended time frame for negotiations.¹⁴⁰ He asked the Prime Minister to confirm that he accepted the Treaty of Rome and the Common Agricultural Policy (CAP), to which Wilson responded that yes, the Government accepted the founding treaty and stated that they had to come to terms with the CAP, but the nature of those terms would be discussed during negotiations. Heath and much of the Conservative Party in general, found themselves in an unenviable situation as the official opposition. It had long been the party position, with the exception of a few, that membership was desirable. As a result, the party was not able to oppose the issue of entry in principle and found themselves in a situation of agreeing with the Government; a position not necessarily comfortable for those on the shadow benches. His party was to spend the duration of the application's life span attempting to strike a balance between opposing the Government but supporting the measure. The outcome of the application proved threatening also; he wanted to join the EEC, but success for the Labour Party's application would serve to highlight the extent of the Conservative Party's failure in 1961-3 to secure membership. Conversely, failure could have the potential to make membership seem an undesirable and unrealistic option at some point in the future when the Conservatives might return to power. He did not want to deal the fatal blow to the application but nor was he willing to offer a blank cheque to the Government. Heath's main strategy was to challenge the Prime Minister's commitment to the application given his staunch criticism of it during the first application. Beyond this he challenged Labour's preconditions that had been established alongside the timing of the program. While the Labour Government maintained the necessity for safeguards, they had learned a significant lesson from the Conservative's earlier failure and when submitting the second application, they did so without attaching any pre-conditions to it; a mistake made in 1961 which had riled de Gaulle and presented the UK as demanding. Despite Wilson's efforts to smooth the path with the EEC ahead of the application, de Gaulle issued a statement of discontent on the membership bid on 16 May 1967, before negotiations had even begun.¹⁴¹ This move was not received well in Europe, with several nations disliking the unilateral action, which was a second veto in all but name. Owing to the nature of the rejection, the defeat for the Government can be seen as somewhat less

¹⁴⁰ Wilson, H. HC Deb (02 May 1967) vol 746 col 316

¹⁴¹ de Gaulle, C (1967) Statement. Le Grand "Non": Britain's Proposed Entry into the Common Market, 16 May 1967

discouraging given that negotiations had not yet started and therefore it could not be fairly said that the Government had failed. In response to the French rejection of the UK application, Wilson left the application on the table, seemingly fulfilling his earlier commitment to the PLP that Labour's application of 1967 would be a once and for all exercise. The decision would mean that the EEC was periodically obliged to discuss the issue of enlargement generally, and the British application specifically, at regular intervals.

It was not until late 1969 that conditions had changed enough to favour another attempt at negotiations with the most significant of these changes witnessed by the six rather than Britain herself. In April 1969, French President Charles de Gaulle resigned and was replaced by Georges Pompidou who did not, in principle, object to enlargement of the EEC or specifically to Britain's application to join it. However, he was committed to key reforms to the Community budget and the CAP being agreed by the Six before any such conversations could occur. In response to the decision of the Six to explore enlargement more purposefully, the Labour Government revived its original application and set about beginning the preparatory work necessary for the commencement of negotiations in the summer of 1970. The Government released a new White Paper, which focused on the economic and financial implications of joining the Community.¹⁴² On other issues the Government were able to recycle previous publications, such as with constitutional implications, given that the impact that these had remained constant since 1967 but the economic affairs of the nation were naturally more fluid. There was little time to focus wholly on the issue of accession to the EEC as a general election been called for 18 June 1970, 9 months earlier than necessary but the polls appeared favourable to Wilson and the previous election gave him faith in them.¹⁴³ As can be expected, both parties presented a positive case for Britain joining the EEC but the manifesto pledges were short and both, on this occasion, indicated some degree of condition required to be met before joining. Labour's manifesto was titled '*Now Britain Is Strong Let's Make It Great To Live In*' and discussion of joining the EEC was minimal and not overly enthusiastic; it spoke of the Party's commitment to join the community, if safeguards

¹⁴² Her Majesty's Stationary Office (hereafter HMSO) (1970) Britain and the European Communities: An Economic Assessment. [white paper] cmd. 4289.

¹⁴³ Abrams, M. (1970). The opinion polls and the 1970 British general election. *Public Opinion Quarterly*, 317-324

could be ensured, but that the nation would 'stand on her own feet outside the Community', if they were not¹⁴⁴ The Conservatives gave the commitment that the party would only negotiate, "no more, no less", for advantageous accession terms.¹⁴⁵ However on the European issue the campaigns themselves were somewhat muted and this was most likely caused by the lack of enthusiasm for Europe from the UK population, as represented in the polls. According to a Gallup poll in April 1970, only 15 per cent of those asked were in favour of another bid for membership. This is in comparison to the three out of five individuals who opposed such activities.¹⁴⁶ Wilson's faith in his own popularity, as indicated by the polls, was to be shaken to its core when, on 18 June 1970, the Labour Party was defeated in the election. The Conservatives took office securing 330 seats while the Labour Party, in its return to the opposite benches after 6 years, did so with 287 seats. This equated to a working majority of 30 seats for the Conservative Government, under Prime Minister Edward Heath.

With the start of negotiations with the Six looming, Heath's Government had little time to prepare their own information and policy briefs and given that the Labour Party had done much of the preparatory legwork, the Conservatives commenced negotiations on the 30 June, using both the briefs and the civil service team intended for use by Labour.¹⁴⁷ For the Labour Party, the negotiations and arguably the years that followed, proved challenging. The Party had moved from a position of opposing British membership of the EEC in 1962, to one of pursuing its own bid in 1967, reattempting accession in 1969 and then preparing for negotiations at the start of the year. Opposition to negotiations and accession in 1970-2 would likely prove highly contentious and would appear to be little more than political game playing; but the Party did find itself in a position of opposition and thus would need to find something to oppose. Europe had consistently proved a challenging and divisive issue for Labour; Parliamentary membership of the party was generally split in thirds: those that oppose, those that supported and those that sat in the middle.¹⁴⁸ Following the election, Roy Jenkins was elected as Deputy Leader of the Labour Party. Jenkins

¹⁴⁴ Labour Party Manifesto (1970) Now Britain's Strong – Let's Make it Great to Live In.

¹⁴⁵ Conservative Party Manifesto (1970) A Better Tomorrow.

¹⁴⁶ Broad, R. *op. cit*

¹⁴⁷ Broad, R. *op. cit*.

¹⁴⁸ Broad, R. *op. cit*.

was a fierce advocate of the Common Market and Britain's membership in it, but his election was by no means a suggestion that the party had decided to continue to support the application for British membership.

Negotiations between the British Government and members of the EEC began in earnest following the election and the Government said it would report back regularly to Parliament on the terms and progress of them. In reality, the extent of the negotiations was limited; the Government had already identified the need to agree to the founding treaties of the Community, as well as existing EC law. This too, as previously explained, had been accepted by the Labour Party when in Government. Though both parties insisted that they would get favourable terms for the UK, the only real substance in negotiations were the terms of the transition period to be agreed. It was early in 1971 that such terms had started to emerge allowing the Labour Party to coalesce around any form of significant policy approach. Divisions within the Party between pro- and anti-marketeer groups became entrenched as each set about a campaign to ensure their sides success. On 21 January 1971, John Silkin, Labour MP for Deptford and member of the left-wing Tribune Group, laid an Early Day Motion (EDM) which noted that negotiations so far envisaged would not be of benefit or interest to the United Kingdom.¹⁴⁹ The EDM received 103 signatures immediately and amassed 133 by the summer recess. The Common Market Safeguards Campaign (CMSC) had been established in response to the Labour endorsed White Paper of 1970 and was led by Labour MP Douglas Jay, a staunch anti-marketeer. It commenced an extra-Parliamentary campaign of publishing adverts in newspapers aimed at 'alerting' the public that in entering the Common Market the EEC would subsume large portions of UK affairs.¹⁵⁰ In response to Silkin's EDM, the Labour Committee for Europe (LCE), who claimed to have 82 supporters in the Commons, took out a full page advert in *The Guardian* bearing the names of 100 individuals calling for the party to maintain a pro-EC policy.¹⁵¹ The issue of entering the Common Market was, for many, one which transcended party lines. This trend was especially apparent in the Labour Party during this period but the fracturing potential of the European question was to remain a significant issue for

¹⁴⁹ Broad, R. *ibid.*

¹⁵⁰ Broad, M. (2018). *Harold Wilson, Denmark and the Making of Labour European Policy, 1958-72*. Oxford University Press

¹⁵¹ Broad, R. *op. cit.*

MPs from accession through to the UK's eventual departure and which can be most potently identified during the Brexit years. Following the referendum of 2016, the Brexit agenda was to play out in Parliament where MPs were to once again find themselves torn between principle and party; a characteristic noteworthy of the UK's relationship with the European Communities throughout its membership. For some MPs in the 1970s, as has often been the case, the party took priority and providing a strong opposition and opposing Heath was paramount. For other members, the Europe question invoked principle above all else. Thus, finding an appropriate party policy on membership which was both strong and clear, took time and careful management.

Upon losing the General Election in 1970, the NEC urged the party to 'hold the line' on its current pro-EC position.¹⁵² Obviously, the body was aware that 'flip-flopping' on its key policy so radically, so shortly after losing office, would be seen as political game-playing and partisanship which would raise issues with regard to reputation. The 'hold the line' resolution was passed by a majority of just 95,000 votes of the six million that were cast.¹⁵³ Part of the problem in deciding upon a position as a party was a lack of information regarding the terms of entry; during the early period of negotiations between the EC and the UK Government, information was slow to pass into Parliament. Such an issue was to be clear and present in the Brexit years, too, when Labour, once again the Official Opposition, struggled to form a coherent policy to oppose the Government because they often did not have access to any real understanding of the Government's position. The Labour Party in 2016-2019, as will be shown elsewhere in this work, was consistently held to account by other parties and the media over a seeming lack of position on leaving the EU and pressured to provide an alternative plan. The Government however were given a degree of flexibility on the same counts owing to the necessity to withhold information in order not to weaken the 'negotiating hand'. Such information withholding can be seen at both the entry and exit points of the UK's membership to the EC. In essence, the opposition were to find themselves under a greater, and perhaps more potent, level

¹⁵² Baimbridge, M., Whyman, P., & Mullen, A. (2016). *The 1975 Referendum on Europe-Volume 2: Current Analysis and Lessons for the Future* (Vol. 2). Andrews UK Limited

¹⁵³ Broad, R. *op. cit.*

of scrutiny surrounding its activities on European membership than the Government often was.

The lack of transparency emanating from the Government could not last indefinitely, because Parliament had a role to play during both the period of accession and withdrawal. The Governments of both eras were required to release information eventually and, as they might have feared, challenges were mounted against them as a result. The executive can remain dominant in scenarios where the legislature has limited information to scrutinise. During the accession negotiations, the moment of clarity occurred in July 1971.¹⁵⁴ Labour's response to the nature of terms for entry agreed by Heath's Government and the EEC was to campaign to reject the application 'on Tory terms'.¹⁵⁵ Notably, this did not reject the principle of membership. A resolution of the Labour conference of October 1971, introduced by Denis Healey, argued that the Conservative Party had no mandate to take the UK into Europe.¹⁵⁶ He argued this on the grounds that public opinion on the issue was so divided, the Government had only initially committed the UK to 'negotiations; no more, no less' and that Heath himself had stated in March 1970 that 'no British Government could enter without the fullhearted consent of the people'.¹⁵⁷ The resolution was passed with five million votes in favour and one million against.¹⁵⁸ The PLP was finally given its policy to follow just as the legislative legwork required for accession began: that the party would support the issue of membership to the EEC in principle, but would reject the bid on the grounds of the terms agreed by the Government. This is yet another example of the deep parallels between the phases of entry into, and exit from, the European Community; Labour, during the Brexit years, consistently maintained that they would listen to the will of the people and support withdrawal from the EU, despite campaigning to remain, but found their own voice in opposing the nature of the Conservative Government's deal. Employing such a strategy, at both ends of the time period of Britain's membership in the Community, allowed the party to provide an opposition without opposing outright. For

¹⁵⁴ HMSO (1971) *The United Kingdom and The European Communities*. [white paper] Cmnd. 4715

¹⁵⁵ Baimbridge, M. *et. al. op. cit.*

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ Broad, R. *op. cit.*

parties fraught with internal problems over an issue this provided a basic compromise and ensured a certain degree of party unity.

Legislating for accession to the European Communities

Entering and exiting the European Community was to require key pieces of legislation to ratify the agreements made. The legislative exercise required of Parliament in 1971-2 was a comparatively simple task; the treaty-like agreement required ratification in the Houses and the terms of agreement were known prior to the legislative process starting. As will become apparent through the course of this thesis, the legislative work which was necessary to extricate the UK from its membership in 2016-2019 was to be far more complicated, owing in part to over 40 years of fusion between the UK and the EU which by 2016 touched on almost every aspect of domestic life. Added to the complexity of the legislative tasks involved in the UK's withdrawal from the EU was the fact that any developments made to Parliamentary or executive operations in the intervening years had been done within a context of membership to the European Union.

October 1971 was to mark the first key test for Labour's policy on membership to the EEC. On 21 October 1971, Foreign Secretary, Sir Alec Douglas-Home, laid a motion before the House of Commons stating, 'that this house approves Her Majesty's Government's decision in principle to join the European Communities on the basis of the arrangements which have been negotiated'.¹⁵⁹ What followed was a six-day debate which was to witness the inclusion of 180 MPs. The motion was just a motion and did not form part of the enabling legislation which would be laid before the House in the following year, however, the motion was to be a key battleground for both mainstream parties to 'test the water'; it was, to mix the analogy, a barometer through which the leadership could gauge the strength of feeling in the House. For the Government it was a test of support of the House to establish the type and extent of support and opposition that the actual legislation for accession would likely face. It is probable that it was for this reason that the debate was allowed to last for such a significant length of time. Six days would allow for the fullest extent of opposition

¹⁵⁹ Douglas-Home, A. HC Deb (21 October 1971) vol. 823, col. 912

arguments to be explored in readiness for the European Communities Bill. The motion was of significant political, but not legal or constitutional, importance as it was a non-binding procedural mechanism. The Labour Party too could make use of the exercise to test its new policy under the scrutiny of its opponents and perhaps get the ridicule of yet another perceived policy U-turn out of the way before the real event; it too could test the loyalty it might expect to achieve during the legislative process to come or rather the degree of potential disloyalty. For both parties, the exercise could be utilised to identify the likely MPs who may be willing to 'cross the floor' in support of their cause; partisanship could be less guaranteed on European issues than on any other and so passing legislation on it was never a simple 'numbers game'. Strategically, the Government benefitted more from the debate given that they could eventually limit the time given to debate during the passage of the ECA, particularly at second reading, given that so significant a length of time had already been given to what would essentially be a very similar debate; management of Parliamentary time was, and remains, a key power of the Government to control the agenda and thus it was better to allow time for non-binding issues, if in doing so, they could (seemingly) legitimately restrict such debate during the passage of binding legislation. This management of the parliamentary diary allows for the extension of executive dominance by limiting the potential for defeat were possible. Heath's Government was also able to use the debate to inform their eventual creation of the European Communities Bill which could then be developed in a way as to limit or manage possible conflict through the inclusion of opposition arguments in areas where the Government could, or was willing to, compromise.

Despite the lack of legislative imperative carried by the motion, the House treated the debate and preceding vote with the full weight that its political importance warranted. The event really was the culmination of ten years of debating the issue for Parliamentarians and the six-day debate was carried out with the levity of such. In the run up to the debate, Heath refused to allow a free vote on the issue at hand and Labour too imposed a three-line whip which had been agreed by the PLP with 140 votes in favour to 111 votes against.¹⁶⁰ Though, Heath was to later change his mind and announced that his party could have a free vote on the issue of accession. This enhances the notion that the debate was being used by the Leader and the

¹⁶⁰ Broad, R. *op. cit.*

Government to fully assess the attitude of the House. For those who lost the PLP vote on the nature of the vote, there were many within the Labour Party that felt it imperative to vote with their conscience on the issue; such figures included Jenkins, Roy Hattersley and Douglas Houghton, all of whom were convinced Europhiles.

When the motion came to division, it passed. With 365 voting in favour, which included 281 Conservatives, 69 Labour MPs, five Liberal and one Ulster Unionist member. On the losing side, amounting to 244 votes were 198 Labour MPs, 33 Conservatives, six UUP MPs, one Liberal and six others.¹⁶¹ The 69 Labour rebels had secured victory for the Government and were seen to be propping up the Conservatives. It was clear from the outcome of the vote that there were more pro-Europeans who were willing to cross the floor than there were those able to stop it. Following the vote, Houghton, MP for Sowerby and the Chairman of the PLP, stated that having exercised his conscience against the three line whip on the principle of entry, he would beyond that point follow party policy on the enabling legislation and expressed that it was up to the Government beyond that point to find the majorities it needed.¹⁶² This practise would come to be called the Houghton formula and several MPs that had broken the whip on 28 October 1971 were to follow his principle during the passage of the European Communities Act. Such a tactic evidences the willingness of MPs to transcend the party line and rebel against mechanisms that promote loyalty if such activity was 'guaranteed' to have minimal impact on party activities at large and especially during periods where the imperative was not necessarily binding. This action allows the opposition some control at a later stage given that the evidence of a willingness to cross party lines was not necessarily a guarantee of repeated actions at a later stage.

Jenkins was to endorse the use of the formula and as Deputy Leader was in a more difficult position than most; on 4 November 1971 he was asked to clarify his decision in a meeting of the PLP. He stated that he did not regret his decision of the 28 October, neither did he rescind his commitment to the European project and the UK's membership of it but going forward he would only commit as far as 'not to vote with the Government, not to vote against it'.¹⁶³ In effect, he was pledging to abstain

¹⁶¹ Division. HC Deb (28 October 1971) vol. 823 col. 2217

¹⁶² Campbell, J. (2014). *Roy Jenkins*. Random House.

¹⁶³ Broad, R. *op. cit.*

from votes. Barbara Castle, MP for Blackburn, was left unimpressed by such suggestion and even less so by the fact that he 'got a standing ovation for it'.¹⁶⁴

On 26 January 1972, the Government published the European Communities Bill, having formally signed Britain's accession to the EEC three days earlier. The Labour Party, when in Government and preparing for negotiations with the EEC in 1967, had envisioned a bill of 'a thousand clauses' to ratify the treaty; the enabling act presented to Parliament in 1972 had just 12 clauses, four schedules and consisted of 37 pages in all. It is evident from the Bill as introduced that there had been little concern about the strength of opposition it was likely to face; there were few attempts to include pacifying measures which would have indicated a degree of preventive influence emanating from Parliament. Bill creation and length play an important role in the level of opposition, scrutiny, and executive dominance to be experienced over the passage of legislation; to introduce 'short' bills reduces the opportunities for opposition, and potentially defeat, by narrowing the scope of a bill and ultimately reducing the prospect of successful substantive amendments being passed by non-Government Parliamentarians. This was a strategy to be redeployed by the Conservative Governments of 2017-19, specifically with the European Union (Notification of Withdrawal) Act, 2017.

The ECA had its Second Reading on 15 February 1972 and to engender more support, or rather less disloyalty, from his own backbenches, Heath made the vote a matter of confidence. In introducing the Bill at second reading, Geoffrey Rippon quoted heavily from the Labour Party's own documentation crafted in 1967 to deal with the constitutional implications of joining the EEC.¹⁶⁵ This being another example of the way Labour's changing attitude toward membership was being used against them to undermine potential opposition to the Bill or policy. Rippon identified the necessity of having legislation, the purpose of which was to provide legal footing and certainty for the supremacy of EC law and for the subsuming of future law to come.¹⁶⁶ Further, he quoted Wilson in saying that 'restraints of this kind on our legislative freedom are by no means unprecedented' and gave examples, as Wilson had done, of NATO, the UN, GATT and EFTA.¹⁶⁷ Some of the main issues

¹⁶⁴ *Ibid.*

¹⁶⁵ Rippon, G. HC Deb (15 February 1972) vol. 831 col. 269-75

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*

highlighted during the motion debate of October 1971 were those relating to the economy and to sovereignty; Labour had not only supported membership in the mid-to late 1960s, they had led the charge in submitting the second application and while much had changed in the economic sphere, there were many associated issues, such as sovereignty and the constitution, which had not. Consequently, the possibility to criticise the Government's activities around such issues were limited.

Rippon highlighted that Wilson, when his application was revived in 1970, had told the House not to worry about the minutiae that was some 1,200 EEC instruments that needed to find a standing within UK law.¹⁶⁸ Wilson opened the second day debate on 17 February and focused his speech on two main issues as he saw them: the terms of accession and the constitution. He stated that the terms negotiated by the Conservatives were not good enough, that Labour had argued for more than the Government were able to achieve and that the transition arrangements did not wholly safeguard issues relating to New Zealand and sugar.¹⁶⁹ Though much of Labour's argument relating to terms ultimately had to rely on hypothetical scenarios of 'if we had negotiated, we would have achieved X', the notion that a Labour Government would have emerged from the negotiations with a deal which was substantially different from the one on the table is questionable. Indeed, George Thomson, Labour MP for Dundee East, who had been in charge of the Labour-led negotiations of 1967 told the special party conference of July 1971 that he would have recommended to the Labour Government similar terms which had been achieved by Heath's Government later.¹⁷⁰ The second issue that Wilson focused on was what he described as 'deep constitutional issues' raised by the nature of the legislation before them.¹⁷¹ He followed a strategy of dissociating this issue from those of terms and principles and focused on the problems with the Bill itself. To this he stated that:

'As a government, had we got the terms we had sought from our applications, we never contemplated a bill of either this form or this size. We made clear that consequential legislation would take up a whole Parliamentary session. We knew that that would have to be so. I was warned to expect a 1,000

¹⁶⁸ *Ibid.*

¹⁶⁹ Wilson, H. HC Deb. (17 February 1972) vol.831. col.629-49

¹⁷⁰ Broad, R. *op. cit.*

¹⁷¹ HC Deb. (17 February 1972) vol.831 col.629

clause Bill- a phrase that was in common use as indicating the scope and form of Parliamentary action consequent on signing the treaty.’¹⁷²

One of the main arguments that he used in support of his criticisms, which few could cite hypocrisy, was that, because of the Bill, all future EEC law would be automatically applicable in the UK without any further legislative process through which other law must pass. This was not the way that Labour had planned the exercise, and no one could say that he was wrong. However, the feasibility of Labour’s original plan is somewhat questionable given that having to ‘manually’ write in every EEC law, regardless of size or substance, would have created a huge burden on Parliamentary time and workload. The Conservative Government’s approach was a far more streamlined one, even if the cost of it was the perceived loss of Parliamentary authority and sovereignty and increased executive dominance. The ECA does evidence that the use of so-called skeleton bills has a far longer standing in the governance of the United Kingdom than is otherwise normally suggested and certainly more than was raised during the Brexit years when non-Government Parliamentarians deplored the use of delegated powers to deal with the workload amassed by the decision to withdraw from the EU. These criticisms largely centred around the European Union (Withdrawal) Bill which was intended to repeal the ECA from the statute books and retain EU law in the process. Many Parliamentarians deplored the extensive use of delegated legislation and the provision of so-called Henry VIII powers. However, the imposition being that the use of such mechanisms was unique to the EU(W) bill when there had been a clear upward trend in the use of skeleton bills by all Governments since the 1970s.

When closing the debate at second reading, Heath’s main response to the constitutional issues raised was that nothing had changed since 1967 in that regard, just as nothing had changed since 1961; except Labour’s position perhaps. Further to this he added that to enact all EEC law in the manner envisaged by Wilson would amount to a burden on Parliament and not an exercise of its sovereignty.¹⁷³

Over the three days given to Second Reading of the Bill, not a single Labour MP would rise in support of it. With the Houghton formula in operation by much of the

¹⁷² *Ibid.* col.640

¹⁷³ Heath, E. *Ibid.* col.747-8

pro-EEC contingent of the Labour Party and with the vote being one of confidence for Heath's Government, the fate of the Bill when it went to division could have been anyone's guess. On dividing over the matter, the bill did pass to third reading but only just, passing as it did by a majority of eight votes; 309 being in favour and 301 in dissent.¹⁷⁴ Eight MPs had saved the Bill, as well as Heath's Government. Of the Conservative backbench rebels, 15 crossed the Lobby to vote against it and five chose to abstain, on the opposition benches five Labour MPs abstained from voting and five Liberals crossed the floor to support the Government.¹⁷⁵ Anger was turned towards the ten opposition MPs who had missed the opportunity to defeat the Bill and force a general election.

Turning to Committee stage, taken as a committee of the whole House, there were a significant number of occasions which saw Conservative backbench rebellions. On clause one, they voted with the opposition on 18 substantive amendments, clause two witnessed Conservative MPs crossing the floor on 23 occasions and this was a pattern that was to continue throughout the passage of the Bill. Despite this sustained opposition from its own ranks, the Government was to remain undefeated on all occasions and the Bill passed clean. The Government majorities throughout the divisions ranged from eight to 49 and the success of these was almost entirely down to tactical abstentions from the Labour Party's pro-EEC members. For the likes of Jenkins, who had endorsed the Houghton formula for the sake of party unity, there was still a huge concern that the Bill may not pass due to the commitment of some Conservative backbench rebels. As such, these members operated on a strategic abstention basis. Jenkins, who described the act of voting 'no' at second reading as 'demoralising', voted against the legislation 55 times, was paired on a further 34 occasions and abstained (unpaired) seven times.¹⁷⁶ Reflecting on the event, he stated that,

'The abstainers were made up in almost equal proportions of old men who had decided that their political fate no longer mattered and young men with the gallantry of 1916 subalterns...they at once provided us with an essential little shield behind which to shelter and made our political calculations rather

¹⁷⁴ Division. HC Deb 17.02.1972 vol. 831, col. 754-5

¹⁷⁵ Norton, P. (2011). Divided Loyalties: The European Communities Act 1972. *Parliamentary History*, 30(1), 53-64

¹⁷⁶ Campbell, J. *op. cit.*

tawdry. It is never comfortable to be dependent on men braver than oneself.’¹⁷⁷

As the Bill made its way through the necessary legislative stages, it was subject to almost 100 divisions, and took over 300 hours, across 26 days. Third reading of the Bill, 13 July 1972, followed straight after Committee stage given that report stage is skipped if no amendments are made to a bill and as such the Bill progressed to the House of Lords and would ultimately achieve Royal Assent on 17 October 1972.

Wilson’s, and subsequently Labour’s, activities over the course of the final application to join the Common Market were inevitably highly scrutinised. As discussed, Labour Party policy was one which had fluctuated between the extremes; from outright no, to yes and then finally a sort of yes but also no. Such changes left them open to attack as being hypocritical, fickle and having played political games at the cost of the nation over such a significant issue. Beyond this, finding a position which would not exacerbate the already distinct divisions within the party itself was always going to prove challenging. The final position established by the NEC and the PLP was the compromise through which the party could be held together at a time of serious need over an issue which had the potential to split them far greater than that which would occur later with the formation of the SDP.¹⁷⁸ This problem was one which would be revisited by the Labour Party over the course of Brexit and it too established its main policy as one of compromise; yes, the party would agree to the principle of withdrawing from the EU predominantly because the referendum and subsequent fallout left them little choice. Any willingness to ‘go along’ with the deals eventually proposed by Theresa May and Boris Johnson were ultimately rejected based on the terms present in the agreements proposed. The party under Corbyn may not have adopted the tag line of the earlier period, that of ‘not on Tory terms’, catchy as it was, but certainly the approach and thinking were reminiscent of it.

Though it may be true to suggest that the actions of the Labour MPs who operated based on tactical abstentions resulted in the successful passage of the Bill, it was in fact Heath who ensured that the Labour party and Parliament played so extensive a role in the first place. Theoretically, accession to the European bloc could have been

¹⁷⁷ Broad, R. *op. cit.*

¹⁷⁸ Jenkins, R. *et. al. op. cit.*

handled as a treaty, the ratification of which would not have required, constitutionally speaking, the depth of Parliamentary involvement that the ECA allowed. Heath and his Government, indeed all Parliamentarians, were aware that the constitutional requirements fell far short of what would have been considered politically sound. Joining the Common Market was far more complex than a purely economic trade agreement. For those who were committed to the European project the ambitions for integration transcended far beyond just economics and would have witnessed further, if not complete, social and political integration too. For those suspicious of such ambitions, legal and constitutional safeguards were paramount. Accession was controversial among the electorate and the mandate provided for by the results of the election, positive for Heath though they were, did not go much further than a commitment to negotiate for possible membership to the bloc. Though the nation would later be given a choice as to their desire to maintain membership or not, the charge that the UK was taken into the EEC without the full-hearted consent of the UK population would be mounted against EC membership throughout the relationship and one which would be reignited during the campaign for the 2016 referendum.

The nature of executive-legislature dynamics in the accession period, including the failed applications, was never simple or binary. The Labour Party never achieved a unanimous voice on joining the EEC even at times when they managed to agree on a firm policy. There were too many dissenting voices within the group which inhibited the possibility to oppose outright and defeat the Government when the opportunity arose within Parliament. Owing to the nature of majorities and the 'number game' that is UK governance, the Labour Party required complete loyalty to the three-line whip imposed during the passage of the ECA alongside significant Conservative backbench rebellions to defeat the Government on this Bill. Equally, the Government never felt its position so tenuous that it had to accept amendments without division or make changes to the Bill in lieu of any amendments. The most significant suggestion that the Government held any concern about their prospects were centred on its own backbenchers. This concern was managed by making the legislation a matter of confidence. This action supports the idea that the most effective body within the Legislature at controlling or resisting executive activity lies within the Government's own party and that Government backbenchers often have the biggest opportunity to

administer defeat. By making it a matter of confidence, Heath hung the whole party's political future in the balance.

It is clear in this period that the Government were dominant over the issue of accession, but that dominance was not specifically the result of their own endeavours. Attempts to join the EEC and the specific experience of the last application having derived from and having been pursued by the Labour Party aided the Heath Government and allowed them to achieve membership with a low degree of risk posed by the Official Opposition. Aiding this was a higher degree of party unity in the Conservatives over the issue of Europe comparative to Labour and the potential for rebellion, though still present, was manageable as indicated by the motion of October 1971. UK membership to the EEC was never reliant on successful passage by the House of Parliament because the deal was essentially completed by the time that the European Communities Bill came to Parliament and the motion of October 1971 provided a mandate for such an agreement through its political significance rather than its legal standing. Parliament's involvement related specifically to legislation which would provide for the application and supremacy of EEC law in the UK's statute and while defeat of the Bill would have challenged the start of membership, it would not have stopped it directly. The number of non-Government amendments tabled to the Bill and the extent of those being divided upon with no degree of success suggests that on the scale of executive-legislature dominance, the accession to the EEC was indeed characterised by executive dominance.

Chapter Five

Labour's pre-notification activities

Following the outcome of the referendum results on British membership to the EU, Labour experienced a period of near devastation. In the months before the Government officially triggered its intention to leave the bloc, Labour's experience as the official opposition was a desperate one having had few opportunities to credibly hold the Government to account over its early Brexit activities. The Government, during this period, were dominant on issues relating to Brexit, but only marginally so as their own preparations had been lacking. It was, perhaps, the Select Committees who were leading the way with regard to getting down to the business of Brexit, having commenced a series of enquiries into the impact of withdrawal.¹⁷⁹

Referendum campaign challenges

The period between 23 June 2016, when the referendum results were announced, and 29 March 2017, when the United Kingdom formally triggered Article 50, was one of widespread uncertainty. In the intervening nine months, there was little understanding as to what Brexit would really mean for the UK. The Government, under Theresa May's leadership as of July 2016, was tight-lipped over their plans and aims for the withdrawal process. May was content to allow no digressions from her diktat that 'Brexit means Brexit'.¹⁸⁰ With little to no clarification of what leaving the European Union would look like, there was increasing attention paid to 'hard Brexit' versus 'soft Brexit', doomsday scenarios abounded and to further confuse matters, May later insisted it would be a 'red, white and blue Brexit'.¹⁸¹ In Parliament, numerous attempts were made across the benches, in both Houses, to pull information from Ministers; the common answer was often a variation of revealing too much would 'weaken the negotiating hand'. The Government during this time was under no real obligation or pressure to do, or say, anything given that the UK had yet to officially announce its intention to leave and thus negotiations were not on

¹⁷⁹ Matters relating to Select Committee work is dealt with more thoroughly in Chapter Ten

¹⁸⁰ May, T. (2016). PM Statement in Paris. 19 July 2016, 10 Downing Street.

¹⁸¹ May, T. (2016). Press Conference, Gulf Tour. 6 December 2016, Bahrain. [Accessed 10 March 2021] <https://www.theguardian.com/politics/2016/dec/06/theresa-may-calls-for-red-white-and-blue-Brexit>

the horizon. The Government were dominant on the issue at this stage as they would spend the following months getting their own house in order. Any pressure to relinquish its grip on Brexit was weak at best given the opposition benches appeared so divided and, in essence, hollow.

Labour's difficulties and internal divisions were exposed when the referendum results were released on 24 June 2016, but the party's problems began much earlier. On 17 September 2015, Jeremy Corbyn released a joint statement with Hilary Benn, Shadow Foreign Secretary, stating that the Labour Party would be campaigning to remain within the European Union when the time came.¹⁸² This move in itself was not so surprising especially when considering that 'over 210' of Labour's 231 Members of Parliament eventually signed up to support the official 'Labour in for Britain' campaign group in December 2016.¹⁸³ The surprising element of the announcement was that Labour's newly elected leader, Jeremy Corbyn, had a history of resistance toward the European project which was as old as British membership in the Union itself. Mere days before Corbyn was announced as leader, he was asked by a Reuters journalist whether he had voted in the 1975 referendum on Britain's continued membership of the EEC, to which he responded, 'I did vote and I voted no'.¹⁸⁴ Corbyn's approach to the European Community between the referenda of 1975 and 2016 was a consistent one. Consistently critical. Since 1983, when he was first elected as MP for Islington North, he frequently voted against any measure which could be seen as increasing European integration at a cost of national or Parliamentary sovereignty. This included significant treaty amendments such as the Lisbon Treaty; Corbyn voted against the European Union Amendment Bill 2008 at second and third reading which sought to ratify the treaty changes into domestic legislation.¹⁸⁵ During the Labour leadership hustings at the GMB union in Dublin in June 2015, Corbyn indicated that he would 'advocate a no vote' if there

¹⁸² Wintour, P. (2015). 'Jeremy Corbyn: Leader will campaign for the UK to stay in the EU'. *The Guardian* [online]. 17 December 2015 [Accessed 1 May 2017] <https://www.theguardian.com/politics/2015/sep/17/jeremy-corbyn-labour-campaign-for-uk-stay-in-eu>

¹⁸³ Wilson, P. (2015). 'Labour is united in its belief that Britain should remain part of the EU'. *LabourList* [online] 29 November 2015 [Accessed 11 January 2017].

¹⁸⁴ James, W. (2015). 'Labour's Corbyn says voted 'No' to Britain's EU membership in 1975 vote'. *Reuters* [online] 10 September 2015 [Accessed online 26 April 2017] <http://uk.reuters.com/article/uk-britain-eu-labour-idUKKCN0RA2DE20150910>

¹⁸⁵ HC DEB col.1320, 21 January 2008. Division no.50 & HC DEB col.250-1, 11 March 2008. Division no.122

were to be any imposition of free market policies.¹⁸⁶ Within three months of this Corbyn was supposedly Labour's leading man on the campaign to remain in the EU.

It was clearly feasible in the party leader's mind that he could support remaining in the European Union having been so actively critical of it. However, the distinct rhetoric of the referendum campaign reduced this strategy to one of 'sitting on the fence'; apparently torn between principle and party and not really choosing either. During his speech at Senate House as the official campaigns began, he stated that it was 'perfectly possible to be critical [of the EU] and still be convinced we need to remain a member'.¹⁸⁷ In reality and under different circumstances, this was a perfect plausible belief to hold and much of the UK's political elite had held similar beliefs over the course of the country's membership to the Union, but in Brexit-Britain such nuances were seemingly unacceptable. However, there were few who would allow Corbyn a 'free-pass' on the issue of his apparent U-turn. Kate Hoey, Labour MP for Vauxhall, and ardent leave campaigner, highlighted Corbyn's apparent reversal of principle at the 'Labour Leave' press launch. At the event on 20 January 2016, Hoey recalled that she and other Eurosceptic MPs 'were joined on many occasions over the last 20-odd years when we were doing our bit to oppose various treaties and issues which were furthering EU domination of our country. Jeremy was always with us'.¹⁸⁸ *Ad hominem* attacks were a prevalent feature throughout the referendum campaign and so it is not surprising that Corbyn's legacy of EU criticism was used against him throughout. However, Corbyn's campaign techniques did little to guard against this type of attack and by April several pro-EU Labour MPs were calling for him to 'step-up' his activities in relation to referendum campaigning. In an article for *The Guardian*, Labour MPs Chris Leslie, Adrian Bailey, Ben Bradshaw and Emma Reynolds called on Corbyn to 'campaign relentlessly...with passion and without equivocation' something they claimed was 'overdue'.¹⁸⁹ Whilst not overly critical of their leader, the joint piece certainly highlights some of the frustration felt on the Labour benches regarding Corbyn's campaigning strategies.

¹⁸⁶ Mosely, T. (2016). 'In quotes: Jeremy Corbyn and the EU Referendum' *BBC* [online] 14 April 2016 [Accessed 1 February 2017] <http://www.bbc.co.uk/news/uk-politics-eu-referendum-35743994>

¹⁸⁷ Corby, C. (2016). Speech to Senate House. 14 April 2016

¹⁸⁸ Hoey, K. (2016). 'Labour Leave Campaign Launch'. 20 January 2016, Birdcage Walk, London

¹⁸⁹ Leslie, C. Bailey, A. Bradshaw, B. Reynolds, E. (2016) 'Decisive EU referendum victory is essential – we must help deliver it'. *The Guardian*, 9 April 2016. [Accessed 10 October 2016] <https://www.theguardian.com/politics/commentisfree/2016/apr/09/labour-mps-eu-plea-to-corbyn>

It would be unfair to say that Corbyn didn't campaign, but frustrations tended towards his lack of enthusiasm for the EU when he did. An *Opinium* poll carried out for the *Observer* on 29 March-1 April 2016 found that only 47per cent of those surveyed believed that Corbyn supported remaining in the EU compared to the 12per cent who believed he wanted to leave and finally the 40per cent who did not know.¹⁹⁰ This confusion was borne out of a lack of passionate rhetoric which was embodied within the other referendum campaigns and also the decision to not share a stage with Cameron and the official 'Better in Britain' remain campaign. One of the strangest of Corbyn's strategies was the decision to appear on Channel 4's topical comedy show *The Last Leg*, broadcast live on 10 June 2016, less than a fortnight before the nation took to the polls. On the show, Corbyn was seen to arrive in a Bentley, dressed in a tuxedo and white fur coat, entering on a red carpet and to a hip-hop backing track no less. With little explanation or clue as to what message he was trying to convey, the appearance on the show got off to an odd start. When asked by presenter Adam Hill 'on a scale of one to ten...how passionate are you about staying in the EU?', Corbyn's responded with 'oh, I'd put myself in the upper half of the five to ten, so we're looking at a seven to a seven and a half'.¹⁹¹ It was intended to be jovial and comedic and the Labour Leader could at least class himself as honest, but in a campaign which was as emotional and passionate as the referendum had been, a seven out of ten did not signal Corbyn as being committed to Europe despite his justifications. Corbyn was not oblivious to the opposition he faced within his party. When asked how many of the Labour MPs would be watching the show and hoping that he would mess up, he suggested it would be 'about half'.¹⁹²

His apparent lack of commitment to remaining in the EU was exemplified in the decision to give Alan Johnson the Chairmanship of the 'Labour in for Britain' campaign. Johnson, longstanding Labour MP for West Hull and Hessle, had long been referred to, by the media and members in his Party, as 'the best leader Labour never had'. The article by Leslie and others, mentioned above, picked up on this decision as another way to criticise Corbyn's lacklustre campaigning; the four MPs stated 'this isn't an issue that can be simply outsourced or delegated. There are some moments when party leaders can make a real difference in shaping events –

¹⁹⁰ *Opinium* (2016). EU referendum and Brexit. [opinion poll] April 2016.

¹⁹¹ *The Last Leg*, (2016) series 8 episode 1. Channel 4. 10 June 2016.

¹⁹² *Ibid.*

and this is such an occasion.’¹⁹³ While there were some cases of intra-party criticisms of the leader’s activities during the referendum these were kept to a minimum to avoid any suggestion that the Parliamentary Labour Party were internally split over Europe and over its leadership.

Labour’s Brexit breakdown

On the morning of 24 June 2016 as the nation woke to the news that it had voted to leave the European Union, Jeremy Corbyn was interviewed on the BBC and was asked whether he was a ‘passionate Brexiter now?’, to which he responded that ‘we must respect that result and invoke Article 50 now’.¹⁹⁴ Such a stance should not have seemed so out of place in a context where many of those who voted to leave were under the, uncorrected, impression that Brexit would begin immediately. Added to this, when David Cameron announced to Parliament that the in-out referendum would be held on 23 June 2016, he also stated that ‘the British people would rightly expect [Article 50] to start straight away’.¹⁹⁵ Article 50 being the ‘break clause’ of the Lisbon Treaty allowing a member state to withdraw its membership from the European Union. However, on the morning after such an emotional day for so many people, Corbyn seemed a gung-ho Brexiter compared to other political leaders; Tim Farron, Leader of the Liberal Democrats, was ‘completely gutted’ and ‘genuinely heartbroken’.¹⁹⁶ The Prime Minister, David Cameron, resigned from his post citing an incompatibility between how the country voted and the vision he campaigned for.¹⁹⁷ When making his resignation speech, Cameron also put a halt to any speculation that Brexit would begin immediately; having indicated that the new Prime Minister would be selected around October 2016, he stated that ‘it is right that this new Prime Minister takes the decision about when to trigger Article 50 and start the formal and legal process’.¹⁹⁸ Perhaps Corbyn had been tired following the long night or perhaps he failed to realise that 48per cent of those who voted were left bitterly disappointed and much of the nation was stunned by the outcome. Whatever the reasoning

¹⁹³ Leslie, C. Bailey, A. Bradshaw, B. and Reynolds, E. op. cit., p. 3.

¹⁹⁴ *BBC* interview with Jeremy Corbyn, 24 June 2016. London.

¹⁹⁵ HC DEB vol.606 col.21-2. 22 February 2016.

¹⁹⁶ *ITV News*, Interview with Tim Farron. 24 June 2016.

¹⁹⁷ Cameron, D. (2016). ‘EU Referendum Outcome: PM Statement’. 24 June 2016, 10 Downing Street, London.

¹⁹⁸ *Ibid.*

behind his call to invoke Article 50 immediately and thus begin the two-year countdown to non-membership despite the nation not being ready, Corbyn seemed in that moment to be true to form and it indicated that his pro-EU stance of the referendum did not reflect his true feelings but had been part of a political game.

It was on this same day that issues within the Labour Party were truly brought to bear. Following the release of the referendum results, veteran Labour MP Dame Margaret Hodge spoke to Sky News on College Green outside the House of Parliament. In the interview she claimed that 'Jeremy demonstrated that he has not got the qualities of leadership', expanding on her point she added that he didn't campaign early enough or energetically enough which resulted in confusion for the voters.¹⁹⁹ She firmly laid the blame for losing the referendum at Corbyn's feet. Leading on from her interview, Hodge alongside Labour MP Ann Coffey, called a motion of no confidence in Corbyn to be heard at the next Parliamentary Labour Party meeting. The events over the course of the following three days were akin to a Labour Party internal haemorrhage. The Press responded with vigour and the Labour Party found itself under the intense scrutiny of the nation's gaze.

The letter from Hodge and Coffey to the Chair of the PLP, John Cryer, was the first of many blows rendered against Jeremy Corbyn's leadership of the Labour Party. Following from this, it was rumoured in the press that Hilary Benn, Shadow Foreign Secretary, was canvassing the Shadow Cabinet and Labour Backbenches looking for support or backing in asking Corbyn to resign.²⁰⁰ This supposed coup to unseat Corbyn was reported at 10pm on Saturday 25 June 2016, by 12.50am Sunday morning Benn made a phone call to Corbyn. Benn reported that during the call he told the Labour leader that he had lost confidence in his ability to lead the Party.²⁰¹ Corbyn's response was to sack Benn from his position in the Shadow Cabinet. There had been little love lost between the two since Benn backed calls for military intervention using airstrikes in Syria in December 2015 and the rumours of Benn's activities following the referendum gave Corbyn the justification needed to remove

¹⁹⁹ *Sky News*, (2016). Hodge, M. speak to cameras. 'Corbyn: No-Confidence Motion in Labour Leader'. 24 June 2016, London.

²⁰⁰ Boffey, D. (2016). 'Hilary Benn seeks Shadow Cabinet backing to oust Corbyn'. *The Guardian* 25 June 2016. <https://www.theguardian.com/politics/2016/jun/25/hilary-benn-jeremy-corbyn-labour-leadership-eu-referendum-Brexit> [Accessed 10 January 2017]

²⁰¹ *The Andrew Marr Show*. 26 June 2016, BBC.

him from the post of Shadow Foreign Secretary. Benn's sacking triggered quick responses from other Labour MPs who took to Twitter to air their views including Wes Streeting, MP for Ilford North, who tweeted that 'lots of good people chose to serve in the Shadow Cabinet to keep the show on the road. There are no longer good reasons for good people to stay.'²⁰² This seemed to prophesise the events which were to follow over the next two days. At around 8am on Sunday 26 June, the first Shadow Cabinet member handed in her resignation. Heidi Alexander, Shadow Health Secretary, walked away from her position citing that 'as much as I respect you as a man of principle, I do not believe you have the capacity to shape the answers our country is demanding' and added that if Labour were to form the next Government then new leadership was required.²⁰³ This action by Alexander was to prove a turning point as a total of 47 Labour MPs, comprising of Shadow ministers, Junior Ministers and Frontbenchers, were to follow suit over the next two days. Added to this was Baroness Angela Smith and Lord Steve Bassam, Leader of the Labour Party and Chief Opposition Whip in the House of Lords, who did not resign but refused to attend any PLP meetings whilst Corbyn was still leader.²⁰⁴

Many of the 47 that resigned took to social media platforms to publish their resignation letters in full. The reasons given for their decisions fell broadly into two camps. The first was Corbyn's unconvincing performance during the referendum campaign and the second was his inability to unite the party and/or hold his Shadow Cabinet together. Adding fuel to a particularly hot fire, Phil Wilson, MP for Sedgefield, and Chair of 'Labour in for Britain' in the PLP, wrote a scathing account of the Corbyn's referendum activities going so far as to claim that he 'sabotaged' the Party's campaigning efforts. In the article, Wilson claimed that Corbyn's Office consistently undermined the 'Labour in for Britain' work and maintained that he had evidence showing that 'they resisted all polling and focus group evidence on message and tone, raised no campaign finance, failed to engage with the campaign

²⁰² Streeting, W. (2016). Twitter:@wesstreeting: *Lots of good people chose to serve in the Shadow Cabinet to keep the show on the road. There are no longer good reasons for good people to stay.*[Tweet] 26 June 2016. Available at: https://twitter.com/wesstreeting/status/746862815164661761?ref_src=twsrc%5Etfw [Accessed 27 June 2016]

²⁰³ Alexander, H. (2016). *Letter to Jeremy Corbyn*, 26 June 2016.

²⁰⁴ *The Telegraph* [Online] 'Labour Shadow Cabinet and ministers resignations – the letters in full'. 30 June 2016 [Accessed 26 April 2017] <http://www.telegraph.co.uk/news/0/labour-shadow-cabinet-resignations---the-letters-in-full/>

delivery and deliberately weakened and damaged the argument'.²⁰⁵ Though none of the referenced evidence was produced, Wilson's role in Labour's campaign and the fact that his claim aligned so precisely with how people viewed Corbyn's referendum activity, the unverified account was another strong blow against Corbyn's leadership. This message was echoed further by Alan Johnson during a PLP meeting when he claimed that Corbyn's team did not turn up to weekly meetings during the referendum.²⁰⁶

Labour's traumatic few days came to a head when Hodge and Coffey's motion of no confidence was discussed at the Parliamentary Labour Party meeting on 27 June 2016. According to *The LabourList*, the 75-minute meeting was 'packed out' and intense; quoting unnamed MPs, the meeting was described as 'brutal' and 'heart-breaking'.²⁰⁷ The resounding message from Corbyn and his allies was stubbornly straightforward – 'if you want Corbyn gone, mount a leadership challenge'. The following day was to bear witness to a secret ballot on the no confidence motion; on the ballot 'that this PLP has no confidence in Jeremy Corbyn as Leader of the Parliamentary Labour Party', a resounding 172 Labour MPs voted in favour of the motion.²⁰⁸ Despite such a hefty majority in favour of Corbyn standing down, there was no obligation for him to do so under the party's constitution. It took almost two weeks before the first leadership hopeful became apparent. Angela Eagle, former Shadow Business Secretary, launched her leadership bid on 11 July and was quickly followed, two days later, by Owen Smith. By 19 July, Eagle had stepped down to endorse Smith, who had achieved more PLP and EPLP nominations than she had. From this point until 22 September 2016, the Labour leadership bid was a two-horse race; Smith may have had the backing of swathes of the PLP and EPLP, but Corbyn had the support of large numbers of Labour Party members and the activist group Momentum. The one fortuitous component of the leadership contest was that it

²⁰⁵ Wilson, P. (2016). 'Corbyn sabotaged Labour's remain campaign. He must resign'. *The Guardian*. 26 June 2016 [Accessed 26 April 2017]

<https://www.theguardian.com/commentisfree/2016/jun/26/corbyn-must-resign-inadequate-leader-betrayal>

²⁰⁶ Pope, C. (2016). 'Heated PLP meeting spills out into Commons corridors'. *LabourList*. 27 June 2016 [Accessed 27 June 2016] <http://labourlist.org/2016/06/heated-plp-meeting-spills-out-into-commons-corridors/>

²⁰⁷ *LabourList*, *Ibid*.

²⁰⁸ *New Statesmen*. (2016). 'MPs voted no confidence in Jeremy Corbyn after Shadow Cabinet result: as it happened'. 28 June 2016 [Accessed 1 May 2017] <http://www.newstatesman.com/politics/uk/2016/06/mps-vote-no-confidence-jeremy-corbyn-after-shadow-cabinet-revolt-it-happened>

occurred largely over the summer recess when Parliamentarians are decidedly less active. However, for Labour this advantage was incredibly short-lived as any hopes that its own leadership campaign would align with the Conservative Party's quest for a new leader and Prime Minister, thus rendering them both politically inactive, were swiftly dashed.

David Cameron's resignation, following the referendum, also triggered a Conservative Party leadership contest, nominations for which closed on 30 June 2016. By this date, five leadership hopefuls were apparent: Theresa May, Stephen Crabb, Michael Gove, Liam Fox, and Andrea Leadsom. The requirement of just a primary and secondary 'backer' from within the Parliamentary group open the ballot much wider than in the Labour race where candidates required the backing of 50 members of the PLP. The first round of ballots in the Conservative contest gave May 165 votes and eliminated Fox who received just 16. Stephen Crabb quickly withdrew from the race having been placed in fourth position with just 34 MPs supporting him. The second ballot took place two days later and removed Gove as a hopeful having placed third behind May and Leadsom. By 7 July 2016 the contest was down to Theresa May, then Home Secretary, and Andrea Leadsom, Minister for Energy and Climate Change. The intended timeline would have announced the new Party Leader and Prime Minister on 9 September 2016. However, Leadsom landed in hot water following an interview in *The Times* in which she stated that having children gave her 'a very real stake' in the country's future, comparative to the childless Theresa May. Added to this she suggested that May must have been 'really sad' not to have had children.²⁰⁹ The backlash received because of her comments was fierce, not least from within her own party. Two days later, 11 July 2016, Leadsom withdrew her candidacy from the Conservative leadership contest indicating that the 25 per cent support she received at second ballot from the Parliamentary group did not lead her to believe that she had sufficient support 'to win a strong and stable Government'.²¹⁰ Theresa May was instantly declared the new Prime Minister, a post she took up on 13 July 2016, without having faced a single vote of the party members. Elections of this nature were intended to be avoided from 1965 when the

²⁰⁹ Coates, S and Sylvester, R. (2016) 'Being a mother gives me edge on May – Leadsom'. 9 July 2016 [Accessed 1 February 2017] <https://www.thetimes.co.uk/edition/news/being-a-mother-gives-me-edge-on-may-leadsom-0t7bbm29x>

²¹⁰ Leadsom, A. 2016. *Letter to Graham Brady, Chairman of 1922 Committee*. 11 July 2016

Conservative Party issues new rulings to ensure that party members were given a say on its leadership.²¹¹ However, with no competition there could be no contest.

While the Labour leadership race was still in its infancy, the Conservatives had managed to scope and place a new leader within days. Importantly, they had managed to do it all before the summer recess. This included May's Cabinet reshuffle starting on 14 July 2016 which seemed to indicate a shift to the right wing with the selection of a triumvirate of Brexiters; Boris Johnson was given the Foreign Office; Liam Fox became the newly created Secretary for International Trade; David Davis became the first ever Secretary of State for Exiting the EU in the newly created Department for Exiting the European Union (DExEU). May's newly formed Government, with its new departments, had several weeks to settle itself and a summer break in which to formulate the beginnings of a plan for Brexit. Labour's civil war had achieved little except leaving itself politically ham-strung between June-September 2016. The Labour Party leadership challenge ended on 24 September 2016 and Corbyn was announced as the new (continuing) party leader. Receiving 313,209 votes to Smith's 193,229, Corbyn managed to increase his mandate by over 60,000 votes from the 2015 leadership election.²¹² Labour MPs had little choice at that point to either back Corbyn explicitly or remain quiet; many of those formerly in the Shadow Cabinet opted for the latter.

Back to the business of Brexit

Corbyn announced his new Shadow Cabinet on 7 October 2016, after the annual party conference season. To the role of Shadow Secretary for Exiting the European Union, Corbyn chose a relative new-comer, Sir Keir Starmer.²¹³ Starmer, MP for Holborn and St. Pancras since 2015 was a Human Rights Lawyer and previous Head of the Crown Prosecution Service. Starmer had been one of the 47 to resign in June 2016 but he been at that stage a Junior Minister and his appointment was

²¹¹ Quinn, T. (2012). *Electing and Ejecting Party Leaders in Britain*. Palgrave Macmillan, London.

²¹² The Labour Party, (2016). 'Labour Leadership Election 2016'. [Accessed 26 April 2017]
<http://www.labour.org.uk/pages/labour-party-leadership-election-2016>

²¹³ Starmer was knighted in 2014 for services to law and criminal justice but chose not to be referred to by his title when entering politics.

unlikely to rock the boat too much. If anything, Starmer's selection for the role allowed for some internal party healing; as a 'moderate', he had never criticised Corbyn heavily or publicly which catered for smooth relations with Corbyn's team but for those on the centre-left, he had resigned his Shadow Cabinet therefore evidencing his discontent at the state of the party following the referendum. There were few who opposed the appointment of Starmer to the role though someone who was reported to be less than happy was Emily Thornberry. The MP for Islington South and Finsbury had assumed the Shadow office for Exiting the EU in July 2016 when May had created DExEU; at that stage she had only just inherited the position of Shadow Foreign Secretary following the sacking of Hilary Benn. According to the opinion of several individuals, Thornberry hadn't wanted to release the department to Starmer, or anyone for that matter, and in the earliest days of Starmer's incumbency she would continue to attend meetings alongside him.²¹⁴ With Corbyn having established his new Shadow Cabinet there was finally a sense that there was, at the very least, the personnel within the party who could begin to challenge May's Government over Brexit. Although any notions of a firm Labour policy on Brexit was a long way off.

During the Conservative Party Conference, Theresa May informed the attendees that Article 50 would be invoked no later than March 2017. Keir Starmer and his team were quick to try and forge themselves a role in the process given that a Labour Brexit team was still very much in its infancy at that point. That is not to say that Starmer's strategies were in the least bit successful in the initial months. One of the first major strategies adopted was the 170 written questions sent by the Shadow Brexit Department to David Davis' DExEU. In a letter to the Secretary of State, dated 12 October 2016, signed by both Starmer and Thornberry (who was seemingly still in attendance), the ministers established that they would be sending 170 written questions to his department to reflect the 170 days left before the proposed invocation of Article 50.²¹⁵ Also within the letter the pair called on Davis to set out a plan which could be scrutinised and then voted on by Members of Parliament. It was true that whilst Labour had very little in the way of a realistic vision for Brexit by this stage, beyond accepting the referendum result and calling for the Government to

²¹⁴ Smith, A. *In conversation with Hayter, D and Mordue, C.* 7 December 2016.

²¹⁵ Thornberry, E. and Starmer, K. *Letter to David Davis* 12 October 2016.

divulge more information, the Conservatives had shown little evidence that it had any real plans either. Most of the information which had been provided was little more than slogans, sound bites, misspoken and then hastily redacted words from senior Ministers; the worst culprit for this was Foreign Secretary Boris Johnson.²¹⁶ The Labour shadow ministers targeted Davis' ego and principles to secure a Parliamentary vote on a Brexit plan in calling on the 'highly principled way' in which he had argued for the importance of Parliamentary Sovereignty. Also deferring to Conservative MP Dominic Grieve, QC, with appreciation was perhaps an early attempt to win over the Government benches to the new Shadow Minister. The polite but forceful manner of the letter was temporarily suspended when attention turned to Theresa May and they wrote that 'we hope that you...will stay true to your principles, rather than following the edicts of an increasingly authoritarian Prime Minister, who seems intent on following her predecessor's mistakes, whatever the calamitous results'.²¹⁷ There is very little sense here that attempts to foster good relations across the benches extended to the Prime Minister with the use of such rhetoric. The 170 questions strategy adopted by Labour could be considered creative, but it fell far short of effective. Written questions do have to be answered by the Department or Minister to which they have been posed but there is no minimum quality that the answer is upheld to. This was very little follow up on what answers the Government gave because they were essentially useless and most of the questions were answered far quicker than the one-a-day vision that Labour had at the outset. The answers themselves did little to dampen the opposition calls for more information to fill the gaps created by Government secrecy over its Brexit ambitions. Many of the written responses embodied the same approach taken in verbal discussions with May's ministers; largely they provided no new information using the justification that assessments were still ongoing or providing information would weaken the Government's position in the face of negotiations with European counterparts. When Labour commenced the plan, it lacked any objective that went beyond forcing the Government to answer 170 questions that it did not really know the answer to. The Government's lack of a plan did not become apparent with this strategy because of the Government's ability to justify its position and Labour's lack of resources to press

²¹⁶ Mason, R. Walker, P. Wintour, P (2016) 'Boris Johnson ridiculed by European Minister after prosecco claim', *The Guardian*. 17 November 2017

²¹⁷ *Ibid*.

the Government on individual points; there is even less control over written responses than verbal questioning. It is clear that Labour's early strategies did little to wrest dominance of the issue away from the Government but that the Party was trying to find ways to challenge the Government even though it had yet to form its own party line on the issues.

Within five days of accepting the position as shadow Brexit Secretary, Starmer was to oversee an Opposition Day debate on 12 October 2016 on the topic of Parliamentary scrutiny of leaving the EU. This was to signal a sea change in Labour's Brexit activity and in many ways marked the arrival of Her Majesty's Official Opposition to the Brexit 'party'. Starmer tabled a Labour Party motion relating to the Government's plan for leaving the European Union; this was the first formal action taken by the Official Opposition, albeit a non-binding one. The motion was 'that this house recognises that Brexit is the defining issue facing the UK; believes that there should be a full and transparent debate on the Government's plan for leaving the EU; and calls on the Prime Minister to ensure that this House is properly able to scrutinise that plan for leaving the EU before Article 50 is invoked'.²¹⁸ The motion was conceded by the Government, who also tabled its own amendment, adding 'and believes that the process should be undertaken in such a way that respects the decision of the people of the United Kingdom when they voted to leave the EU on 23 June 2016 and does not undermine the negotiating position of the Government as negotiations are entered into which will take place after Article 50 has been triggered'.²¹⁹ While Labour was keen to paint the passing of the motion as a victory for itself, it was hardly a major one and in practical terms meant so little that they had to re-table a motion along much of the same lines at the next Opposition Day in December 2016. By allowing the motion to pass with the Government's amendment to 'respect the decision of the people', Labour was effectively committing itself at that early stage to supporting any legislation which was designed to 'fulfil the will of the people' and commence and the leave procedure. However, the Labour Party was in no position to bypass an opportunity to claim a victory over the Government. A PLP post opposition day debate campaign pack stated that 'facing the prospect of a Commons defeat' the Government accepted Labour's motion. The next opposition

²¹⁸ HC DEB vol.615 col.313-4 12 October 2016.

²¹⁹ *Ibid.*

day to focus on Brexit was on 7 December 2016. Once again Keir Starmer led the charge with a broadly similar motion and once again the Government responded with its own amendment. While the motion touched on some of the same issues of scrutiny and Brexit plans as the previous one, Labour added that ‘there should be no disclosure of material that could be reasonably judged to damage the UK in any negotiations to depart from the EU’.²²⁰ This provision within the motion was arguably a flawed manoeuvre on Labour’s behalf to help ease the motion through as it allowed the Government to continue to withhold information on the basis that it ‘weakened the negotiating position’ but crucially it allowed the Government to decide what was or was not deemed to be damaging. Ultimately, this adds weight to the notion that the Labour Party activities, at times, allowed the Government to increase the level of executive dominance over Brexit issues. Beyond this, the Government’s amendment, which Starmer considered an ‘eleventh hour concession’ was to be a significant challenge for the Labour Party later down the line. The addition to the motion of ‘and further calls on the Government to invoke Article 50 by 31 March 2017’, ultimately meant that by supporting its own motion, Labour was tying itself into supporting the invocation of Article 50 within a set timeframe.²²¹ Publicly, the Labour Party had committed itself to fulfilling the instruction delivered by the nation via the referendum but in supporting the amendment, Labour was binding itself to supporting a Bill that it had not yet seen. The Party was to be hampered further by the amendment when the EU (Notification of Withdrawal) Bill was to pass through Parliament. The Bill was to be expedited through the normal timetable procedures following its presentation on 26 January 2017 on the basis that it had previously been agreed that Article 50 would be invoked by the end of March 2017.²²² This acceleration was agreed to by Labour for fear of being seen as attempting to delay or halt the withdrawal of the UK from the EU. Consequently, the December motion can be argued to have done more damage to Labour’s Brexit activities than the short term ‘victory’ afforded it in the first place. For all intents and purposes, the motion was designed to increase the level of Parliamentary scrutiny that the Government faced over Brexit yet the first true opportunity for this to happen was hampered by its passing. Unlike the motion passed in October, the Opposition Day motion of 7

²²⁰ HC DEB vol.618 col.220-1 7 December 2016

²²¹ *Ibid.* col.230-1

²²² *European Union (Notification of Withdrawal) Bill* [HC] (Bill 132,2016-17)

December 2016 did go to a division. Largely speaking, the opposition benches beyond Labour (with the exception of 23 MPs who voted 'no') voted against the motion or its amendment with 461 for and 89 against.²²³ Such a strategy adopted by the official opposition shifted the 'balance of power' towards the Government and is a key example of the way in which the Labour Party hampered its own potential effectiveness. Allowing the passage of the motion with a 'non-disclosure provision', combined with the Government specified timeline, significantly increased the opportunities for executive dominance over Brexit.

Work beyond the Frontbenches

Labour's Brexit activities were not limited to the work of Starmer and the shadow Brexit team. Other than the work of Labour Peers, which is discussed separately, some of the party's backbenchers were particularly active. The work undertaken by Emma Reynolds is a prime example of this. Reynolds, MP for Wolverhampton North since 2010 and member of the Brexit Select Committee, organised and chaired a series of meetings each of which were designed to tackle specific issues emerging from Brexit. Starting in October 2016, the meetings were principally established as a seminar-like experience with various experts in attendance; guests included the Norwegian and Swiss Ambassadors as well as academics in fields such as economics and immigration. The group had its beginnings in an unofficial project of Reynolds' creation but was officialised as a party working group in December 2016. Backbench attendance of the group was reasonably consistent and included members such as Alan Johnson, Yvette Cooper, Angela Eagle, Maria Eagle, Chris Leslie and Stephen Kinnock; the last five of these having been in the cohort of 'resigners' in July 2016. While the group was not explicitly created for those critical of Corbyn's leadership, it did provide a 'safe space' to explore the full implications of leaving the European Union for those previously active ex-frontbenchers assigned to having no defined role in Labour's Brexit manoeuvrings. Reynolds led a band of 17 PLP members to Brussels in November 2016 during which they met with members of the European Labour Parliamentary Group led by Glenis Wilmott, delegates from the Party of European Socialists as well as UKRep; this meeting was said to have

²²³ HC DEB vol.618 col.329-336 7 December 2016.

been initially blocked but for the intervention of Lord Bridges, Spokesperson for Exiting the EU, who insisted that the PLP members were to be given access.²²⁴ This suggests that not all Conservatives were upholding the 'Brexit blackout' imposed by the Government. In talking to *The Guardian* about the visit, Reynolds stated that the trip was designed to 'shape debate' on Brexit in the face of the High Court ruling delivered 3 November 2016, on the basis that MPs would have a far greater role to play if the ruling was to be upheld following the Supreme Court appeal.²²⁵ While the group provided no formal or legislative contributions to Labour's Brexit strategy, it established a forum in which Europhile Labour MPs and Peers could better understand the impact that leaving the EU would have on the United Kingdom. Whilst the 'material' contribution of the group to a wider Labour policy on Brexit was arguably minimal, though there was some crossover of individuals between the two, notably Baroness Hayter, it's worth was perhaps far greater; Reynolds' group provided a bridge which would help to reconcile some of the most pro-European components of the party with Labour's commitment to fulfil the outcome of the referendum. Such worth is difficult to quantify however any endeavours to heal party divisions, following such a disastrous summer, would only aid Labour's position in opposition and perhaps eventually its electoral prospects.

The working group was not the only attempt made by a Labour MP to achieve a greater level of input and ultimately some tangible form of opposition to the Government activities over Brexit. Melanie Onn, MP for Greater Grimsby, tabled a ten-minute ruling (private members) Bill designed to safeguard EU derived workers' rights into primary legislation. The Workers' Rights (Maintenance of EU Standards) Bill sought to transpose specific EU directives and regulations into UK domestic law was not a novel idea. In fact, it very much fell in line with the Government's own plans to table the Great Repeal Bill (GRB) which would do much the same but on a wider scale.²²⁶ Much of the Labour Party's concerns over the proposed Government Bill fell largely on the use of sunset clauses, Henry VIII clauses and statutory instruments which could be used to later undermine and/or change the EU derived

²²⁴ Reported by Hayter, D. 6 December 2016

²²⁵ Walker, P. (2016) 'Labour MPs travel to Brussels aiming to 'shape debate' on Brexit', *The Guardian*. 9 November 2016.

²²⁶ The Bill was heavily criticised in the Labour ranks based on its name alone. The Government eventually changed the proposed name of the Bill. It became the European Union (withdrawal) Bill and was presented in the next Parliament.

rights. Simply put, there was little trust that the Conservative Government would truly want, or be prepared to, protect workers' rights which often came at the expense of businesses. Onn had the support of the shadow Brexit Department when tabling the Bill and Starmer spoke at the launch 'party' of the bill alongside the Liz Snape, former President of the Trade Union Congress, and Assistant General of UNISON on 11 January 2017. General attendance to the launch was very strong with the likes of Labour stalwart Denis Skinner and Shadow Spokesperson for Brexit Baroness Hayter and many others, to the point that the Committee Room, albeit one of the smaller ones, was packed out. There was a sense of great enthusiasm and optimism from those at the event that the Bill would perform well in the Commons. It was in theory an inoffensive attempt to provide some much-needed certainty for workers and business and, perhaps more importantly, get the Labour Party more involved in the process. Theresa May announced to Conference in October 2016 that her Government would introduce the GRB to override the European Communities Act, 1972 and in doing so transpose the *aquis* of EU law onto a domestic legislative footing.²²⁷ During the same speech she declared that her party was in fact the 'true workers party' and as such would enhance, not erode, the rights of workers in the UK.²²⁸ Such rhetoric should have bode well for the success of Onn's Bill as it appeared as though the two parties were on the same page on at least one issue. Enthusiasm for the Bill was not reflective of the fact that the Conservatives would be unwilling to see any form of a Labour legislative victory in the Commons particularly in a period typified by intense political feeling. The Bill was to have its Second Reading on 13 January 2017 but fell afoul of Conservative filibustering on the Broadcasting (Radio Multiplex Services) Bill and was rescheduled to 24 February 2017. The Bill was never to come to fruition during the Parliamentary session due to the introduction of the EU (Notification of Withdrawal) Bill and then the calling of a General Election in April 2017. The failure of the Bill to gain any traction in the House and its failure at the hands of Conservative game-playing might have been used more effectively by the Labour Party as evidence of the Conservative unwillingness to protect the UK's workers and their rights and highlight the fact that the Government was not the party of the workers that it claimed to be. The lack of

²²⁷ Theresa May, (2016): Address to Conservative Party Conference. 2 October 2016.

²²⁸ *Ibid*

opportunity to make the most of this, as was common over the withdrawal period, was the ever-changing and fast-moving nature of the Brexit-beast; no sooner had one issue passed, a new one developed, making it difficult for members of the Opposition to keep track with that which they were opposing. The one concrete way that the Party had the possibility to focus on specific elements of the Brexit programme was during the passage of legislation.

Onn's attempt was indicative of Labour's wider experience between June 2016-March 2017; innocuous but genuine attempts to colour the course of Brexit, hitting the brick wall that was the Conservative policy of secrecy and discipline surrounding Brexit. Labour could claim the moral high-ground for many of their policy objectives such as guaranteeing EU citizens' rights, a greater degree of Parliamentary involvement and scrutiny and a refusal to scapegoat migrants for domestic problems, but moral high-ground could do little to diminish Conservative dominance over the Brexit negotiations. Much of Labour's experience in this period is typified by their political will far exceeding the institutional opportunities open to it. Many of the mechanisms it might have hoped to use against the Government were non-binding; anything more potent would have fallen foul of government control of the diary.

House of Lords – Labour Peer activities

During this time, the House of Lords was not immune to the pressures of trying to figure out what Brexit entailed. Activities, both partisan and non-partisan, were stepped up across the House as early as July 2016. The Labour Party appointed its Shadow Spokesperson for Exiting the EU, Baroness Hayter of Kentish Town was given the role; she had extensive experience working within the European Union and the Labour's NEC and was intensely pro-EU. Hayter's work got off to a slow start due to the chaos within the Commons Labour team; however, that calm did not last long. While Hayter made no attempt to participate in all Brexit related debates and activities, she undertook the organisation of Labour's activities in the Lords. The reasoning for such a strategy was simple, Brexit was too big a job for a single person given the far fewer resources available to a Spokesperson in the Lords comparative to their Commons counterpart. Added to this was the wealth of expertise across the Party in the Lords on various issues, not just Europe but across various sectors; experience, it could be argued, which was lacking on all sides of the Lower

Chamber. There were many who despaired at the notion of leaving the EU with many having a different connection to the European project than their (generally) younger colleagues in the Commons. As such, Labour Peers throughout the House were incredibly interested in and vocal about Brexit related issues. On 19 October 2016, Hayter organised the first meeting of Labour's Frontbench Peers and Labour Members of the various EU committees in the Lords. The underlying purpose of these meetings were to coordinate Brexit-related activities in the Lords, notably the scrutiny role. In an email to her colleagues, Hayter noted that the 'Government does not appear keen on encouraging engagement either with Parliamentarians nor with the Public' and as such their response and strategy needed to be clear and coordinated to challenge the Government's approach.²²⁹ Baroness Smith of Basildon, Labour Leader in the Lords, said of Brexit that it is one of those issues 'that the more you find out, the less you know', which was a sentiment echoed around the room.²³⁰ Some of those present at the meeting were members of the European Union Select Committee or one of its six sub-committees and had already started to work on a series of inquiries into the 'Brexit effect' on various policy areas or sectors. The purpose of having Labour Committee members involved in the meeting was two-fold; on the one hand those individuals would likely have enormous expertise on the EU and the second purpose was that it served as an efficiency measure. By having these members directly involved, the Frontbench Peers could bypass the need to telescopically analyse the Committees' work to identify messages which tallied with Labour Party lines – in essence the leg work was already done. Lord Whitty, member of the EU Committee and EU Internal Market sub-committee, raised an issue in relation to such functions, simply that 'we need to know what the Labour Party wants' to fulfil that role.²³¹

The meetings of the Labour Peers Brexit group were made semi-regular and were scheduled to sit before significant events or when they could be joined by members of the Commons team such as Keir Starmer or Hilary Benn, who had been elected to Chair the Exiting the EU Committee in the Commons. These occasions were intended to allow for some unity between, and assimilation of, the activities and

²²⁹ Hayter, D. (2016) *Email to members of the House of Lords Labour Frontbench and Labour members of the EU Select Committee*. 7 October 2016.

²³⁰ Smith, A. *Labour Peers Frontbench meeting* [closed meeting] 19 October 2016.

²³¹ Whitty, L. *Labour Peers Frontbench Meeting* [Closed meeting] 19 October 2016.

messages on Brexit between the Labour Party in the Commons and the Lords. When Starmer met the group on 1 February 2017, frustrations with Brexit were beginning to come to the fore as he tackled the group's questions; on the issue of losing Single Market membership, he responded with "we have to accept the referendum. If Labour ever wants to be in a position to regain power, we have to vote this [EU Notification of Withdrawal Bill] through. If we thought that leaving was so risky, we should not have agreed to a referendum in first place".²³² He ended the meeting with his view on being in a position of opposition, to which he said it is "frustrating...but we have to use this as a reminder that we need to be in a position to win in the future. At most we can take the edges off of what the Government proposes and do our best to provide restraints".²³³ Certainly not an optimistic view of Labour's position at a time when the Commons were voting through a Bill which would formally begin the process of leaving the EU, but it was undoubtedly a reasonably realistic one.

In summary, Labour's activities between June 2016 and January 2017 were left wanting; they failed to provide a convincing performance during the referendum campaign and consequently fell apart when it ended. Labour's real challenges around Brexit have their conception in their disunity of that period, as exemplified by the leadership challenge that quickly followed. The disunity in this period can be more closely associated with the divisions caused by Corbyn's leadership than with the issue of Europe as had been the case in the accession period; largely speaking much of the PLP had voted to remain but the dissonance between this and the results of the referendum threatened future electoral success if they didn't get their response to Brexit right. The MPs were predominantly of a centre-left persuasion, but huge swathes of the party membership had shifted further to the left and wanted to stay there, as shown by the re-election of Corbyn as leader. This highlighted a disconnect between the two. Labour's pre-occupation during the summer of 2016 put them on the back foot with regards to policy formation but more importantly there were few opportunities to really hold the Government to account. Where these opportunities did exist, using Parliamentary procedures such as Opposition Day Debates, Labour's actions were flawed and often resulted in more problems than

²³² Starmer, K. *Labour Peers Frontbench Meeting*. 1 February 2016.

²³³ *Ibid.*

they solved. The concessions that Labour perceived itself as having drawn from the Government, such as December's Opposition Day motion, were half-hearted and only sought to draw Labour further into committing itself to going along with the Government on Brexit. The Labour Party, as a body of opposition and a mechanism for the reduction of executive dominance, was ineffectual during this period and large portions of the scrutiny and accountability work fell onto the House of Lords and its non-partisan European Union Select Committee.

However, the fault cannot be said to lie solely with the Labour Party decision making and activities. The institutional mechanisms on offer to non-government Parliamentarians are intentionally designed as non-binding. While these mechanisms are accessible to all Parliamentarians, the Government's response or participation are not policed or monitored. Failure on the Government's part to respond to such activity may risk a political cost but beyond that there is no formal mechanism to force them. Additionally, where non-binding practises are employed i.e., legislation, government control of the parliamentary timetable is a key tool through which the executive can mitigate the risk of such activities. During periods where the Government has assessed that the political cost would not be significant, or analysis suggests that they have time to make up any such losses the Government is not obliged to allow non-government Parliamentarian's opportunities to oppose. Such activity is more evident in the 2017-19 parliamentary session, when the Government adopted a strategy of ignoring Opposition Day motions. For the period under review in this chapter, it is clear that the Government was operating on a platform of executive dominance. At this stage of the process there was very little official business relating to Brexit. This resulted in the Labour Party having very little recourse to challenge the Government on a political front and the House of Commons had even less that it could scrutinise.

Chapter Six:

Legislating for Withdrawal

Once the issue of whether the United Kingdom was leaving the European Union was seemingly settled, attention then turned to the process of leaving. Article 50 TEU, a somewhat vague but integral clause of the Lisbon Treaty, was the only mechanism which could provide for the nation's withdrawal. The clause became the key talking point of politicians, lawyers, and journalists for months, not least because the Government was taken to court over its intention to invoke it without prior Parliamentary approval. This chapter will highlight the complexities around the notification of the UK's intention to withdraw from the EU, with a focus on the Santos and M –v- Secretary of State for Exiting the EU court case and the subsequent European Union (Notification of Withdrawal) Bill, and suggest that the most effective show of opposition came from outside of the Parliamentary system and that without it, the Labour Party, indeed the whole Parliamentary system, would have played a far lesser role than it was consequently able to.

Legislating for Brexit

Article 50 of the Treaty on European Union 2007, more commonly known as the Lisbon Treaty, was the first occasion in the history of the European Community when a specific mechanism for a member state's withdrawal was provided for.²³⁴ Prior to this, any nation wishing to withdraw their membership from the Community would have had to rely on international law to do so. The inclusion of such an article was designed to demonstrate the voluntary nature of membership to the EU and to challenge the notion of a democratic deficit within the supranational entity. The withdrawal provision was originally drafted for a constitutional treaty in the early 2000s but this was rejected by the peoples of France and the Netherlands, whom had voted in a referendum on the ratification of the Constitutional Treaty.²³⁵ The

²³⁴ European Union, *Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community*, 13 December 2007, 2007/ C306/01.

²³⁵ Crum, B., (2013) *Learning from the EU Constitutional Treaty: Democratic Constitutionalization beyond the Nation-State*, London: Routledge.

work which had been put into the Constitutional Treaty was subsequently ‘watered down’ into what became the Lisbon Treaty but the clause relating to the withdrawal process was transferred untouched. Lord Kerr of Kinlochard had been one of those responsible for the drafting of Article 50 and he became an increasingly sought-after man once the UK had decided to withdraw its membership from the EU. In 2002-3 he acted as Secretary-General to the European Constitutional Convention and following the referendum spoke frequently about his involvement in drafting the clause. Talking to *POLITICO* in March 2017, Kerr explained that he never envisaged the UK being the nation to invoke Article 50 but rather ‘it seemed...very likely that a dictatorial regime would then, in high dudgeon, want to storm out. And to have a procedure for storming out seemed quite a sensible thing to do – to avoid the legal chaos of going with no agreement.’²³⁶ The increased attention paid to Lord Kerr was borne out of the inexplicit nature of Article 50; notable clause one. Clause one stipulated that ‘any member state may decide to withdraw from the Union in accordance with its own constitutional requirements’ and this raised the first challenge of invoking the article.²³⁷ The uncodified nature of the UK’s Constitution resulted in questions around what such constitutional requirements actually were. As far as the Government was concerned this was solely their responsibility through the execution of powers falling under crown prerogative. Prime Minister Theresa May, announced at the Conservative Party Conference in October 2016, that ‘it is not up to the House of Commons to invoke Article 50, and it is not up to the House of Lords. It is up to the Government to trigger Article 50 and the Government alone.’²³⁸ It was also here that she announced her intention to do this by the end of March 2017. Specifically, she was addressing the issue relating to a court case brought against the Government over its right to invoke Article 50 without first seeking approval, via primary legislation, from both ends of the House of Parliament. It was clear that May and her Government intended to use the powers provided under the crown prerogative to withdraw from the Community through the insistence that it was fundamentally a treaty issue. The UK’s membership to the EU was provided for by treaties and therefore its withdrawal could be handled as one. Such a position was

²³⁶ Gray, A. (2017). ‘Article 50 author Lord Kerr: I didn’t have the UK in mind’, *POLITICO*, 3 March 2017.

²³⁷ Article 50(1), TEU.

²³⁸ May, T. (2016). Speech: ‘Britain after Brexit: A Vision of a Global Britain’. Conservative Party Conference, 2nd October 2016.

challenged given the depth of feeling that the country had over the issue and the belief that the enormity of the issue needed to be overseen by Parliament rather than a single political party.

*Opposition sensu stricto versus opposition sensu largo*²³⁹

In July 2016, a judicial review application was brought against the Secretary of State for Exiting the European Union over the Government's intention to invoke Article 50 by various parties with the lead claimant being Gina Miller. The case was heard in the High Court in October 2016 and was arguably the greatest example of effective opposition against the Government between the referendum and the invoking of Article 50 in March 2017. This opposition took place outside of the Parliamentary system and as such we will consider this as opposition *sensu largo*. Taking Kubat's definition of the types of opposition as appropriate and current, opposition *sensu stricto* signifies that which occurs within the political apparatus of a nation i.e., Parliamentary system, with opposition *sensu largo* being reserved for resistance beyond such political institutions.²⁴⁰ This definition is useful because it allows for opposition *sensu largo* to be politically motivated, but better designates the locality of such opposition. This too allows us to understand who is involved in the opposition activity; *sensu stricto* would relate to politicians, in the Commons and the Lords, as well as political parties within the Parliamentary system. Whereas *sensu largo* accounts for the actions of individual members of society. Santos and M –v- Secretary of State for Exiting the European Union is an example of opposition which is not specifically the focus of this research but the success of the case against the Government allowed for a greater degree of opposition *sensu stricto*. This had the effect of reducing executive dominance by establishing a role for Parliament in the Brexit process.

The judicial review was brought against the Government on the basis that it did not have the right to notify the European Union of the UK's intention to withdraw its membership under the crown prerogative. The claimants, led by hedge fund manager Gina Miller, represented by Lord Pannick, stated that the case raised 'an issue of constitutional importance concerning the limits of the powers of the

²³⁹ Kubat, M., (2010) *Political Opposition in Theory and Central European Practice* (Vol. 3) Peter Lang.

²⁴⁰ *Ibid.*

executive branch'.²⁴¹ Their argument was based around the rights which were imparted on citizens as a result of the UK's membership to the EU and which were provided for by the European Communities Act, 1972. As that Act had been written in the statute as a piece of primary legislation, the Government could not, through the use of prerogative powers, undermine an Act of Parliament. Furthermore, the Brexit referendum, which was underpinned by the European Referendum Act 2015, held no statutory power and therefore could only be considered as advisory because the Act never made explicit that the result would legally be fulfilled.²⁴² In regards as to what was constitutionally appropriate, the claimants argued that as an Act of Parliament (ECA, 1972) was the 'constitutionally appropriate mechanism for accession', then the same would have to be true of any reversal of that.²⁴³ Beyond this, the claimants argued that the act of invoking Article 50 was irrevocable, that it was equivalent to 'the pulling of the trigger. And once you have pulled the trigger, the consequence follows. The bullet hits the target.'²⁴⁴ Once the trigger is pulled, the bullet cannot be recalled. The revocability of Article 50 was an issue to be decided outside of the courts. Indeed, the European Parliament stated outright that the notice served under Article 50 could be withdrawn, should the remaining 27 member states agree to it.²⁴⁵ Lord Kerr reiterated this in a speech hosted by Open Britain during which he stated that 'if we had wanted a notification letter to be irrevocable, we would have drafted the clause to say so. But we didn't, and the clause doesn't. So, the die is not cast irretrievably'.²⁴⁶

The Government, committed to fulfilling the 'will of the people' and politically unwilling to walk away from leaving the EU, was not willing to argue in the Courts that invoking Article 50 was anything other than permanent. This is where any agreement between the claimants and defendants ended. In her speech to the party Conference in 2016, May was to go 'all-out' in rallying popular support for her side. She described those who were seeking Parliamentary involvement as individuals

²⁴¹ CO/3809/2016;CO/3281/2016 'Skeleton Argument for the Lead Claimant, Gina Miller'.

²⁴² 'Skeleton Argument for the Lead Claimant, Gina Miller'.

²⁴³ *Ibid.*

²⁴⁴ Pannick, D. 2016, 'Santos and M –V- Secretary of State for Exiting the EU Morning transcript for 13 October 2016'.

²⁴⁵ European Parliament (2016) 'Draft motion for a resolution to wind up the debate on negotiations with the United Kingdom following its notification that it intends to withdraw from the European Union'. B8-0000/2017.

²⁴⁶ Kerr, J. (2017) Speech 'Article 50: The Facts', Open Britain. 10 November 2017.

‘not standing up for democracy, they’re trying to subvert it. They’re not trying to get Brexit right; they’re trying to kill it by delaying it. They are insulting the intelligence of the British people.’²⁴⁷ This sentiment was carried forward into the court case when the State suggested that ‘the courts should not entertain a claim which in substance challenges that decision directly or, at the least, indirectly by seeking to prevent the decision from being implemented’.²⁴⁸ It was implicit in their argument that the case was an attempt to stop Brexit from being carried out despite the claimants’ statement to the contrary. This was an intensely powerful message in an environment where the media were gunning for anyone who seemed to be trying to thwart the Brexit process. Gina Miller was to experience this attitude at its fullest when she received threats of harm because of her involvement in this case.²⁴⁹

The Government’s case, led by Attorney General Jeremy Wright QC and James Eadie QC, rested on the legality and use of crown prerogative. They held that issues relating to the UK’s membership of the EU fell within the purview of these powers because such membership was consequent of an international treaty.²⁵⁰ The making and unmaking of treaties is a clear use of the crown prerogative, not least because in most circumstances these operate on the plane of international law and do not affect domestic law and are therefore not justiciable.²⁵¹ This may have been the case in most circumstances, however membership to the EU was written into the statute and made equivalent to, and in places superior to, UK domestic law. In regard to the invoking of Article 50, the defendants carried that there was an implicit understanding of Parliament and the Public that the result of the referendum would be acted upon and that the 2015 Act (EU Referendum Act) did not ‘expressly nor implicitly require that further Parliamentary authority’ was needed before Article 50 was triggered.²⁵²

The High Court heard the case for three days in October 2016 and handed down its judgment on 3rd November 2016. The Lord Chief Justice (Lord Thomas of

²⁴⁷ May, T. (2016) ‘Keynote speech’ Conservative Party Conference, 2 October 2016.

²⁴⁸ Davis, D. (2016) ‘Skeleton argument of the Secretary of State’, (2016) CO/3809/2016; CO/3281/2016.

²⁴⁹ This is best exemplified in the case brought against Rhoddri Phillips, 4th Viscount St Davids, who was prosecuted and sentenced to twelve weeks imprisonment in July 2017. Phillips, amongst other issues, had offered £5000 to anyone who would run Miller over.

²⁵⁰ Davis, D. (2016) *Op. Cit.*

²⁵¹ *Ibid.*

²⁵² *Ibid.*

Cwmgiedd), Master of the Rolls (Sir Terence Etherton) and Lord Justice Sales stated that ‘subordination of the crown (i.e. Executive Government) to law is the foundation of the rule of law in the UK’ and held that the Secretary of State did not have the power through the use of crown prerogative to the notify the EU of the UK’s intention to withdraw its membership.²⁵³ According to the High Court’s application of the law, primary legislation would be required to give authorisation to the invocation of Article 50.

During this time the Labour Party had consistently maintained that Parliamentary involvement was paramount throughout the Brexit process, though the party had focused on achieving a vote in Parliament on the Brexit plan rather than on the right to invoke Article 50. When the results of the court case were released on 3 November 2016, Labour’s response (in its most simplistic form) was one of ‘we told you so’. The PLP top lines for the process of invoking Article 50 stated that the ‘High Court Ruling underlines that the Prime Minister was wrong to try and side-line the House of Commons and public scrutiny’.²⁵⁴ Following the judgement, the Government took just four days to announce that it was appealing the result of the High Court ruling and had been granted permission to ‘leapfrog’ straight to the Supreme Court.²⁵⁵ Labour’s party line on the issue was that ‘rather than fighting legal action in the Courts, the Government should be allowing proper debate in Parliament’.²⁵⁶ The Government was under no obligation to take note of the opposition in this instance and, in all likelihood, believed that it had the people’s support on the issue.

Following the judgment of the High Court in November, the Judges that had presided over the case were victims of vitriolic attacks in the press. This was not least the case in the *Daily Mail* which labelled them as ‘enemies of the people’.²⁵⁷ While the Labour Party condemned the decision to appeal and the attacks on the judiciary, there was little more than verbal protestations. There were no attempts to put down a more formal opposition in the shape of an EDM or other mechanism to record its

²⁵³ R Miller V Secretary of State, (2016). ‘Approved Judgment’. 3 November 2016. [2016] EWHC 2768.

²⁵⁴ *Parliamentary Labour Party*, (2016). Top lines for the process of invoking Article 50. 7 November 2016

²⁵⁵ HC DEB vol.616 col.1255 7 November 2016.

²⁵⁶ *Parliamentary Labour Party*, (2016). Top Lines. 5 December 2016.

²⁵⁷ Slack, J. *op. cit.*

dissatisfaction with the decision to appeal the result. There was no way to take this decision out of the Government's hands. However, given the expense, both in time lost and financially, Labour would have been within its right to force a debate and/or a vote specifically on the issue of an appeal, to have its position officially taken note of. Despite the appeal, there was some clarity offered by the Government's decision; there would be an answer, one way or the other, in January 2017. In November 2016, Kerr, a Crossbench Peer, attended a Shadow Brexit Department meeting. During the meeting Kerr indicated that he felt that the Government would lose their appeal meaning that the 'triggering' of Article 50 would have to pass through Parliament and that the measure would have to be an Act of Parliament and not merely a resolution.²⁵⁸ It should have come as no surprise to many when the Government did lose the case at the Supreme Court given that it made very little effort to bolster its argument at all, thereby suggesting that the High Court incorrectly applied the law in delivering the original judgment. When the Supreme Court sat to preside over the judgement in December 2016, it was with a historic precedent; for the first time in the history of the court, since the creation of the Law Lords in 1876, there was to be a panel of eleven Justices, such was the constitutional significance of the case. Ordinary cases would more often be subject to a panel of five Justices. Added to this was the intense exposure afforded to the case by the press at large; key moments of the case were at times broadcasted live on television by various news outlets, particularly as the judgment was handed down on 24 January 2017. Eight of the eleven Justices agreed with the High Court judgment that the authority to invoke Article 50 had to be conferred to the Government through an Act of Parliament. Despite losing its appeal, the Government had no intention of fighting the court case to the bitter end which would have meant appealing once more to the European Court of Justice, the irony of which was lost on no-one.

Gina Miller and her fellow claimants achieved something that no member of the Official Opposition, or any non-government Parliamentarian was able to within the Parliamentary system. They forced a clear Government defeat and retreat when the Government was making an explicit attempt to exceed its executive powers to exclude Parliamentary scrutiny on the issue and avoid Parliament altogether. The

²⁵⁸ Kerr, J. (2016). *Meeting of the Shadow Brexit Department* [closed group] 7 November 2016.

total cost of which was £1.2m.²⁵⁹ Some may argue that Miller merely beat them to it and that in the chaos of the summer, she got the head-start on the legal implications of the Government's Brexit strategies. This is another example of the way in which the legislature is not designed to withstand an overly dominant government; there is no procedure available that would have forced the Government to involve Parliament in the process. Activity of the House is mainly achieved through polite acceptance of convention and precedent, but this falls short in exceptional circumstances or in the face of a government that simply takes no notice. In reality, it is probable that even if there had been scope to force the Government's hand on the issue of Parliamentary involvement, it would have been a difficult path for Labour to follow. Having been bruised so badly by internal disunity and having been on the wrong side of referendum outcome, Labour could not afford to appear to be 'thwarting the will of the people'. Labour was in a position of needing to appear supportive of Brexit in principle while finding a way to oppose the Government on its activities.

European Union (Notification of Withdrawal) Act 2017

In anticipation of its defeat and with some advance notice that an Act of Parliament would be required in order to start the withdrawal process, the Government brought forward the European Union (Notification of Withdrawal) Bill. The Bill was short with just a single operative clause which, if passed, would provide the Prime Minister the authority to invoke Article 50. It was clear from the design of the Bill that the Government intended for it to pass through unimpeded and 'clean'.²⁶⁰

The invocation of Article 50 was becoming an increasingly complicated issue for the Labour Party; from the earliest point it had been at pains to highlight that they would 'respect the outcome of the referendum'.²⁶¹ The constant emphasis on 'supporting the will of the people' and 'respecting the instruction given' was picked up on by Lord Taverne, a Liberal Democrat Peer, during an interview. When discussing Keir Starmer, he stated he 'wish[ed] he wouldn't start every bloody speech by saying he

²⁵⁹ *Department for Exiting the European Union*, 2017. 'Annual Report and Accounts 2016-17', 19 July 2017.

²⁶⁰ The single operative clause of the European Union (Notification of Withdrawal) Act 2017.

(1) The Prime Minister may notify, under Article 50(2) of the Treaty on European Union, the United Kingdom's intention to withdraw from the EU.

²⁶¹ Thornberry, E. 2016. *Note to PLP members – responding to the EU referendum result*. July 2016.

respected the referendum result. You've said it, you don't need to keep saying it.'²⁶² Except that he did. As annoying as it had been to hear the message repeated over and over, it was a message that Labour had to press. The issue of withdrawing from the EU was a difficult policy for the party that had campaigned, in its droves, to remain within the Community; it was the only mainstream Party that was to change its stance on Europe wholesale. The Government under David Cameron, although officially leading the Remain campaign was divided through and through; key members of the cabinet and backbenches were supporting the leave campaign and Cameron's resignation and subsequent reshuffle provided for a fresh start that the whole Party was encouraged to get behind. The Liberal Democrats briefly flirted with the idea of supporting the outcome before deciding that it would maintain its remain stance and is arguably the only party within the UK political system to have maintained a homogenous party line on Europe throughout. The Scottish National Party (SNP) was steadfast in its continued unwillingness to support leaving the European Union given that Scotland had voted to remain. Having to change its view and accept the referendum result often meant that for the Labour Party policy decisions relating to Brexit were quite slow to form and lacking in clarity. Already on the back foot due to time lost in the months following the referendum, Labour was disorganised in its approach to the EU (Notification of Withdrawal) Bill. Jenny Chapman, MP for Darlington and Junior Shadow Minister for Exiting the EU, noted that 'colleagues are confused' on whether they were to 'vote for or against Article 50'.²⁶³ However, for Starmer, even at this early stage, the path was clear enough, responding immediately with 'we will not block it'.²⁶⁴ Despite not yet having an official line on the matter, Starmer recognised the political difficulties that Labour was facing; traditional Labour supporters were more likely to have voted to leave the EU and many of their constituencies, particularly in the North of England, had. To be seen blocking Brexit would risk the party's future electoral prospects. Politics took precedence over principle in the face of such devastation.

²⁶² Taverne, D. (2017). *Private interview with Mordue, C.*

²⁶³ Chapman, J. (2016) *Meeting of the Shadow Brexit Department* [Closed group] 7 November 2016.

²⁶⁴ Starmer, K. *Ibid.*

European Union (Notification of Withdrawal) Bill

Having failed in its attempts to circumvent the need for Parliamentary approval, the Government was subsequently required to submit a Bill to the House. The European Union (Notification of Withdrawal) Bill was presented to the House of Commons on 26 January 2017, though it was announced two days previously in a statement from Davis when dealing with the Supreme Court's decision. During the statement Davis emphasised that 'it will be the most straightforward Bill possible' and Bill 132 was just that.²⁶⁵ Providing just one single operative clause which, if passed, allowed that 'the Prime Minister may notify, under Article 50(2) of the Treaty on European Union, the United Kingdom's intention to withdraw from the EU'.²⁶⁶ Clearly from the Conservative perspective this was nothing more than a matter of procedure; the Court's said they needed permission to invoke Article 50 and the Bill would do no more than that. There was a clear attempt to thwart any possibilities of amending the Bill by drawing it so tightly.

Labour's attempts to undermine this vision for the Bill came in the shape of multiple amendments. As early as 3 December 2016, Corbyn indicated that amendments put down will target the wider issues relating to Brexit. Addressing the Party of European Socialists (PES) in Prague, he announced 'we're putting down an amendment to the proposal in Parliament which will attempt to gain a guarantee of market access to Europe for Britain after leaving the EU. Obviously, maintenance of the workers' rights and conditions we talked about and also, as a Party, we want to maintain the closest possible relationship.'²⁶⁷ These issues did not fall within the purview of the Bill but there were so few other opportunities for Labour to hold the Government to account on these issues that there was little choice but to use the Bill as a vehicle for the discussions of Brexit more widely. This was used by the Conservatives against them to highlight that the party was attempting to delay the Brexit process. While Labour was going to attempt to defeat the Government and see any amendments passed, it had been clear that the Labour Party policy was not to block the Bill. During the 24

²⁶⁵ Davis, D. HC Deb 24 January 2017, vol 620.

²⁶⁶ EU (Notification of Withdrawal) Bill, HC Bill 132.

²⁶⁷ Corbyn, J. (2016). Speech 'Addressing the PES', *PES Council "Saving Europe"*. 3 December 2016, Prague.

January statement on Article 50, Starmer declared that Labour ‘will not frustrate the process, but we will seek to lay amendments to ensure proper scrutiny and accountability throughout the process’.²⁶⁸ However, taking this position ultimately weakened the hand that Labour could play throughout the Bill. Knowing that in the long run Labour would pass this Bill undoubtedly made life easier for the Conservatives, who wanted the Bill passed unamended. The Conservative position was settled further when Corbyn told *Sky News* on the 19 January (even before the Bill had been announced) that he would be imposing a three-line whip on the issue. In the interview he stated, “I have made it clear; the Labour Party accepts and respects the decision of the British people. We will not block Article 50’ and ‘all Labour MPs will be asked to vote in that direction next week or whenever the vote comes up’”.²⁶⁹ The three-line whip was made official in another *Sky News* interview on the 26 January 2017; on hearing this news, Tulip Siddiq, MP for Hampstead and Kilburn, quit her job as Shadow Minister for Early Years Education.

31 January 2017 marked the start of Second Reading, in his opening remarks Starmer reflected on the challenges faced by his party with his admittance that ‘for Labour, this is a very difficult Bill’ which was met with laughter in the Chamber.²⁷⁰ The position was made more difficult perhaps following Davis’ reminder that the ‘House of Commons has already overwhelmingly passed a motion to support the triggering of Article 50 by 31 March’, harking back to the Labour Party’s flawed Opposition Day Motion passed in December 2016.²⁷¹ Labour attempted to disguise its weak hand going into the debates by emphasising that while it wouldn’t block the Bill, neither would it ‘give the Government a blank cheque’ but would hold them to account through its amendments.²⁷² Indeed, the Bill was passed at Second Reading 498 votes in favour and 114 votes against the progression of the Bill; a total of 47 Labour MPs broke the three-line whip to vote alongside the SNP, seven Liberal

²⁶⁸ Starmer, K. HC Deb 24 January 2017, vol 620, col 163

²⁶⁹ Corbyn, J. (2016). Interview ‘Corbyn’s three-line whip on Brexit A50 Bill’. *Sky News*, 19 January 2017

²⁷⁰ Starmer, K. HC Deb 31 January 2017 vol 620, col 824

²⁷¹ Davis, D. HC Deb 31 January 2017 vol 620, col 818

²⁷² PLP Top Lines, (2017). Briefing ‘Committee Stage and Third Reading’. *Parliamentary Labour Party*, 8 February 2017

Democrats and Conservative MP Kenneth Clarke to stop the Bill from proceeding to its third reading.²⁷³

Amending the ‘unamendable’

No less than 277 amendments were laid against the EU (Notification of Withdrawal) Bill. Many of these were laid by Labour’s backbenchers including one reasoned amendment laid by Meg Hillier in an attempt to destroy the Bill; although the SNP’s reasoned amendment was selected over hers.²⁷⁴ Naturally, there was a high degree of overlap between the amendments laid and not all were allowed or heard. The Labour Party’s Frontbench team put down eight key amendments against the Bill and officially supported an amendment put down by Melanie Onn, which was an extension of her previously unsuccessful EU (Maintenance of Workers’ Rights) Bill. The eight official labour amendments were:

- i) Parliamentary oversights of negotiations.²⁷⁵ The Government to publish a report every two months on the progress of Brexit negotiations and make relevant documents available to Parliament (NC3).²⁷⁶
- ii) Meaningful Vote in Parliament on the final deal. The House of Commons to have the first say (through debate and vote) on the proposed Article 50 deal before the European Parliament and Council (NC1).²⁷⁷
- iii) Establish a broad number of principles the Government must seek to negotiate with regard to, protecting workers’ rights and securing full tariff and impediment free access to the Single Market (NC2).²⁷⁸
- iv) Guarantee legal rights for EU nationals living in the UK before Brexit negotiations begin (NC6 and NC8).²⁷⁹
- v) Seek continued membership of Euratom (The European Atomic Energy Community (NC192)).²⁸⁰

²⁷³ Division 135 HC Deb 1 February 2017 vol 620, col 1136-1140

²⁷⁴ House of Commons, ‘Notices of Amendments given up to and including Thursday 2 February 2017’, 3 February 2017

²⁷⁵ *Ibid*

²⁷⁶ PLP Top Lines, *Op. Cit.*

²⁷⁷ *Ibid.*

²⁷⁸ *Ibid.*

²⁷⁹ *Ibid.*

²⁸⁰ *Ibid.*

- vi) Ensure the Government must seek to retain all existing EU measures to prevent tax avoidance and evasion post-Brexit (NC7).²⁸¹
- vii) Require the Government to consult regularly with the Governments in Wales, Scotland and Northern Ireland (NC4).²⁸²
- viii) Require the Government to publish any impact assessment that has been carried out on the impact of leaving the Single Market and Customs Unions (NC5).²⁸³

Labour's first attempt to secure a defeat came on day one of the Committee of the Whole House when NC3 was debated. Moved by Matthew Pennycook, Shadow Minister for Exiting the European Union, the clause fell under the bracket of Parliamentary scrutiny and the purpose of which, according to Pennycook, was to provide 'Parliament with the means not only to effectively monitor the Government's progress throughout the negotiations, but to actively contribute to their success by facilitating substantive scrutiny that can positively influence the outcome'.²⁸⁴

Pennycook and NC3 were quick to face opposition on the basis that it would work against the negotiators if their European counterparts were able to follow, in detail, the Government's work on the Brexit negotiations; Labours proposal was unrealistic not just in scope but also the proposed time frame and Labour were accused of attempting to have Parliament micromanage the negotiations to the point of undermining them.²⁸⁵ The attempt was solid enough from the opposition benches though. The Government had been consistently vague with regard to Brexit details to the point of raising the question of whether there were any details to be vague about. The lack of information leaking from the Cabinet was unusual and the Government's various attempts to side-line Parliament painted a sorry picture; that of a government who was not in control of the process. Labours attempts to increase the level of Parliamentary scrutiny tallied with one of the key issues raised by the referendum campaign and that was that the United Kingdom wanted to 'take back control' from Europe and return its sovereignty to Parliament. However, NC3 was rejected when tested with a vote; 284 voted in favour whereas 333 voted against. Despite the

²⁸¹ *Ibid.*

²⁸² *Ibid.*

²⁸³ *Ibid.*

²⁸⁴ Pennycook, M. HC Deb 6 February 2017 vol 621, col 58

²⁸⁵ HC Deb Vol 621, Col 59 and 60

attempt to reduce executive dominance over the issue of Brexit, it was clear in this first vote that the Government was set on maintaining its control over Brexit and Conservative Party discipline exemplified just that.

NC4 (the involvement of devolved nations) was the next clause to face the House. The Government had already instituted a Joint Ministerial Committee (JMC) to work alongside ministers from the devolved nations throughout Brexit. NC4 would have put such an arrangement on the statute and had the Government failed, at any stage, to keep up with the requirement to consult the JMC, the issue would have been judiciable. The Government however were under no obligation to consult the devolved administrations as the issue was a reserved matter and both the High Court and Supreme Court had ruled as such when handing down judgments in the Miller case. There was nothing to indicate that this issue of devolved relations had major support outside of the SNP and the likelihood of a Conservative rebellion on this issue was slim given that there was no real need to put the JMC on a statutory footing. New Clause 4 was rejected with 276 voting for and 333 against.

The second day of the Committee of the Whole House was to see the debates relating to new clause 1 and 5; the vote in Parliament and the publishing of impact assessments. Starmer described NC1 as being the ‘most important debate we have had thus far’ but Pete Wishart of the SNP was quick to level a familiar blow against the Shadow Secretary. Wishart asked ‘is it the case that if all the hon. and learned Gentleman’s proposals are rejected by the Government, the Labour Party will simply endorse Third Reading and support the Government? What is the point, therefore, of making all this case for these proposals if he is just supinely going to cave in to what the Government want on article 50?’²⁸⁶ The position that Labour had put itself in was apparent to more than just the Government. Starmer’s response was strong, but it was to equate the opposition with a position of nagging, not necessarily one of forcing the Government’s hand. He replied with:

“Just to be clear, nagging away, pushing votes, and making the argument, we have got the White Paper, and it is important. Nagging away and making the arguments, we have got commitments about reporting back. Nagging away and making the arguments, we have got a commitment to the vote at the end

²⁸⁶ Wishart, P. HC Deb 7 February 2017 Vol 621, Col 264

of the exercise. So when the charge is levelled at the Opposition that they have not made the case, and are not succeeding on the case, for scrutiny and accountability, that simply does not match what has happened over the last three months".²⁸⁷

This was a passionate response, but not one which really emphasises a strong opposition; Labour had called for a White Paper to be released on the Government's plans but what was delivered fell short of anything detailed and was simply a rehash of the Prime Minister's Lancaster House speech of the 17 January 2017. In fact, there is a stronger argument that the White Paper was only agreed to once members of the Conservative backbenches, such as Anna Soubry, Dominic Grieve and Nicky Morgan, became more vocal in expressing the need for a White Paper to be published. Its publication was probably more intended to soothe backbench rumbling than that of the opposition. It was true though that there had been commitments regarding the vote at the end of the negotiating phase of the Article 50 timeline, however none of these commitments had any statutory grounding and the Government would only ever be bound by its word. NC1 was an attempt to achieve such statutory footing but Starmer was barely into the bones of his speech when he was interrupted by David Jones, Minister of State for Exiting the EU, who declared that 'I can confirm that the Government will bring forward a motion on the final agreement, to be approved by both Houses of Parliament before it is concluded. We expect and intend that this will happen before the European Parliament debates and votes on the final agreement.'²⁸⁸ Starmer immediately called this a 'huge and important concession' and ultimately decided not to put new clause one to a vote.²⁸⁹ For an experienced lawyer, this choice is difficult to fathom. The 'eleventh hour concession' was flawed, it provided no greater clarity as to the exact meaning and weight of the vote.²⁹⁰ It also only committed the Government to a motion and still failed to put the vote on any statutory footing; ultimately even once the vote was completed, there would be nothing to force the Government to act on it. There was a greater degree of consensus across the Chamber as to the need for a final vote on the final Brexit deal struck. However, it is arguable that Starmer recognised that

²⁸⁷ Starmer, K. *Ibid.*

²⁸⁸ Jones, D. *Ibid.*

²⁸⁹ Starmer, K. *Ibid.*

²⁹⁰ Starmer, K. HC Deb 7 February 2017 Vol 621, Col 329.

Government Backbenchers would be unlikely to cross the floor in rebellion when they had been given firm assurances; Conservative MPs having far more reason to trust their Party than anyone else. If this was the assessment made by Starmer and his team, it would be fair to suggest that there was a strong understanding of the nature of the Commons and of what it took to rebel against the Party for most ordinary MPs. Labour was all too aware that its ability to impede the Government over Brexit, thus reducing executive dominance, was slim. It was altogether impossible without the guarantee of government backbench help. Labour would not want to find itself in a position of pushing every issue to division only to be seen to be frequently failing. The position of the Official Opposition is an unenviable one and this notion was exemplified by Starmer during a Labour Lords Frontbench meeting when he suggested that the Party's only hope was 'to take the edges off' of the Government's activities.²⁹¹

New Clause 5 was to follow and was an attempt by Labour to force the Government to publish an impact assessment on the future trading relationship with the EU. The second clause of the amendment would have seen that Government admit to having done no impact assessments if it could not publish one. This move was an attempt to highlight the lack of preparedness (as Labour saw it) of the Government going into the Brexit negotiations and would seek to find support from those who had been frustrated by the level and detail of information the Government had been willing to share. This was particularly the case after the Prime Minister's Lancaster House speech on 17 January 2017 and the subsequent publishing of the White Paper, *'The United Kingdom's exit from and new partnership with the European Union'*.²⁹² During the Speech, May declared that the UK would not be seeking to retain its membership to the Single Market or the Customs Union.²⁹³ This had been the first major announcement made by the Government as to the shape of Brexit and without additional detail suggested that the UK was headed for a 'hard Brexit'. At this stage, Labour was yet to produce a clear line on what its Brexit policy would be and sought to press the Government for further information regarding how close to the 'WTO option' the UK would be going. NC5 was to test the will of the House to find out how

²⁹¹ Starmer, K. [closed meeting] 26 January 2017

²⁹² May, T. (2017). Speech: 'The Government's negotiating objectives for exiting the EU'. 17 January 2017, Lancaster House.

²⁹³ *Ibid.*

much research the Government had done on the outcome of its policy. Labour's amendment was grouped with 61 further amendments calling for the publication of various impact assessments, with most amendments focussing on a specific sector or issue. There was clearly an appetite for more information to be released. However, the main argument used against NC5 was the reliability of the forecasts and subsequent usefulness.²⁹⁴ This was a point that was not really challenged by the Opposition; if the forecasts were so useless, what was the Government using to prepare itself for the Brexit negotiations? Despite the all too frequent emphasis on not 'thwarting the will of the people' by respecting the outcome, an all too familiar counterargument was thrown at the Opposition Benches. Sir Desmond Swayne, Conservative MP for New Forest West, challenged that the clauses were 'based on the fact that the Opposition members genuinely believed in their doomsday forecast, and they are just waiting for it to play out. That is the whole point of delaying the process – it is in the hope that when the sky falls in, the British people will change their minds.'²⁹⁵ This was a much used sentiment towards the Labour Party that played out well in the press; there was a general lack of belief in the Party's commitment to leaving the European Union and it was a valuable way to undermine the opposition's position. When put to the House, NC5 was voted down 281 to 337.²⁹⁶

The third day of the Committee of the Whole House was Labour's last chance in the Commons to defeat the Government over the Bill before it ascended to the Lords. NC2, carried by Paul Blomfield, Shadow Minister for Exiting the EU, related to the conduct of the negotiations. Specifically, it would have required the Government to have regard to public interest over the course of the negotiations.²⁹⁷ Blomfield's justification for the clause lay in the risks associated with the UK's departure from the EU; his focus was on the economy and jobs. This had been the one area that Labour had managed to pin down as a firm policy. Although not quite able to describe how it would achieve it, Labour wanted to see a Brexit that put these two issues at the

²⁹⁴ Duncan-Smith, I. HC Deb 7 February 2017 Vol 621, Col 349

²⁹⁵ Swayne, D. HC Deb 7 February 2017 Vol 621, Col 352

²⁹⁶ Division 143 HC Deb 7 February 2017 Vol 621, Col 395-398

²⁹⁷ Public interest was here defined as (a) maintaining a stable and sustainable economy (b) preserving peace in Northern Ireland (c) having trading agreements with the EU for goods and services that are free of tariff and non-tariff barriers and further regulatory burdens (d) co-operations with the EU in education, research and science, environment protection, and preventing and detecting serious and organised crime and terrorist activity (e) maintaining all existing social, economic, consumer and workers' rights.

forefront. Blomfield was immediately challenged by three Conservatives on Labour's decision to exclude immigration from the clause. Jim Cunningham, Ian Duncan-Smith and Anna Soubry all being distinctly aware of the challenges of Labour's position on the Single Market and subsequently the freedom of movement that membership to it entailed and their emphasis on the issue highlighted Labour's lack of a succinct policy.²⁹⁸ When taken to a division the result of the vote was similar to those which had come before it. The Conservatives and their allies stood strong and defeated the opposition clause 336 to 291.²⁹⁹

The final amendment worthy of note was new clause 192; this would have seen a continuation of membership to Euratom. Prior to the publication of the EU (Notification of Withdrawal) Bill and the accompanying explanatory notes there had been no discussion regarding any future membership to the EU's nuclear programme. The withdrawal from Euratom, as accounted for in the Bill's Explanatory Notes, appeared to come as quite a surprise to many MPs in the House.³⁰⁰ Prior to this, the Government had only ever suggested that the membership was under consideration.³⁰¹ Labour accused the Government of going beyond the mandate given to them by the referendum, given that it 'certainly was not on the ballot paper' and the SNP's Patrick Grady describe the removal of Euratom membership as 'being taken out of it without any warning'.³⁰² When tested by the House the amendment was also rejected by 336 votes to 287.³⁰³

The Labour Party in the Commons failed to force a government defeat over the EU (Notification of Withdrawal) Bill but despite any flaws in their proposed amendments the failure was perhaps more the result of Conservative Party cohesiveness than anything else. The composition of the House of Commons (figure one), at this stage, favoured the Government with 330 MPs to Labour's 229, meaning that the Conservatives maintained a 4-seat lead over the 326 needed to form a majority Government. Assuming the inclusion of the SNP and Liberal Democrat's votes with that of Labour, the Conservatives could expect a working majority of around 38

²⁹⁸ Cunningham, J. Duncan-Smith, I. and Soubry, A. HC Deb 8 February 2017 Vol 621, Col 444.

²⁹⁹ Division 152 HC Deb 8 February 2017 Vol 621, Col 525-529.

³⁰⁰ Bill 132 EN.

³⁰¹ House of Lords, 'Written Question: Euratom', 7 July 2016, HL911 & House of Lords, 'Written Question: Euratom', 2 November 2016, HL2652.

³⁰² HC Deb, *Hansard*, 8 February 2017, col 449 and HC Deb, *Hansard*, 7 February 2017, col 379.

³⁰³ Division 160, HC Deb 8 February 2017 Vol 621, Col 561-5.

seats. Providing May could ensure that her party toed the line, she was almost guaranteed victory. The only Conservative MP to consistently break the whip throughout the Bill stages was Kenneth Clarke; even outspoken, pro-European MPs such as Anna Soubry marched alongside the Government into the lobbies.

Figure 1: Composition of the House of Commons as at January 2017	
Party:	Total no. of MPs
Conservative	330
Labour Party	229
SNP	54
Liberal Democrat	9
DUP	8
Independent	4
Sinn Fein	3
Plaid Cymru	3
SDLP	3
Greens	1
Speaker	1
UKIP	1

Not only could May depend on the Conservative majority, but she was almost guaranteed an unofficial working majority of a further 9 seats. This was due to the tendency of UKIP and the DUP to vote alongside the Government on various matters, especially Brexit. While these were not guaranteed, they provided a safety net against any minor party rebellions. Figure 2 highlights the voting tendency along party lines during the divisions of the EU (Notification of Withdrawal) Bill where that tendency was to vote alongside the Government.

Figure 2:						
Division number:	Conservative	DUP	Labour Party	UKIP	UUP	Ind.
137	319	7	4	1	2	
138	319	7	2	1	2	
139	319	7	3	1	2	
140	319	7	1	1	2	

141	312	7	6	1		
142	320	7	6	1	2	
143	320	8	6	1	2	
144	318	8	4	1	2	
152	322	8	5	1		
153	321	7	5	1	2	
154	321	8	6	1	2	
155	321	8	5	1	2	
156	322	8	6	1	2	1
157	321	8	5	1	2	
159	317	8	6	1		
160	320	8	5	1	2	
161	320	8	162	1	2	1

This table highlights the voting intentions by party, where that intention was no and subsequently pitted them against the Labour Party as a unified body. That is with the exception of division 161 which was the vote to give the Bill its Third Reading and as Labour had committed itself to doing so, they appeared alongside the Government in the Aye Lobby. It is evident from this that even without the relatively small number of rebellions from Labour MPs such as Kate Hoey, there was no way possible for Labour to force the amendments through as the Government had the numbers needed and the safety net of DUP and UKIP support. The opportunity, therefore, to reduce or impose limitations upon executive dominance under such circumstances are near impossible; however they were granted concessions on some of the issues they fought, such as a vote in both houses on the final Brexit deal.

The EU (Notification of Withdrawal) Bill completed its first outing in the House of Commons on 8 February 2017. This was due to the Bill being expedited through the normal legislative process for the completion of all Bill stages by 31 March 2017. Following the completion in the House of Commons, the House of Lords were able to table their amendments to the Bill from 10am on 9 February 2017.³⁰⁴ It was Hayter's initial belief that the Labour Lords Frontbench 'should do all the ones Keir [Starmer]

³⁰⁴ Hayter, D. (2017). Email 'RE: Art 50 Bill: Amendments', 29 January 2017.

etc, are doing the HoC (House of Commons) – including Melanie Onn’s’.³⁰⁵

However, Angela Smith responded that ‘it may be better to see how they go in the Commons as we might want to tweak, depending on the response it gets’.³⁰⁶ This was to be the strategy that was eventually followed by the Lords Labour team. The conflict highlighted between the two strategies is perhaps evident of conflict more widely within the House of Lords and its Members activities. Peers who are Party affiliated might find themselves making a choice between close partnership with Party members in the Commons or using the composition of the Lords to pass amendments and achieve a defeat over the Government Lobby. At times, these two choices will align but the connection between the Labour Party in the Commons and in the Lords was not necessarily a fruitful one despite Hayter’s efforts to build better relations. Communication between the Commons and Lords Labour Party was clearly lacking as Peers were mystified by the inclusion of Melanie Onn in the official Labour amendments. It was suggested that this was ‘to give her an outing’, until Lord Lennie clarified that it was likely due to the failure of her workers’ rights Bill earlier in the year.³⁰⁷ The Labour Peers Frontbench approach was emphasised in an email sent by Lord Bassam of Brighton, Chief Whip, to all Labour Peers on 2 February 2017 when he stressed that he wanted them to ‘focus on – and coalesce around – those amendments that will put the Government under pressure in the Lords or (if won in the division lobbies) in the House of Commons; or would wrest genuine concessions in line with our objectives’ and he further explained that ‘we need to pass amendments that our Labour MP colleagues can use, so I would ask that colleagues think seriously about tabling (and especially voting on) amendments that have little prospect of success and would simply expose our own divisions.’³⁰⁸ The Labour Lords Frontbench team tabled eight amendments, along broadly similar topics as those table in the lower chamber:³⁰⁹

- (i) Parliamentary approval for agreements with the European Union
- (ii) Parliamentary oversight of the negotiations
- (iii) Guaranteeing the rights of EU and EEA nationals resident in the UK

³⁰⁵ *Ibid.*

³⁰⁶ Smith, A. 2017. *Ibid.*

³⁰⁷ Lennie, C. 2017. *Ibid.*

³⁰⁸ Bassam, S. 2017. Email ‘Labour Peers’, 2 February 2017.

³⁰⁹ Parliamentary Labour Party, ‘European Union (Notification of Withdrawal) Bill: Labour Lords Frontbench Amendments’ 10 February 2017

- (iv) Conduct of the Article 50 negotiations
- (v) Involvement of Scotland, Wales and Northern Ireland
- (vi) Publications of impact assessments on potential future UK-EU trade models
- (vii) Nuclear collaboration with Euratom
- (viii) Respect for the Good Friday/Belfast Agreement

Amendment 9B, guaranteeing the rights of EU and EEA nationals resident in the UK, was the first of these to be debated and voted on. The amendment was carried by Baroness Hayter but was also in the names of Lord Hannay (Crossbench), Lord Bowness (Conservative) and Baroness Ludford (Liberal Democrat). This marks a key difference between the two chambers as generally speaking, and as was often the case for this Bill, the Commons amendments were rarely supported by members across the House. Where agreements were had, they would more often than not be between Labour and other minority opposition parties, or just the minority opposition parties. The members of the House of Lords had a greater willingness to support another party's amendment. As early as November 2016, Labour had called for the Government to unilaterally guarantee the rights of the 3 million EU citizens resident in the UK.³¹⁰ Their justification for this, and for their amendment, was that individuals should not be 'used as mere bargaining chips' and that the moral high ground should be taken to provide certainty for those citizens, even if the exercise was to prove a unilateral one.³¹¹ When the House divided on the amendment, it was to pass with a majority of 102; 358 peers being content to 256 not content.³¹² Only 7 Conservative Peers were to 'cross the floor' and vote alongside Labour on the issue but the 213 Conservatives who were not content had the support of just 43 others. Labour, who numbered 165, however, were joined by 78 Crossbench Peers and 93 Liberal Democrats among others. The vote was to become the second largest vote in the House of Lords on record since 1999; totalling 614 members.

The second significant moment for Labour in the House of Lords was when Lord Pannick (Crossbench) presented amendment 3 in his name and that of Baroness Hayter (Labour), Lord Oates (Liberal Democrat) and Viscount Hailsham

³¹⁰ Stewart, H. (2016) 'Keir Starmer: UK should guarantee citizens' rights before talks begin', *The Guardian*. 30 November 2016

³¹¹ Hayter, D HL Deb 1 March 2017, Vol 779, Col 814

³¹² Division 1, HL Deb 1 March 2017, Vol 779, Col 855-859

(Conservative). This amendment related to Parliamentary approval for the outcome of the negotiations with the European Union. This was similar to new clause 1 in the Commons that Starmer did not subject to a vote. By putting this amendment on the face of the Bill, the Government would be legally bound to act upon Parliament's decision on the final Brexit deal rather than being able to make its own assessment of it, or as the concession went, putting a motion to both houses to test the opinion across the Chambers. Concerns regarding the amendment related not to Europe at all but rather the primacy of the House of Commons over the House of Lords and anxieties regarding a clash between the houses when it came time to vote on the final deal.³¹³ Pannick, unlike Starmer, was not content to rely on the Government's word and put the amendment to the opinion of the House. Amendment 3 was passed with a majority of 98; 366 being content and 268 not content. This vote was to become the largest vote on record with 634 peers passing through the Lobbies.³¹⁴

It was far less of a challenge for Labour to see its amendments passed in the House of Lords for two reasons. Firstly, there was a greater willingness to work across party boundaries meaning a wider range of support and less rigidity over party lines. This was perhaps due to the nature of the Lords itself as, without a ministerial or shadow ministerial position, the likelihood of punishment as a result of rebelling was low, or at least less harsh than it could be for a Minister or an elected MP. The second reason for the ease with which these amendments were passed is due to the composition of the House. The Government did not hold a majority in the Upper Chamber; while it is the largest group with 250 Peers, the presence of the Crossbench Peers means that topics tend to be approached on an issue-by-issue basis rather than according to pure party policy.

The most challenging and intense part of the Bill was to come once it was returned to the House of Commons with the amendments included more commonly known as 'ping-pong'; this is the moment when the Commons are asked to 'think again' about specific issues which the Lords have deemed important enough to include on the face of the Bill. Ping-pong was to begin and end on 13 March 2017. The likelihood of the House of Commons allowing the amendments to stay on the face of the Bill were

³¹³ Grocott, B. HL Deb 7 March 2017, Vol 779, col 1282

³¹⁴ This was not the largest vote as a proportion of those eligible to vote but the largest number of attendees.

slim. Even before the Lords had voted on these amendments, Home Secretary Amber Rudd told *ITV's Peston on Sunday*, on the topic of the Government agreeing to the amendments, 'no, I don't think there is any possibility, and I don't think there should be. This is a process Bill. It's just about beginning the process for the two years that we're going to need in order to prepare for leaving.'³¹⁵ In an attempt to engender some cross-party support, Angela Smith and Keir Starmer wrote to Theresa May urging her to duly consider each amendment despite it being 'increasingly clear that the focus of your Government is to have a 'clean' Bill...rather than listen and respond to these legitimate concerns that in no way damage your stated objectives'.³¹⁶ They added that 'unfortunately, strong statements by Government Ministers that these amendments must be rejected out of hand undermine commitments that had previously been made on these issues', clearly in reference to Rudd.³¹⁷ However, this attempt failed and in just four hours and 14 minutes, the House of Commons had debated and voted on both amendments. David Davis argued that neither of these amendments fell within the purview of the Bill as it was designed to have a singular, simple purpose to allow the Prime Minister the authority to invoke Article 50. Lords' amendment 1 (EU nationals) was rejected with a majority of 48 (335 votes to 287). This was to see an increase in votes against it compared to a similar amendment in the Commons first time round which had been rejected by a majority of 42.³¹⁸ Lords amendment 2 (meaningful vote) was also rejected with 331 votes to 286, a majority of 45. This too saw an increased majority of MPs objecting, compared to a similar vote in the commons which had been rejected with a majority of 33.³¹⁹ This had been Chris Leslie's (Labour Co-op) new clause 110 which, similar to new clause one, would have legislated for a vote on the final 'treaty or relationship'.³²⁰ Both of these amendments were rejected from forming part of the final Act for the same reason, that 'it is not a matter that needs to be dealt with in the Bill'.³²¹ When the Bill was returned to the Lords for the final time, it remained there for just shy of two hours. While Lord Oates decided to test the will of

³¹⁵ Rudd, A. (2017) Interview *Peston on Sunday*, ITV. Televised 26 February 2017.

³¹⁶ Smith, A. and Starmer, K. (2017) Letter 'Lords Amendments'. 10 March 2017.

³¹⁷ Smith, A. and Starmer, K. *Ibid*.

³¹⁸ PLP top lines, 'Post Lords amendments of Bill amendments defeated', *Parliamentary Labour Party*, 14 March 2017.

³¹⁹ PLP top lines, *Ibid*.

³²⁰ Leslie, C. HC Deb 7 February 2017 Vol 621, Col 329-334.

³²¹ HL Bill 111 Commons reasons, 13 March 2017.

the House once more on Amendment 1 (EU nationals), Labour did not wish to do so. In Bassam's email to Labour Peers, mentioned earlier, he noted that 'as the unelected House, there are clear constitutional limitations as to what we can do'.³²² Labour did not have the appetite to force a protracted battle over this Bill as it would serve no purpose but to undermine its message that it was going to respect the will of the people. As such, it would bow to the primacy of the elected House on this issue, particularly since the majorities had increased since the first vote. Hayter described the Liberal Democrat motion as being irresponsible and added that 'our view has been rejected in the elected House of Commons and it is clear that the Government is not for turning'.³²³ When put to a division, the House rejected the motion with 274 votes to 135; all but 26 Labour Peers abstained from the vote leaving the Liberal Democrats as the largest party to carry it.³²⁴ On amendment 2 (meaningful vote), Pannick declared that 'it is now time for this House to give way to the House of Commons' as the issue had become one of a constitutional challenge rather than one about the Bill. The challenge being who, in practice, held the right to force such changes: the elected lower Chamber or the unelected second Chamber? On dividing over the amendment, the answer was clear; 118 votes to 274 signalled that the Commons had primacy and that the Bill would be passed unamended and 'clean'.³²⁵ Following the passing of the Bill, Labour's top lines were defensive. They blamed the Prime Minister for 'putting pride ahead of principle' which 'sets a worrying precedent for the negotiations'.³²⁶ In defence of the Labour Peers' decision not to support sending the Bill back to the Commons for a second time, they wrote that they 'took an entirely responsible decision...the Lords role is to advise the Commons, not to override it'.³²⁷ In the face of this defeat, Baroness Hayter and Baroness Smith later laid two motions in the House of Lords; that a report would be laid before the House by the end of the session on any progress made towards ensuring that EEA nationals retain their EU derived rights and that a Joint Committee of Lords and Commons be appointed to report on the options for voting in Parliament on the final Brexit deal.³²⁸ The Government benches were notably empty for the

³²² Bassam, S. Email, *Op. Cit.*

³²³ Hayter, D. HL Deb 13 March 2017, Vol 779, Col 1717.

³²⁴ *Ibid.* Col 1722-1724.

³²⁵ *Ibid.* Col 1734-1736.

³²⁶ PLP Top lines. 14 march 2017, *Op. Cit.*

³²⁷ *Ibid.*

³²⁸ HL Deb 4 April 2017 Vol 782, Col 1013 and 1044.

debate and it was clear that those present were, on the whole, there to support the motions. The Government allowed the motions to pass unimpeded, requiring no division on the matter. It is perhaps the case that either the Government had no fundamental issue regarding these two topics, they had after all given concessions on the matters, or knowing that as the two issues had cross-party and majority support, they decided that not having a vote was the better course of action over losing a vote. More convincingly perhaps is the argument this marked the start of what would become the Government's strategy of ignoring the activities of the opposition in the House of Parliament; no mechanism employed by them posed a significant threat and so the Government would not allow further opportunity to administer defeat through debates or votes.

Labour as an effective opposition in the pre-notification period

Was the Labour Party an effective vehicle of opposition in the pre-notification period? Did they, at any stage, limit the degree of executive dominance over the issue of Brexit? In short, no. However, it was not always the case that Labour's inability to effectively oppose the Government was the result of its deficiencies. Between June 2016 and January 2017, Labour's weakness as opposition was almost completely the result of the Party's own activities in this period. The leadership battle, which in hindsight proved pointless given that there was a continuation of Corbyn as leader with an even larger mandate, proved to destabilise any hope for the Party to effectively oppose May's Government. This was made all the worse by the Conservative's expeditious contest meaning that May was able to select and settle her new Government departments and their ministers before the summer recess. Outside of the debilitating effects of the leadership contest, Corbyn had lost much of his Shadow Cabinet because of the mutiny against him, resulting in an inexperienced set of Shadow Ministers to hold the fort over the summer further delaying policy formation. Outside of these problems was the larger issue that no one, including the Government seemingly, really understood what Brexit meant in the early months. While May was quick to say that "Brexit means Brexit", this was merely a vague way of putting an end too many questions; this explained the Government's reliance on lines such as 'revealing too much would undermine the negotiating hand'. However, the Government could say it was getting on with the job whereas Labour was left trying to figure out what leaving the European Union really

meant and scrambling to find a suitable policy line. It was not until September 2016 when things began to settle down for the Labour Party. This was in part due to the finalisation of the leadership contest and the subsequent shadow cabinet reshuffle. The selection of Keir Starmer as Shadow Secretary of State for Exiting the EU was the first step towards Labour finding its 'Brexit feet'; not only did it provide stability but also a figure which the Party could rally round, with few seeming to dislike his appointment. However, a firm party line would not be developed in this period.

Labour's first real opportunity to oppose only came following the result of the High and Supreme Court cases. The outcome of these ensured that Labour, and other non-government Parliamentarians, had a definitive role to play in the commencement of the withdrawal process. This opportunity did not come because of Labour's own activities but rather from an extra-Parliamentary source. It is possible to argue that Miller, and the supporting claimants of the case against the Government, performed the most effective piece of opposition that this period was to witness. It was only through their doing that the Government's attempt to extend the use of executive dominance, by side-lining the use of Parliament, was hampered. Once the cases had been settled, Labour had the opportunity to step in and seek further accountability from the Government. Knowing that its opportunities to be properly involved in the Brexit process were limited as they were not included in the negotiations, Labour sought to amend the EU (Notification of Withdrawal) Bill even though it was not the vehicle to discuss such issues as tax havens because of the tight manner with which it had been written. As a result, even when Labour Peers were able to rally enough cross-party support to have the Bill amended, these were never going to be allowed to pass in the Commons.

It was, however, largely due to the composition and structure of the House of Commons which ensured that the Labour Party could not defeat the Government there. Having a majority ensured that the governing party, if they remained disciplined in their voting, could not be overruled. Consequently, Labour could not impede on the level of executive dominance because Westminster is not designed to allow it. This raises questions on the true degree of democracy in operation in the Westminster Parliamentary system. The governing Party, with a majority, has the mandate from the people to pursue a legislative programme based on the policies carried in their manifestoes. However, what becomes of the situation when the

mandate held by the Government is not a clear one, as in the case of Brexit? Certainly, the majority of people voted to leave the European Union, but the question asked of them was a binary one while the practicalities of withdrawing from the union were far from that. There was no mandate as to the details of Brexit, yet the Government could dictate the nature of the withdrawal with no imposition from the opposition. Though the actual legislative programme associated with Brexit during this period was minimal, the sliding scale of executive-legislature relations was tipped firmly towards Government domination of the issues.

Chapter Seven:

The 2017 General Election

Having survived a potential defeat in the Commons over the EU (Notification of Withdrawal) Bill, May was consequently able to fulfil her pledge that she would notify the EU of British withdrawal by the end of March 2017; she did so on 29 March 2017 the day before the Easter Recess period. At this time, May was riding high in the opinion polls and seemingly confident that the business of Brexit, to be overseen by her Executive, could get started. It was around this point that May took the biggest gamble of her time in Office and called a snap election, clearly in the hope that the opinion polls would deliver a greater and more secure majority for the remainder of the withdrawal process. May's gamble was to prove just short of fatal for her government and was to have a significant impact on the extent with which she could dominate the legislature.

'You're joking?! Not another one?'³²⁹

When the House of Commons returned from its Easter recess on 18 April 2017, it arrived to find that it would not be business as usual. Downing Street released a notice to the press that morning indicating that the Prime Minister would be making a statement. However, there were no details given as to what the statement would entail and speculation in the media was rife as to the nature of it. Suggestions that May would be calling for an early general election were seemingly confirmed when a lectern, minus the official Government insignia, arrived outside of Number 10, ahead of the PM. Theresa May was quick to confirm that she had met with her Cabinet and an agreement had been made to call a snap election for 8 June, providing for just 51 days from announcement to completion. As a result of the decision, May would be the first Prime Minister to test the Fixed Term Parliament Act, 2011. An Act introduced during the 2010/15 Coalition Government, largely to ensure that the then Prime Minister David Cameron would not be able to call a snap election when the odds appeared to suit him better. Consequently, May would require a two thirds vote in favour of a motion to hold an early general election. In her announcement she

³²⁹ 'Brenda from Bristol', interview. BBC 18 April 2017.

challenged the opposition parties to vote alongside her to show that they were ‘not opposing the Government for the sake of it’.³³⁰

One of the problems that May anticipated facing because of the decision to go to the polls early came from the consistent, and at times vehement, assertions that as Prime Minister she would not take the country to the polls before 2020. She had first done so when launching her leadership challenge.³³¹ Later in an interview with Andrew Marr on 4 September 2016, ahead of returning from summer recess to oversee her longest period in Parliament by that point, Marr challenged her on the issue, asking “the next election will be in 2020. No ifs. No buts. No snap elections. No change in Parliament under you. Is that absolutely certain?”.³³² May responded by stipulating that the country ‘need[ed] that period of time, that stability, to be able to deal with the issues that the country [was] facing’.³³³ Similar sentiments that the public had come to expect from Theresa May. On two further occasions was the notion of an early general election disregarded, the most recent of which was on the 20 March 2017 when a Downing Street official announced such in a press statement.³³⁴ When making her speech outside of Downing Street, the Prime Minister seemed acutely aware of her apparent U-turn and highlighted that she had ‘only recently and reluctantly’ seen the need for an early general election, something her opponents would not miss the chance to highlight.³³⁵ In the Commons the following day, when debating May’s motion, Paul Farrelly, Labour MP for Newcastle-under-Lyme, rose to ask the PM whether given her Christian values, how she could justify ‘such a loose and complicated relationship with telling the truth’.³³⁶ While the Speaker of the House would not allow such reference to her religious beliefs, Farrelly’s point stood and was one that she swerved quite predictably.

³³⁰ May, T. (2017) Speech. PM Statement: General Election 2017. 18 April 2017.

³³¹ May, T. (2016) Speech. Announcing her candidacy for leader and PM. 30 June 2016. Available at: <https://www.independent.co.uk/news/uk/politics/theresa-mays-tory-leadership-launch-statement-full-text-a7111026.html>

³³² May, T. (2016) Interview. *The Andrew Marr Show*, BBC. 04 September 2016.

³³³ *Ibid.*

³³⁴ Downing Street Press Release, 20 March 2017. Reported by numerous media outlets. Available at: <https://www.independent.co.uk/news/uk/politics/early-general-election-may-2017-theresa-may-article-50-Brexit-negotiations-labour-polls-a7639246.html>. On another occasion: May, T. in interview with Laura Kuenssberg, BBC, 04 October 2016.

³³⁵ May, T. Speech. *Op. cit.* 18 April 2017.

³³⁶ Farrelly, P. HC Deb 19 April 2017. vol. 624, col. 681.

In justifying the need to call an early general election, Brexit was presented as both the overriding reason, and its main priority, thus setting a clear depiction of where the Conservative Party's campaign would focus. In her speech, she suggested that her Government had remedied the ruptures created by the Brexit referendum, that they had provided 'certainty, stability and strong leadership' and recommitted the Brexit agenda to the Leave ideals of money, law and border.³³⁷ There was no evidence provided to support such a claim and no real depth of feeling in the country that any of the divisions highlighted since the referendum had been alleviated. Between the 22 March 2017 and the 19 June 2017, the UK experienced four separate acts of terrorism.³³⁸ May appeared to have responded well to these and the campaigns were temporarily suspended accordingly. These would serve to disrupt May's campaign and re-direct the population's attention to domestic issues and national security rather than Brexit. The attempt to skew the upcoming elections towards a single-issue campaign of leaving the European Union, something on which the Conservatives appeared relatively strong and the Labour Party weak, did not go unnoticed in the Commons when May raised the motion in the Chamber the following day. Labour's Andy Burnham was the first to challenge the PM on this, stating that he could see 'how it suited the PM's purposes to make this election all about Brexit but did she not accept the possibility that it might become a referendum on her brutal cuts'.³³⁹ As much as the Conservative Party wanted the focus of the campaigns to remain on British withdrawal from the European Union, the Labour Party would be equally active in ensuring that that would be anything but the case. Knowing that it had been heavily criticised in the press for being slow to formalise its Brexit position and seemingly being more comfortable on domestic issues such as the NHS and public services, the Labour Party campaign would come to reflect as much.

Arithmetics also played a role in May's decision to call an early election. At the end of the 2015-17 Parliament, the Conservatives had 330 seats which was only 4 seats over the official number of seats needed to form a government (326). While May could be certain that smaller parties would vote alongside her and her actual working

³³⁷ May, T. Speech. *Op. cit.* 18 April 2017.

³³⁸ Westminster and Parliament 22 March 2017, Manchester Arena bombing 22 May 2017, Borough Market (London Bridge) 3 June 2017 and Finsbury Park Mosque 19 June 2017.

³³⁹ Burnham, A. HC Deb 19 April 2017 vol. 624, col. 683.

majority was reasonably healthy, increasing the number of Conservative MPs was naturally an aim of the next election.³⁴⁰ May, herself, raised the issue in the speech of 18 April stating that “our opponents believe that because the Government’s majority is so small, our resolve will weaken and that they can force us to change course. They are wrong”.³⁴¹ While she didn’t overtly admit that the reason for the general election was to increase her majority, it was indeed implicit in the very action itself. It is understandable, and arguably perfectly natural, for a party to want as large a working majority as possible. However, such game playing was not best appreciated by a public that had been to the polls in both of the two years previous. Theresa May added that, ‘every vote for the Conservatives will make it harder for opposition politicians who want to stop me from getting the job done. Every vote for the Conservatives will make me stronger when I negotiate for Britain.’³⁴² Once again she indicated that the opposition would not fulfil the Brexit process and that she needed a greater majority to overcome the challenges associated with that. The greater her majority would be, the more secure her mandate to negotiate Brexit would become. This was important for May as she would have had a greater capacity to negotiate between the hardliners, the anti- and pro-EU MPs within her own party. By securing a larger majority, May would have created a buffer for herself to absorb smaller rebellions. The EU (Notification of Withdrawal) Act, 2017 was a procedural and technical piece of legislation and on that basis getting it through Parliament was a relatively easy task. However, it would be increasingly difficult to write subsequent bills so closely and avoid the inclusion of policy issues completely so May needed the numerical flexibility of an increased majority.

The opposition parties themselves came under attack in May’s speech as she dealt with them individually. She once again focused on the manner in which they posed a threat to the Brexit process. For Labour, she cited their threat to vote against the final deal. The Liberal Democrats, all nine of them in the Commons and 98 in the Lords, were accused of wanting to ‘grind the business of Government to a standstill’.³⁴³ It was levied that the House of Lords had committed themselves to fighting her ‘every

³⁴⁰ Figures discussed in previous chapter.

³⁴¹ May, T. Speech. *Op. cit.* 18 April 2017.

³⁴² *Ibid.*

³⁴³ *Ibid.*

step of the way'.³⁴⁴ Though it seems that she must have forgotten that 244 of the Peers belonged to her own party. Either that, or she didn't trust them to maintain party discipline on all matters. In reference to the Lords she was sure to cite the unelected basis on which they operate; this had been an assault that she and her Party (and the press) had used consistently throughout the EU (Notification of Withdrawal) Bill stages in the House of Lords. Such was the apparent threat of a Lords rebellion that there were continual attempts to force the Lords to kowtow to the Government's wishes by reminding them of the Sewel Convention or of their 'undemocratic' origins versus the 'peoples will'. This adds yet more credence to the notions that May was calling for a new election to reduce any potential opposition and consequently increase the level of executive dominance with which she could operate in the next parliamentary session.

The Conservatives had every reason to believe that they were able to win the 2017 General Election, and to win it well. If, of course, they were basing such beliefs on the opinion polls of voting intention from around the time. Polls from 13 April 2018 to 18 April 2018 gave the Conservative Party a combined average of a 20.5 point lead.³⁴⁵ A YouGov Poll released the day before the snap election was called had the Conservative Party at 44 per cent and the Labour Party at 23 per cent.³⁴⁶ It also indicated that 50 per cent of those questioned felt that May was a better leader than Corbyn, who received 14 per cent.³⁴⁷ The notion that the Prime Minister had called the election because her Party was (subjectively) performing so well according to such markers did not sit well with many people, who viewed such a strategy as political game playing. Even if the polls were not the marker by which the Prime Minister had judged that summer 2017 was the right time to take the nation to the polls, it would seem an absurd notion that she herself had not been aware of them or that they hadn't been brought to her attention. The day following the announcement of the early election, May was interviewed on BBC Radio Four's *Today* Programme. Nick Robinson challenged May on whether the results of the polls had played a role in the decision and asked 'what was it about the 20 per cent opinion poll that first

³⁴⁴ *Ibid.*

³⁴⁵ For a summary of political poll data since 2015 see: Election 2017 Poll Tracker: Opinion Poll Data. BBC, 7 June 2017.

³⁴⁶ *Ibid.*

³⁴⁷ *Ibid.*

attracted you to the idea of a general election?'.³⁴⁸ May responded by saying that her decision predated the release of such information and that she had been thinking about it prior to the Easter recess.³⁴⁹ Theresa May was not the first Prime Minister to call an election while riding high in the polls, and was in fact, the third Conservative PM to do so.³⁵⁰

Initial responses to the news were varied and many had been anticipating an early general election at some stage. Brenda from Bristol went viral following her interview on the BBC; she herself had not known about the statement prior to the interview, and when informed, the shock and frustration were apparent. She managed to capture in a few short words the sentiment of vast swathes of the population. Dumbfounded, she fired 'You're Joking?! Not another one? Oh, for God's sake! I honestly, I can't stand this! There's too much politics going on right now.'³⁵¹ Brenda came to epitomise the voting fatigue felt by much of the public and the political overload that Brexit seemed to induce. FTSE responded quickly to the news also, suffering a dip before May's statement in anticipation of yet more destabilising news but later picked up with the announcement adding confidence to the prospect of a Conservative victory.³⁵²

Politically, the snap election was more warmly welcomed, particularly by some members the Labour Party. Jeremy Corbyn's official response was that they would provide 'an effective alternative to a Government that has failed to rebuild the economy, delivered falling living standards and damaging cuts to our schools and the NHS', taking the opposite strategy to May and keeping his focus for the campaigns on a domestic plain and avoiding where possible all discussion of Brexit.³⁵³ Dianne Abbott came out in support of her leader and challenged the statements made by May, stating that 'the country's not united, that's what we saw with the Brexit vote. Whereas Theresa May wants to play on that disunity, we want to bring people together...at this point the Party is uniting behind the leadership.'³⁵⁴

³⁴⁸ Robinson, N. (2017) Radio Four Today Programme, BBC. 19 April 2017.

³⁴⁹ May, T. *Ibid.*

³⁵⁰ Thatcher (1983 and 1987) and Macmillan (1959).

³⁵¹ 'Brenda from Bristol', *op. cit.*

³⁵² Chisholm, J. (2017) 'How the markets are reacting to UK's snap general election', *Financial Times*. 18 April 2017.

³⁵³ Corbyn, J. (2017) Response to the Prime Minister's call for a general election. 18 April 2017. 2017 Press Archive, Labour Party.

³⁵⁴ Abbott, D. (2018) In interview with ITV. 18 April 2018.

Abbott thus challenged what May had said regarding the election being 'all about leadership', a choice between the strength of hers versus the 'weak and unstable' Corbyn.³⁵⁵ There were some who were less than thrilled at the prospect of going to the polls; Labour stalwart Dennis Skinner, MP for Bolsover, voted against the motion allowing for the election under the Fixed Term Parliament Act.³⁵⁶ While he was in the minority of those who voted, he had a clear preference for the eventuality that the Conservatives would self-implode before the next planned election or that by 2020 it would be clear to voters that May's Government had mismanaged their mandate. There were some who decided against contesting their seats at all for fear of a Conservative whitewash. Many, within Labour and without, were predicting that a huge Parliamentary majority was heading the Governments way, prompting recollections of Michael Foot's ill-fated general election in 1983.³⁵⁷ While some Conservatives were predicting a replay, some within Labour were equally nervous. Baroness Hayter reflected that she herself expected a similar outcome.³⁵⁸

While the Liberal Democrats were also happy to welcome the Prime Minister's decision, not all politicians were so pleased. Andy Burnham tweeted that it was a clear display of the Conservatives putting party interest before national interest.³⁵⁹ Nicola Sturgeon, Leader of the Scottish National Party, was the least happy of all the leaders and fired that May had 'clearly seized the opportunity, given the total disarray in Labour, to crush all opposition, to get rid of people who disagree with her'.³⁶⁰ Her statement was clearly in reference to the idea that May and her Party were choosing to take the nation to polls for no other reason than to increase their majority and remove the possibility of being defeated in Parliament, particularly over Brexit.

The campaigns that emerged following the success of the early general election motion could hardly have been further apart from one another. The Conservatives maintained their promise that the election would be about two things: Brexit and leadership. The Labour Party strategy was to not be drawn into such an approach,

³⁵⁵ May, T. Speech. *Op. cit.*

³⁵⁶ Division. HC Deb. (19 April 2017). Vol. 624 col. 708-712

³⁵⁷ The 1983 general election proved disastrous for the Labour Party returning just 209 MPs and giving Thatcher a majority of 144 seats.

³⁵⁸ Hayter, D. in conversation with Mordue, C. 20 June 2017.

³⁵⁹ Burnham, A. Twitter post: "Tory Party puts its own interests before the national interest." 18 April 2017.

³⁶⁰ Sturgeon, N. (2017) 'Nicola Sturgeon: June election is huge miscalculation', *The Guardian*. 18 April 2017.

focussing instead on the Party and domestic issues. The Conservative strategy was to take a 'presidential' approach and focus on May's perceived strength as a leader and her popularity, possibly drawing from the polls that placed her significantly ahead of Corbyn as a good leader. Often, during campaign visits and even on official Party memorabilia, 'Theresa May' would appear (in bold type) alongside her slogan of 'strong and stable' but would often be lacking the official party insignia or name. Where it did appear, it was notably far smaller in comparison. The Labour Party, on the other hand, planned a more party-centred campaign and sought to keep the spotlight off Jeremy Corbyn specifically, appealing to such demographics that were unsure of his leadership. Official party events and memorabilia featured both insignias and associated images alongside the election slogan, 'for the many, not the few'.

The party manifestos were another way in which the differences that would come to transcend the campaigns were starkly apparent. The Conservatives opted for a publication that appeared formal, in tone and style, and relied very little on imagery, containing just one image of Theresa May giving a speech.³⁶¹ Compared to this, the Labour Party was loud. Featuring some 42 images including several of Corbyn interacting with the public, particularly children, as well as many person-centred images often featuring those in public services.³⁶² The language of the party's publication was highly emotive and included 50 references to the Conservative Party and three direct references to May.³⁶³ Neither Corbyn nor the Labour Party featured in the Conservative manifesto, despite May's frequent references to Corbyn verbally. While the content of the manifestos delivered little that was new regarding party policy positions in Spring of 2017, they did highlight the differences with which the Party viewed the British population's priorities. It also allowed the Labour Party the opportunity to clarify and consolidate its policy positions in general, considering that the Party were often charged with appearing uncoordinated and sloppy on its policies.

The Conservative Party tended towards many of the issues that had been raised during the Brexit referendum and beyond, such as future relations with the EU,

³⁶¹ Conservative Party Manifesto (2017) *Forward Together: Our Plan for a Stronger Britain and a Prosperous Future*.

³⁶² The Labour Party Manifesto (2017) *For The Many, Not The Few*.

³⁶³ *Ibid*.

immigration, sovereignty, and international trade. They did not provide much in the way of detail on its withdrawal position, as had been the case in general since the referendum. They did not, of course, neglect domestic issues, however one new proposed reform to social care was to prove to be a headache for May later in the campaign. The reform related to the contributions that people would be required to pay towards the cost of their care in later life, or illness. The aim was to increase the minimum that individuals would 'keep' should they have to sell property to cover such costs, and that the payments could be recouped posthumously. However, the crux of the issue was that all individuals would be required to contribute to the costs rather than those who were deemed able to afford it, through the application of some sort of wealth assessment. Fundamentally, the reform was seen to challenge the notion of a 'cradle to grave' health service and was dubbed the 'dementia tax' given that those immediately affected were elderly.³⁶⁴ Labour was not without challenges to its proposed policies either. Many of its policies could be considered as enticing by a general population that had lived through two terms of austerity. These included providing more police officers, firefighters, better childcare provision and assistance amongst others. They also promised to renationalise the railways and reverse the privatisation of Royal Mail. All of this, they promised had been fully costed; partly by a tax increase for those earning over £80,000p.a.³⁶⁵ However, difficulties arose when members were challenged over the new policies. Diane Abbott was to epitomise failure in this regard when she got her figures confused in an interview on LBC. When asked how much it would cost to provide an additional 10,000 police officers, Abbott provided two figures, at first she stated it would cost £300,000 (resulting in an annually salary of £30), when challenged she changed her mind to £80m (an annual salary of £8,000).³⁶⁶ Abbott could not provide a satisfactory answer in the end, leading to claims that Labour's policies were not fully costed as claimed and that they were relying on a 'magic money tree'. Labour's financial record in office often being a bat with which the Conservatives hit them, aided in undermining the claim that they had balanced the books for their proposed policies.

³⁶⁴ Mason, R. and Campbell, D. (2017) Theresa May under pressure over 'dementia tax' social care shakeup. *The Guardian*. 21 May 2017.

³⁶⁵ Labour Party Manifesto (2017) *op. cit.*

³⁶⁶ Ferrari, N. (2017) The Car-Crash Interview Everyone's Talking About: Diane Abbott on Police funding. *LBC*. 2 May 2017.

The issue of the UK's withdrawal from the EU was a challenging topic for both parties; it was not credible for either the Labour Party or the Government to make promises as to the nature of the outcome of the negotiations. Simply, the Labour Party did not know, in any great degree of detail, the nature of, and discussions which had been had with the EU around the negotiations. Promises, which they could not be certain of keeping, would make the party politically vulnerable should they have won the election and set about achieving them, without any real idea of the realities of negotiating with the Community. The Conservative Party were not in a much stronger position; too much detail would undermine the secrecy with which they had operated to that point and, given that much of the negotiations were yet to take place, the party had to be careful with the promises that it too made in their manifesto and campaign. Resulting from this reality was the continuation of uncertainty as to what Brexit truly meant; a feeling that had preceded the election and would continue until the deal was finally secured and arguably beyond. Just as Parliamentarians had been asked to vote without a clear idea of what the outcome would be, the UK public at this stage was asked to do the same. Brexit dominated all issues over the course of the withdrawal period, including the election, but neither party was able to be able to focus wholly and with any real clarity on the UK's withdrawal.

The differing campaign strategies also became clear in other ways. In her BBC Radio 4 interview on 19 April 2017, May rebuffed the notion that she would be partaking in TV debates between the political leaders. This was a practice started in 2010 and one which many felt should continue so as to take the political debate out of the walls of Westminster into the public's homes. Despite being accused of running scared, she maintained her position that she debated with her political opponents every Wednesday in Parliament and that she preferred to meet voters in person and discuss policy and issues with them.³⁶⁷ Corbyn while challenging her during PMQs shortly after, essentially let her off the hook by saying that he wouldn't do them if she wasn't, rather than agreeing to the debates himself which would have had the effect of making May seem as though she was running scared.³⁶⁸

³⁶⁷ Radio 4 (2017) Radio interview, the Today Programme. BBC 19 April 2017. Nick Robinson interviews Theresa May.

³⁶⁸ Walker, P and Stewart, H (2017) Corbyn to take part in TV Leaders' debate. *The Guardian*. 31 May 2017.

Eventually, Corbyn agreed to participate in televised events leaving May with a 'Hobson's choice'; either agree to join him and perform another U-turn or appear to look weak and unwilling to stand against her opponents. While she did eventually opt for the former, she would not have a head-to-head as had been done previously and was called for by Corbyn and other Party leaders. May would only agree to be questioned by presenters with some element of audience involvement.

Further, the nature of the leaders' campaign trails highlighted their respective target voters. The Prime Minister paid 70 visits across the nation. Only 23 were in Conservative held seats, meaning that 57 per cent of her campaign stops were to Labour seats, many of these being in traditional Labour heartlands in the North of England. May's strategy was clearly one of pursuing the swing vote, particularly in areas that had voted in the majority for the UK's withdrawal from the EU. Labour's strategy for Corbyn's campaign trail was largely speaking the opposite to this. Of his 76 campaign stops, 42 per cent were to areas held by the Labour Party with more than a 20-point lead. Only 1 in 20 of his stops were to Labour seats with less than 15 per cent vote share. In total 36 of his stops were to Labour seats, clearly pursuing a policy of vote consolidation than persuasion.³⁶⁹ These strategies, notably Labour's, were to be reflected in the outcome of the general election.

The characteristics of the canvassing during the campaign reflected both leaders aptly and as such were polar opposites. The Prime Minister tended toward holding events in enclosed spaces with a vetted audience and allegedly prepared questions from pre-selected journalists. Michael Crick, Channel 4 News political correspondent, accused May and her team of side-lining proper journalistic processes by not allowing journalists to ask questions spontaneously and tweeted that he had been told 'there was no point in putting [his] hand up to ask' and that he 'wasn't on the list'.³⁷⁰ Though the Conservative Party challenged his claims and stated that any pre-selection that did occur was to ensure parity of opportunity between outlets.³⁷¹ The event that Crick was referring to was an unannounced speech at the Barbican Centre in York where May's audience consisted of a panel of Conservative

³⁶⁹ Middleton, A. (2019) 'For the Many, Not the Few': Strategising the Campaign Trail at the 2017 UK General Election. *Parliamentary Affairs*. 72:3 pp.501-21

³⁷⁰ Pasha-Robinson, L. (2017) Theresa May 'refusing to take questions she hasn't pre-approved', claims Michael Crick. *The Independent*. 09 May 2017.

³⁷¹ *Ibid.*

candidates from seats in the North East, as well as an invited audience. Such a strategy furthered the notion that May was unwilling or unable to meet voters face-to-face or spontaneously due to the risk of being challenged and that she relied on pre-planned interactions to bolster the image of being strong and stable.³⁷² May's slogan of being the 'strong and stable' choice as the country's leader was pushed heavily as the campaign opened. So much so that by the end of April she had repeated the slogan over 50 times between announcing the election and her last session of Prime Minister's Questions of the Parliamentary session on 26 April 2017. In fact, during the final PMQs she managed to shoehorn the slogan in on ten occasions and the word 'strong' a phenomenal 31 times.³⁷³ Despite the Prime Minister's suggestion that rather than TV debates she would be facing her political opponents in the House of Commons, there were only two sessions of PMQs left following the announcement before Parliament was prorogued and *purdah* began. In these sessions, May's battle plan was one of diminishing the Labour Party and Jeremy Corbyn as much as possible; she made 14 separate attacks on either Corbyn or his party during the two short sessions.³⁷⁴

It had been May, or perhaps her team, that had decided to pursue a presidential-style campaign but for many her personality simply could not support such a strategy nor match that of Jeremy Corbyn's. May had been forced to throw off the ridicules regarding her personality, or supposed lack thereof, even before the 2017 election. As early as November 2016, May had picked up the moniker of 'Maybot', a reference to her robotic, inhuman character, thanks to *The Guardian's* sketch writer John Crace. Prior to the election, May was able to rise above such insults by insisting that she was above all a politician not a celebrity and one that preferred to get on with her job above all else. However, with the election and the strategy adopted by her team, May could do little to escape the focus on her personality. During an interview with *ITV* on 6 June 2017, May was, seemingly unexpectedly, asked what the naughtiest thing she had ever done was. May was clearly torn between appearing relatable and personable and being honest. She fumbled a response and managed to achieve neither. She responded with 'oh goodness me! Um. Well, I suppose. Gosh. Do you

³⁷² General election analysis

³⁷³ HC Deb. (26 April 2017) vol.624 col.1100-1114

³⁷⁴ HC Deb. (19 April 2017) vol.624 col. 666-677; HC Deb (26 April 2017) *op. cit.*

know I'm not quite sure'.³⁷⁵ Eventually she admitted to running through fields of wheat as a child which had upset the local farmers.³⁷⁶ This was hardly relatable to large proportions of the population in 2017. May faced ridicule from all areas for the response. Corbyn, on the other hand, was asked the same question by a member of the public who recorded the interaction and posted it on Twitter. Corbyn responded by stating 'that it was far too naughty to say'.³⁷⁷ While he clearly had more time to think of a response and was not under as much pressure as May to find a suitable answer given the context, he certainly outperformed her on the personality test. Something he would manage to do throughout the campaign.

Corbyn's canvassing style was as far from May's as could be imaginable and reflected his background as an activist. Corbyn's strategy, alongside traditional campaign stops, was to attend and speak at rallies across the country. These were heavily reported on particularly by local media outlets in areas and regions attended by the leader. This was in part because the rallies often drew large crowds. In Leamington Spa for instance, Corbyn was able to draw a crowd of 500 people with reportedly just an hour's notice. In Birmingham on 6 June 2017, the Labour Party event filled the ICC, Centenary Square to full capacity of 700 people with many being turned away but choosing to remain in the area despite being unable to hear the Labour leader's speech. The day before this Corbyn attended an outside event in Gateshead where journalists reported a crowd of thousands were in attendance.³⁷⁸ The leader finished his canvassing in his home constituency, Islington North, where once entering the stage, he was unable to talk for several minutes due to the level of applause from the crowd. It did not seem to matter that he took no questions from journalists at these events or that despite the 'open invitation' nature of the events, they were in fact filled with Labour Party activists, supporters, and Momentum. These had been some of the issues that had been fired at May, but the rally ground was Corbyn's home turf, and his oratory skills shone most of all in these arenas. The Labour leader was an experienced activist and comparatively had more experience

³⁷⁵ May, T. Interview. *ITV Tonight*. 6 June 2017.

³⁷⁶ Ibid.

³⁷⁷ Mann, T. (2017) Jeremy Corbyn's 'naughtiest thing' is way too naughty to even say. *Metro*. 8 June 2017. The video was originally uploaded to Twitter by @sadcat786 but has been shared widely since.

³⁷⁸ Thorsen, E., Jackson, D. and Lilleker, D. (eds) (2017) UK Election Analysis 2017: Early reflections from leading academics. *Centre for the Study of Journalism, Culture and Community*. Poole: Bournemouth University.

of canvassing than May had over the course of her political career. Not only had Corbyn been returned to the House of Commons every election since 1983, compared to May who had begun her Parliamentary career in 1997, he had also fought and won two leadership challenges whose vote were procured from Party Members. May, on the other hand, won a one-horse race to lead her party in 2016. Arguably, Corbyn's canvassing techniques did give the impression that he was winning the personality test. However, the turnout to these events depended on individuals being drawn to him and who would likely have already decided that they would be voting for him via their local MP. It may have neglected any potential swing voter who might have been unlikely to attend such rallies. The popularity contest with the public was an important one for Corbyn to win given that most media outlets reported negatively on his leadership skills and policy proposals.

Media coverage of the election was, of course, varied in its representations of the two leaders and while television news programmes are expected to be objective, print media outlets had a greater freedom in the character of their items. Compared to the 2015 election, the 2017 campaigns saw an increase in the coverage focusing on the two main parties featuring a combined 84per cent of all appearances in the press and 67per cent on TV.³⁷⁹ Of this, Theresa May topped the most prominent individuals in news coverage with 30.1per cent, followed by Corbyn with 26.7per cent, with the next highest person being Tim Farron with 6.8per cent.³⁸⁰ On the nature of the news coverage, Labour received the largest number of negative press items than any other party; in the five weeks leading up to election day, the Labour Party were subject to a far higher degree of negative news coverage particularly in papers with high circulation such as the *Sun* and *Daily Mail*.³⁸¹ The Conservative Party and May were generally treated better. The only exception was the week that the manifesto was launched, and May made a U-turn on the proposed 'dementia tax'

³⁷⁹ Wring, D., Mortimore, R., Atkinson, S. (eds) (2019) *Political Communication in Britain: Campaigning, Media and Polling in the 2017 General Election*. London: Palgrave Macmillan

³⁸⁰ *Ibid.*

³⁸¹ Deacon, D., Downey, J., Smith, D., Stanyer, J., Wring, D., (2019) 'A Tale of Two Parties: Press and Television Coverage of the Campaign' in Wring, D., Mortimore, R., Atkinson, S. (eds) (2019) *Political Communication in Britain: Campaigning, Media and Polling in the 2017 General Election*. London: Palgrave Macmillan

reforms. As a result, coverage over the course of that week was more negative than positive.³⁸²

To circumvent the partisan bias evident in the print media, Labour and its activists made heavy use of social media platforms to reach voters directly, without the filtration and potential distortion of the press. This was particularly the case with Facebook and Twitter, and while both parties spent money on campaigning through these platforms, Labour was the far more successful of the two. This is despite the fact that the Labour Party spent four times less than the Conservatives on Facebook advertising.³⁸³ Over the course of the campaign the official Labour Party Facebook page saw an increase of the number of 'likes' by 413,674, having already had 956,915 likes on 19 April 2017.³⁸⁴ In comparison, the official Conservative page saw an increase of just 63,362, having started with 56,595.³⁸⁵ Labour was far more active in posting material on the site with 545 posts across the campaign compared to the Conservatives 289 posts. However, Labour was also far better at recycling well received posts and only 35per cent of the 545 posts were original.³⁸⁶ Twitter was also a heavily used platform during the campaigns by both the public and politicians. A post-election twitter analysis found that there were 1,062,908 hashtags associated with Labour compared to the 381,647 associated with the Conservatives.³⁸⁷ Further, tweets that specifically mentioned Corbyn's official Twitter account numbered 1,367,392 compared to the 654,417 that mentioned May's account.³⁸⁸ Beyond this it was found that Corbyn was the only politician to directly mention another leader's account in tweets posted by him and that May rarely referred to her own party in her tweets.³⁸⁹ While analysis of the quantity of tweets cannot account for the nature of their content, it is clear that Labour and Corbyn were the most discussed among general election issues on Twitter. Data relating to Facebook can be seen as being far more positive towards the Labour Party and its leader than it did the

³⁸² *Ibid.*

³⁸³ The Conservatives spent £2.1 million on Facebook compared to Labour's spend of £500,000. Electoral commission.

³⁸⁴ Walsh, M. (2017) Understanding Labour's ingenious campaign strategy on Facebook. *LSE Blogs*. 10 November 2017

³⁸⁵ LSE Corbyn's official page saw an increase of 298,907 having started the campaign with 839,332 and May's increase was 75,532 with a starting figure of 343,562.

³⁸⁶ Walsh, M. *op. cit.*

³⁸⁷ Cram, L., Llewellyn, C., Hill, R., Magdy, W. (2017) UK General Election 2017: a Twitter Analysis. *University of Edinburgh*.

³⁸⁸ *Ibid.*

³⁸⁹ *Ibid.*

Conservatives. Many commentators following the election results put Labour's relative success down to its social media strategy. However, it must be remembered that Labour Party activists, particularly Momentum, were especially active on the party's behalf and not all of the success attributed to social media activities were the direct result of the Labour campaign strategy.

By polling day on 8 June 2017, Labour had surged in voter intention polls and had closed the gap between the two parties that was reported when the election was announced. Eight polls were released on the final day of campaigning and all of them still put the Conservatives ahead of the Labour Party.³⁹⁰ Seven of the eight polls gave the Conservative Party a lead of at least 5 points, with the largest showing a lead of 12 points. Survation was the only poll to suggest that Labour would achieve 40 per cent of the vote share, being just one point behind the Conservatives.³⁹¹ When, on 8 June 2017, the exit polls were released they predicted a hung Parliament with the Conservatives receiving 314 seats (12 short to form an outright majority) and Labour as the second largest party with 266 seats. The actual results once all seats had been declared were not too dissimilar with the Conservatives on 317 and Labour on 262 seats.³⁹² It was apparent early on that May's election gamble had not only failed, but it had also done so miserably and in total her party lost 33 seats and had gained 20 equating to a net loss of just 13. May lost nine of her serving ministers as a result of the vote. Despite a vote share of 42.4 per cent on a turnout of 68.8 per cent, the party's highest since 1983, they lost 28 seats to the Labour Party while taking just six from them.³⁹³ The party's campaign strategy of targeting Labour held seats failed to convince swing voters who may have helped the constituencies change hands while at the same time neglecting its own seats that were at risk of turning. The Labour Party lost six of its previously won seats but gained 36 resulting in a return of 262 MPs.³⁹⁴ It too witnessed an increase in its vote share having achieved 40 per cent, on a turnout that was the highest since 1997.³⁹⁵ While Labour literally lost the election as it wasn't the largest party returned, it did

³⁹⁰ Burn-Murdoch, J., Stabe, M. and Leach, A. (2017) UK general election 2017 poll tracker. *Financial Times*. 20 August 2017.

³⁹¹ *Ibid*

³⁹² House of Commons Library (2019) General Election 2017: results and analysis. 2nd edn. CBP 7979.

³⁹³ *Ibid.*

³⁹⁴ *Ibid.*

³⁹⁵ *Ibid.*

appear as the election victors; Corbyn's Party won the battle but lost the war. Despite this, the Party celebrated as victors. The Conservative Party could not easily be considered winners either as they could not form a majority, returned with fewer seats than they had started with, and their leader was facing calls to resign as a consequence of her decision making.

At final count it was clear that the Conservative Party would need to form some kind of coalition with a minor party in order to form its government. Unfortunately for May's party there were few viable options available to them. The Labour Party were clearly no option given that the two were so far apart regarding party lines and given the size of both Parliamentary groups, it would in essence have been a government of the whole Parliament. The Liberal Democrats, with their 12 seats, were numerically an option but they had been burned by their period in the 2010 coalition Government and would go nowhere near the Conservatives, even if its position on Brexit had been more closely aligned to the Government. May saw her only option being to form a 'confidence and supply agreement with the DUP (Democratic Unionist Party) of Northern Ireland'.³⁹⁶ The DUP, a party formed at the height of the Troubles in Northern Ireland, were Unionists committed to the maintenance of Northern Ireland as an integral part of the United Kingdom. The confidence and supply agreement was not a coalition Government but a commitment that the DUP would support the Government on key issues in the House of Commons, at a potential cost of £2.5billion.³⁹⁷ While the agreement was largely framed as a commitment on behalf of the Government to support growth and development in various sectors of Northern Ireland, it was a clear attempt by May to ensure the additional votes needed when it came to Brexit; the biggest legislative challenge of the upcoming Parliament. Having secured the deal and with the agreement of the Queen to form a Government, May returned as PM despite the various calls against it.

Theresa May took the nation to the polls on the premise of wanting to secure a better mandate for the Brexit negotiations. The referendum provided a decision of the UK to leave the European Community, it did not however, provide any instruction as to

³⁹⁶ Cabinet Office (2017) Confidence and Supply Agreement between the Conservative and Unionist Party and the Democratic Unionist Party.

³⁹⁷ The amount the UK Government ear marked for Northern Ireland.

the nature of that withdrawal. The election, with the parties failing to lay down their Brexit ambitions outside of generalisations, failed to produce such a mandate either. Theresa May could only maintain her government arguably by 'buying' the votes from a party that very few individuals outside of Northern Ireland would have had a mind to consider before the election. The DUP had advocated withdrawal from the European Union during the referendum and had a reputation of being anti-abortion and opposed to same-sex marriage; two things which were legal in the rest of the United Kingdom at the time.

Labour's success can be seen as a successful failure; the party's vote share and returned MPs may not have been enough to win but it certainly boosted the confidence of the Parliamentary group and its supporters. There came to be a belief, which had not been very evident before the campaigns, that Labour was actually capable of winning an election in the near future. Starmer, in a meeting of the Labour Lord's told the group that the party had to try to 'hope for 2020', clearly indicating that not all in the Labour Party itself expected any real electoral achievements before that point.³⁹⁸ The success that Labour did achieve during the 2017 general election perhaps indicate that, despite the dominance of Brexit, the UK electorate were becoming increasingly focused on domestic issues and welfare, which were both much more prominent in the Labour Campaign than in the Conservative's one.

The course of events surrounding the 2017 general election did little to challenge the notion that the executive is dominant in British politics. Despite losing the general election, the Labour Party were able to close the margin between itself and the ruling party and they did so having appeared to be victors of the election compared to May's results. However, the constitutional flexibility of creating a confidence and supply agreement rather than a coalition and thus allowing the Prime Minister to 'buy' important and required votes, without requiring a member of that Party to form part of the Executive, only furthers the claim that the executive is too dominant. This dominance has at times been afforded to the executive through the inefficiency or deficiencies of the opposing parties but there is also clear evidence that the executive itself will pursue a course of action should it deem it to be one of

³⁹⁸ Starmer, K. (2017) Labour Peers Frontbench Meeting. 19 October 2016 [closed meeting].

increasing its ability to pass its desired legislation and consequently decrease the possibilities of being defeated in Parliament.

Chapter Eight:

The result of the general election did little to remedy the conflict between the two main political parties over Brexit related issues; the 2017-2019 Parliamentary session would be one dominated by conflict between, and within, the Executive and the Legislature too. The loss of the small working majority held by the Conservatives would encourage non-Government Parliamentarians to double-down on their opposition at times. Most prominently this was experienced during the passage of the European (Withdrawal) Bill which would bear witness to the influence of Government Backbenchers more than any other group in the House.

Repealing the European Communities Act:

The (not so) Great (not quite) Repeal Bill

It came as little surprise to many that the legislative task involved in leaving the European Union would be substantial. After four decades of supranational law-making, the extent of EU-derived content in the UK statute book was significant; during the referendum campaigns figures associated with the issue ranged from 13-75 per cent of UK law as being influenced by the EU. Boris Johnson, then Mayor of London, wrote in *The Sun* in April 2016 that ‘the EU now generates 60 per cent of all laws that pass through Westminster’ and Business for Britain (BfB) published a report which seemed to present a similar figure in an apparently scientific manner.³⁹⁹ Such estimation was vastly misrepresentative of the facts and fundamentally employed the use of non-legislative decisions emanating from the EU, in order to increase the percentage so significantly.⁴⁰⁰ The difficulties in challenging such flagrant misinformation were enhanced by the inability to quantify definitively just

³⁹⁹ Johnson, B., (2016) Boris Johnson: UK and America can be better friends than ever Mr Obama... if we leave the EU. *The Sun*. 22 April 2016.; Coleman, C. (2016) Reality Check: How much UK law comes from the EU?. *BBC News*. 8 June 2016.

⁴⁰⁰ Dougan, M. (2015) Written Evidence Submitted by Prof. Michael Dougan. *Treasury Committee*. 3 November 2015.

how much of UK law was influenced by the EU. Whether the discussion was of influence or actual content, the first obstacle was clear; the European Communities Act (ECA) 1972, acted as a conduit through which EU-derived law flowed into the UK statute books and removed the need for excessive ministerial or parliamentary involvement by absorbing, and supplying supremacy to, EU directives and regulations through the use of delegated legislation. The ECA 1972 proved to be a clever mechanism in dealing with the continual flow of European rulings, but the act needed to be removed, repealed, or amended in light of the UK's decision to withdraw from its membership.

The first discussion of such a bill came from Theresa May during her speech to the Conservative Party Conference in October 2016 in which she referred to the Great Repeal Bill as an instrument to 'get rid of' the ECA.⁴⁰¹ The bill would be named the Great Repeal Bill or GRB until it would be laid in the next Parliamentary session. Beyond the grandeur of the name little was known, yet much was speculated, about the nature of the bill; the name itself did little to assuage fears that the Conservatives would use the exercise to repeal or alter EU-derived legislation itself. Further, the title itself was a misnomer and would likely never have been allowed on the face of a bill owing to the short title rules as presented in Erskine May which dictates that 'an argumentative title or slogan is not permitted'.⁴⁰² The Government's silence on the nature and content of the Bill would persist until March 2017 when it released a white paper titled 'Legislating for the United Kingdom's Withdrawal from the European Union'. The paper, which still referred to the proposed legislation as the Great Repeal Bill, stated that the legislation would serve three main functions:

1. Repeal the European Communities Act, 1972
2. Convert EU legislation as it stands into domestic law
3. Create powers to make secondary legislation⁴⁰³

It would be the third of these stated functions which caused the most consternation from opponents within Parliament who had not wanted to see a skeleton bill for so

⁴⁰¹ May, T. (2016) Speech. Britain after Brexit. A vision of a Global Britain. Birmingham. 2 October 2016.

⁴⁰² Erskine, T. (1844) *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*. (twenty-fifth edn., 2019.) Digital Version. UK Parliament.

⁴⁰³ Department for Exiting the European Union (DEXEU) (2017) *Legislating for the United Kingdom's withdrawal from the European Union*. [white paper] Cm 9446.

significant an issue. The proposed powers created by the GRB were envisaged to correct the statute where the retention of EU legislation caused problems or were not needed, e.g., directives or regulations which referred to EU bodies would no longer be applicable in the absence of membership. Additionally, the powers were intended to allow for any changes necessary once the withdrawal agreement had been concluded.⁴⁰⁴ The Government expected that these changes would be made by a Minister laying a Statutory Instrument (SI) using existing parliamentary procedures already in practice notably affirmative and negative SIs. This would not be the first skeleton bill introduced to Parliament in recent years and the use of such instruments had been an increasingly seen strategy of Governments of all political backgrounds. In the white paper the Government evidenced the extensive use of delegated powers in previous Governments highlighting that 1,338 (2005-10) and 1,071 (2010-15) were given as the average number of SIs laid per year under the previous two administrations.⁴⁰⁵ Providing figures for a Labour Government and a Conservative Coalition Government was arguably a strategy to tie all main parties together in collusion of their willingness to use secondary legislation. The figures though did not differentiate between SIs emanating from domestic law or European law which would have allowed for a clearer picture of each Government use of the procedures.

The Government justified the need for delegated powers in stating that it 'was mindful of the need to ensure that the right balance [was] struck between the need for scrutiny and the need for speed' and proposed an estimated requirement of 800-1,000 SIs to deal with the necessary corrections.⁴⁰⁶ It furthered that the scope of the powers was inextricably linked to the amount of primary legislation needed; too narrow and the powers would be insufficient resulting in an increased number of pieces of primary legislation.⁴⁰⁷ The Government would claim that the timetable for leaving could not allow for any additional legislation owing to the already substantial legislative task posed by Brexit. The nature of the Government's majority in March 2017 was tenuous and had the potential to pose difficulties during the passage of legislation. May would find her position even less secure following the results of the

⁴⁰⁴ *Ibid.*

⁴⁰⁵ *Ibid.*

⁴⁰⁶ *Ibid.*

⁴⁰⁷ *Ibid.*

2017 election and the subsequent reduction of primary legislation would have the effect of reducing possible instances for defeat. This could prove a challenging scenario for any government during the passage of any legislation, but the GRB had the effect of associating two contentious issues which were known test party loyalties: Europe and the role of Parliament.

The Government had indicated its intention to retain the body of EU legislation as it stood the day before exit so that there were no policy changes present in the Bill and through this could maintain the argument that the Bill was a purely technical piece of legislation. The strategy that it had used with the EU (Notification of Withdrawal) Bill which justified the short and close nature of the wording. However, within the white paper it was stated that the wholesale retention of EU-derived legislation would not apply to the Charter of Fundamental Rights (CFR). The CFR provided for the codification of rights found across the body of EU law.⁴⁰⁸ It was on this basis that the Government argued that the CFR did not need to be transposed into UK law because it existed elsewhere and by virtue of that the rights would still be transposed. The Charter, with its weighting equal to that of the EU Treaties, was thus argued to be surplus to requirements. Relying purely on the information in the white paper, fears that the Bill would be used to slash rights and EU-derived regulations were not yet calmed by this move. The Government added that the UK had no need for such a document as many of the rights conveyed by it were also provided by its membership to the United Nations (UN) and the European Convention on Human Rights (ECHR) which was a product of the Council of Europe and thus would remain unaffected by Brexit.⁴⁰⁹ A key failure of the Government's strategy was that its silence on issues relating to Brexit and the refusal to increase transparency did not allow them to 'soften the blow' when it came to introducing changes not previously envisioned; there were few outside of Government who had anticipated the exclusion of the CFR from the retention of EU-derived law. This had been a similar move that the Government had previously made on the withdrawal from Euratom. To its opponents the move appeared to be an attempt to remove the protection afforded to entrenched rights. Arguably, the move was not an indictment, at that time, of a Conservative attack on the European rulings within the law but the removal of the

⁴⁰⁸ European Union (2007) Charter of Fundamental Rights of the European Union. (2007/C 303/01)

⁴⁰⁹ DExEU. *Op. cit.*

CFR could reduce the accessibility that the average member of the population had to understand their rights and increase the challenges of raising objections when infringements occurred against them.

In *'Legislating for the United Kingdom's Withdrawal for the European Union'* the Government quoted from the House of Lords Select Committee on the Constitution which had been published on 7 March 2017.⁴¹⁰ The report is another example of a House of Lords Select Committee filling the information void surrounding Brexit and offered a view as to how the Bill should be composed to reflect and mitigate the potential constitutional implications associated with the withdrawal. The Committee had pre-empted, correctly, that the granting of so-called Henry VIII powers would be a feature of the GRB given that it would allow for the challenge of EU legislation to be dealt with quickly.⁴¹¹ However, the report identified that such a strategy, if adopted, would pose new and significant constitutional problems.⁴¹² In quoting from the report, the Government was fairly selective about the material it chose in support of its arguments and in many ways failed to reflect the alarmist tone of the report. The Government noted the Committee's assessment of the use of the powers and the difference between the 'mechanical act of converting EU law into UK law, and the discretionary process of amending EU law to implement policies that previously lay in the EU's competence', to which the Government agreed that the purpose of the granting of these powers was intended for the first and not the second of these possibilities.⁴¹³ The Government further quoted from the report in identifying that the Committee had recognised the need to not 'unduly constrain the Government' and that it was 'unrealistic to assume that Parliament will be able to tightly limit the delegated powers granted under this bill' and that it 'will necessitate the granting of relatively wide delegated powers to amend existing EU law and to legislate for new arrangements following Brexit'.⁴¹⁴ Though to consider fully the Committees stance on the issue is to consider that they saw this as the 'challenge of the House' as opposed to any suggestion that it was somehow problem-free. The Committee itself elaborated on this challenge within the report as being 'how to permit relatively wide

⁴¹⁰ House Of Lords Select Committee on the Constitution (2017) The 'Great Repeal Bill' and delegate powers. 9th report of session 2016-17. HL Paper 123.

⁴¹¹ *Ibid.*

⁴¹² *Ibid.*

⁴¹³ DExEU (2017) *op. cit.*

⁴¹⁴ *Ibid.*

delegated powers, while ensuring they cannot be used simply to implement new policies'.⁴¹⁵ While it would be incorrect to accuse the Government of misquoting from the report, it is evident that their use of it failed to reflect the context and tone; the Government did not reflect, for instance, on the idea that the Bill was 'likely to involve the massive transfer of legislative competence from Parliament to the Government' which raised 'constitutional implications of a fundamental nature, concerning as it does the appropriate balance of power between the two'.⁴¹⁶ The Government were keen to downplay the extent of the constitutional challenges raised by the GRB and maintain that the bill was a predominantly technical exercise to ensure legal continuity and as such any powers imparted by it would only be used for technical matters. The white paper reported that because the Government intended to use pre-existing Parliamentary procedures (negative and affirmative SIs), that Parliamentarians could apply such scrutiny as with all and any Government activity within the House using procedures that they were familiar with.⁴¹⁷ Therefore, Parliament would be included in the process and could apply standard levels of scrutiny despite the fact that the Executive intended to retain the ability to choose whether any instrument laid would be affirmative or negative. The difference that this could make would be substantial; the negative procedure does not require debate or active passage if no objections are raised within 21 days of it being laid.⁴¹⁸ This could prove a potent power and make surveillance and scrutiny of Government activity a much more arduous task particularly given the proposed number of changes likely to occur within the session. The power to make such a choice enhances the Executive's control over Parliamentary business and presents obstacles to Parliamentarians wishing to apply scrutiny to government activities. Additionally, the existing procedures provide for a standard, and arguably insufficient, level of scrutiny when applied to substantive policy areas rather than technical or mechanical changes.

⁴¹⁵ HLSCC (2017) *op. cit.*

⁴¹⁶ *Ibid.*

⁴¹⁷ DExEU (2017) *op. cit.*

⁴¹⁸ UK Parliament (2021) Statutory instruments procedure in the House of Commons. *House of Commons enquiries service.*

‘A radical departure from the norm’⁴¹⁹:

Responses to the proposed bill

Though the Government had used some of the findings of the Constitution Committee’s report, it had seemingly been selective in order to suggest that the Committee was more supportive of its intentions than was actually the case. The Committee proposed that there ought to be strengthened scrutiny of SIs in light of the severity of the issues involved, proposals included:

- A minister ought to lay a declaration in the explanatory memorandum (EM) of each SI stating that the measure does only what is necessary to ensure legal continuity,
- Each EM ought to state what the law did before exit and the subsequent effect of the law post-Brexit,
- The Government ought to make recommendations as to the appropriate level of scrutiny each SI should be under with strengthened scrutiny procedures for those which could be considered as policy issues,
- A Parliamentary Committee should then review any such recommendation,
- Where it is felt that the issue is of significant policy matter, it should then undergo strengthened scrutiny (if the Government has not already recommended such a step).⁴²⁰

The Committee was not alone in recommending that a strengthened scrutiny procedure was recommended for SIs being laid in relation to Brexit and this applied to both the practice of laying the measure and the Parliamentary response to it. As will become apparent in the Committee responses, as well as responses in the House to the Bill, there was little confidence that the existing SI procedures were adequate in the depth of scrutiny they allowed for. There was little activity, before and after Brexit, toward any significant steps to change or enhance such procedures. This is arguably because SIs as they stand work favourably for the Government and consequently any party in Government would be hesitant to change them for the

⁴¹⁹ Delegated Powers Regulatory Reform Committee (2017) European Union (Withdrawal) Bill. 3rd Report of Session 2017-19. HL Paper 22.

⁴²⁰ HLSCC (2017) *op. cit.*

sake of having to undergo additional and potentially damaging levels of scrutiny. Additionally, the Constitution Committee was evidently mindful that political debate within the House, and the public at large, had become increasingly binary during the referendum campaigns and the months that followed. The experience during the passage of the EU (Notification of Withdrawal) Act had highlighted a conflation of arguments for greater levels of scrutiny of Government activity with accusations of delaying or wrecking Brexit and ignoring the 'will of the people'. The Constitution Committee warned that 'nor should the exceptional circumstances constituted by Brexit, be taken in and of themselves to be a sufficient answer to legitimate concerns relating to the balance of constitutional power between the two'.⁴²¹ Clearly, the Committee felt that the two needed to be divorced from one another owing to the very obvious constitutional implications raised by Brexit; what were the roles of each pillar of governance, the Executive and the Legislature, during Brexit? Which had the authority to decide what would happen? And where did the powers go that were relinquished from the supranational organisation as membership ended? As with much of Brexit, these were issues in which there was no precedent and neither side (Parliament or Government) were particularly willing to cede additional power to the other.

The Constitution Committee report was the first to be published prior to the Bill's introduction to the House but the Delegated Powers and Regulatory Reform Committee (DPRRC) did work with them on the issues.⁴²² The DPRRC is a House of Lords Select Committee established to deal with the 'growing disquiet about the 'wide' and 'ill-defined' powers being conferred on Ministers' and were subsequently tasked with examining proposed delegated powers within legislation in order to act as a beacon to the House on any proposal which raised concerns.⁴²³ It fulfilled its role by reporting 'whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of Parliamentary scrutiny'.⁴²⁴ Consequently, the DPRRC with its 25-year background were well-placed to assess the proposed use of delegated powers in the GRB. In its evidence to the House of Commons Procedure Committee

⁴²¹ *Ibid.*

⁴²² HLSCC (2017) *ibid.*

⁴²³ DPRRC (2017) *op. cit.*

⁴²⁴ *Ibid.*

the DPRRC, on the use of delegated powers, stated that they were ‘keenly alert’ to the notion that future Governments (regardless of political background) might be unlikely to have the same intentions regarding the use of powers offered by the bill.⁴²⁵ It furthered this with ‘the test we apply in scrutinising a power must not be how the current Government intend to exercise it but how any Government could exercise it’.⁴²⁶ This practice was not new to Brexit or the GRB and so the Government’s insistence that they could be trusted to use such wide powers only within the scope of its verbally stated intention and nothing more betrays the uncertainty the Government felt about the bill and Brexit more widely. Proposing powers with such a wide scope would raise Parliamentary opposition, from both Committees and Members, as to the impact on executive powers and potential dominance over the legislature. The Government, though still with its marginal working majority at the time, was arguably not in a position to open itself up so freely to such opposition. It is therefore surmised that the Government saw little choice otherwise but to propose significantly wide powers; an act which suggests that the Government was uncertain as to the breadth of power it needed to give itself in order to ‘get Brexit done’ and any limitation on those powers at an early stage could harm their legislative flexibility at a later point. Transparency over its position was equally not an option given the political repercussions, from within the Conservative Party and external opponents, as well as any potential impact on its negotiating position. In its evidence to the Constitution Committee, the DPRRC furthered that the GRB required the ‘closest scrutiny’ to ensure that powers were only used to convert the *acquis* of EU law into domestic law.⁴²⁷

The submission goes on to challenge the Government’s claim that the existing procedures on Statutory Instruments allowed for Parliament to choose the level of its involvement and consequently how much scrutiny it applied to various measures. The DPRRC suggested that such a claim ‘discloses a marked difference between theory and reality’ and that in practical terms ‘any Government with a working majority in the House of Commons would have a decisive say in the delegation of

⁴²⁵ DPRRC (2017) Special Report: Submission to the House of Commons Procedure Committee inquiry on the delegated powers in the “Great Repeal Bill”. 23rd Report of Session 2016-17. HL Paper 143.

⁴²⁶ *Ibid.*

⁴²⁷ *Ibid.*

powers in a bill and also the level of scrutiny applied to their exercise'.⁴²⁸ This point goes to the heart of the inflexibility of the Westminster model; power is fundamentally a numbers game in UK governance. So, while in theory Parliament could have a role to play in the scrutiny of Government activity, the reality was that that role is weakened by the strength of the Government. The Executive, while enjoying a majority and assuming loyalty from its own members, will dominate the legislature with little practical means for any pushback from the Commons. Though certainty of compliance in the Lords is more complicated with the presence of Crossbench Peers, the primacy of the Commons can have the effect of restricting the activity of the Peers in pushing forward in its measures against the lower Chamber. This results in the appearance of the Houses of Parliament as a rubber stamp for the wishes of Government. During these periods the Official Opposition can do little but stamp its feet and raise its voice in response. However, there is an argument, as explored in this thesis, that the Government can, and does, monitor its exercise of executive dominance even during periods with a healthy and reliable majority. There are multiple reasons for this such as future electoral aims, maintaining loyalty from career Backbenchers, and the impact of the Press at large, reputation and so on. As will be demonstrated through the passage of EU (Withdrawal) bill and the events beyond, there was one stalwart against government overreach found in the position of the Speaker of the House of Commons, John Bercow, who, although a Conservative, fiercely protected the rights of the Legislature, and revelled in the resulting attention. Though the Westminster model has less prescribed methods of checks and balances as can be seen in other examples of governance, it does have mechanisms and practices which ensure that maintenance of the balance between the Executive and Legislature is largely upheld.

The House of Lords Secondary Legislation Select Committee (SLSC) offered evidence submission to the Procedure Committees inquiry; suggesting that bicameral cooperation is strongest within the Committee framework if nowhere else. In its submission, the Committee was forthcoming in its position regarding the proposals for the GRB; its over-riding concern was found in the workload anticipated

⁴²⁸ *Ibid.*

as a result of the high numbers of SIs predicted.⁴²⁹ The Committee though was less concerned with the figure of 800-1,000 SIs but rather the flow with which these were likely to descend into Parliament; it was felt that this needed to be a well-managed flow to ensure that Parliament had enough time to apply the appropriate levels of scrutiny which would be difficult if they came in fits and starts or towards the end of the session.⁴³⁰ Additionally the Committee called for more detail in the EMs of SIs associated with this task and essentially called for the Government to go beyond standard practice in order to aid Parliamentary scrutiny.⁴³¹

The Delegated Powers and Regulatory Reform Committee (DPRRC) published its own report on 28 September 2017 which came after the first and second readings of the bill.⁴³² In the report the Committee slammed what it deemed to be 'unacceptably wide Henry VIII powers' which included the ability to amend or repeal the EU (Withdrawal) Act (once Royal Assent was achieved) through SI.⁴³³ In what it describe as 'one of the most constitutionally important bills in history', the Committee highlighted that the proposals offered 'insufficient Parliamentary scrutiny' by giving 'Ministers a range of powers, unique in peacetime, to override Acts by SI without the need, in most cases, for any prior debate'.⁴³⁴ Fundamentally, the Committee judged the Governments proposals for the delegation of power and the justification given for it as being found wanting. It attacked the Government's intention to allow itself the freedom to choose whichever procedure it deemed fit even though it the GRB was intended to replace a bill which provided that very power and had therefore set a precedent to do so.⁴³⁵ It called the proposals a 'radical departure from the norm and one which is wholly unacceptable' given that it would confer onto Ministers the widest Henry VIII powers as 'we have ever seen'.⁴³⁶ As with the Constitution Committee, the DPRRC proposed that a committee, existing or newly established, be used to assess the SIs as they were laid.⁴³⁷ It is evident that the Government had

⁴²⁹ Secondary Legislation Scrutiny Committee (2017) Special Report: Submission to the House of Commons Procedure Committee inquiry on the delegated powers in the "great Repeal Bill". 33rd Report of Session 2016-17. HL Paper 165

⁴³⁰ *Ibid.*

⁴³¹ *Ibid.*

⁴³² First reading, 13 July 2017. Second Reading, September 2017.

⁴³³ DPRRC (2017) *op. cit.*

⁴³⁴ *Ibid.*

⁴³⁵ *Ibid.*

⁴³⁶ *Ibid.*

⁴³⁷ *Ibid.*

displeased the very Committee responsible for assessing delegated powers and had done little to improve the Bill in this regard since the publication of the white paper despite vocal resistance to the measures.

The House of Lords Committees were not alone in passing judgment on the bill with the House of Commons Procedure Committee publishing an interim report called '*Scrutiny of delegated legislation under the EU (Withdrawal) Bill*' in November 2017, prior to the commencement of the Bill's Committee Stage. The Committee argued that the 'proposals, resting on existing procedures' do not go far enough.⁴³⁸ In giving evidence to the Committee, Andrea Leadsom, then Leader of the House of Commons, had offered that each proposal would be assessed by the Cabinet Committee in Parliamentary Business and Legislation (PBL).⁴³⁹ The Committee though did not deem the measure to be an appropriate replacement for scrutiny applied by the House.⁴⁴⁰ The Procedure Committee, as with the DPRRC before it, proposed the use of a committee which would be tasked with examining each SI laid using the delegated powers supplied by the Bill and would determine whether the measure was of significant political and/or legal importance to be of interest to the House at large and require further consideration.⁴⁴¹

Beyond the work of the Committees, Parliamentarians were keen to have their voices heard on proposed legislation. The first test of the proposals came during debates on the white paper. In her speech on the publication, in response to Lord Bridges of Headley's statement, Baroness Hayter referred heavily to the work of the Committees on the GRB and incorporated many of their conclusions into her own demands of the Government over the bill. She challenged the Minister to:

"give serious considerations to our recommendations? These are: that an explanatory memorandum be published alongside each statutory instrument; that there will be early consultation with outside stakeholders; that there will be a provision of comprehensive delegated powers memorandum for Parliament when the bill appears; that there will be provision of draft regulations so that

⁴³⁸ House of Commons Procedure Committee (HCPC) (2017) *Scrutiny of delegated legislation under the European Union (Withdrawal) Bill: interim report*. First report of session 2017-19. HC 386

⁴³⁹ Leadsom, A. (2017) Oral evidence: Exiting the European Community: scrutiny of delegated legislation. House of Commons Procedure Committee. HC 386. 18 October 2017.

⁴⁴⁰ HCPC (2017) *op. cit.*

⁴⁴¹ *Ibid.*

scrutiny can be commenced before the bill is enacted, in view of the sheer scale and complexity of the secondary legislation; and, given that delegated legislation is unamendable, that there will be consideration of a strengthened scrutiny procedure to ensure that Parliament retains some control over significant statutory instruments, including some form of “triage” of the various proposals”.⁴⁴²

It is evident that these requests were drawn from the suggestions raised by the early inquiries into the Bill and speaks to the efforts of both Baroness Hayter and Baroness Smith to use the expertise of the Committees; this was particularly the case of Labour Peers who sat on relevant Committees coming together with the pair to find alignment between the findings of inquiries and core Labour values or express Party policy.⁴⁴³ The strategy pursued by Labour Peers as reflected by Baroness Hayter is reflective of the role that they play within the governance framework at large and though convergence can be seen between the aims of the different branches of the PLP, there are divergences in how they work to achieve these.

In the Commons, the strategy pursued by Keir Starmer was to apply a series of tests through which he and his colleagues could quantify success on Brexit. For Starmer, support for the Government’s activities on Brexit was contingent on them meeting each of the tests, which were:

1. Does it ensure a strong and collaborative future relationship with the EU?
2. Does it “deliver the exact same benefits” as we currently have as members of the Single Market and Customs Union?
3. Does it ensure fair management of migration in the interests of the economy and communities?
4. Does it defend rights and protections and prevent a race to the bottom?
5. Does it protect national security and our capacity to tackle cross-border crime?
6. Does it deliver for all regions and nations of the United Kingdom?⁴⁴⁴

The deployment of the tests allowed for Government activity to be measured and provide a useful criterion through which Labour MPs could stay on message. It was

⁴⁴² HL Deb (30 March 2017) vol. 782. Col. 804-5

⁴⁴³ Labour Peers Frontbench Meeting (19 October 2016) [closed meeting]

⁴⁴⁴ HC Deb (30 March 2017) vol.624 col.430-1

not the first time that the Labour Party had used such a strategy; they had done so in opposition in 1970 and they had done so in Government during discussions on joining the Eurozone.⁴⁴⁵ Though the tests were to be applied to Brexit in general, they were used during the passage of the EU (Withdrawal) bill too. Given the generally technical nature of domesticating EU legislation it could be assessed that the application of policy-laden tests was inappropriate, but it highlights the degree of mistrust between Labour as opposition and the Conservatives in Government. Further, it highlights quite how few other opportunities that non-government Parliamentarians had to force binding changes on the Government.

The tests had their first outing in a speech given by Starmer at Chatham House on 27 March 2017.⁴⁴⁶ While they highlighted what Labour considered to be the most important policy areas such as immigration, rights and protections and national security, they were (presumably) purposefully vague. The tests were not intended to serve a function as Labour's alternative plan to that of the Governments and they were not so specific that they would be binding and detrimental should they fail in their purpose. The test on immigration did not set out to establish Labour's preferred policy on the issue but only that the outcome was 'fair'. Such a criteria, being subjective and ambiguous would mean that Labour could not be called hypocritical at times when they found themselves having to support the Government. The strategy can also be seen as an attempt to move away from the tradition that the Official Opposition had to offer an alternative plan to that of the Government. In a situation when so little was known of the Government's activities and plans, an attempt at being alternative was not feasibly an option. What was known by mid-2017, courtesy only of May's speech of January 2017, was that the Government intended to withdraw from the Common Commercial Policy (CCP) and the Common External Tariff (CET) and ultimately the Customs Union owing to the decision to pursue its own trade agreements.⁴⁴⁷ It might appear then that from the outset Labour's second test to deliver the 'exact same benefits' as members of the Single Market and Customs Union was destined for failure. However, the phrasing used by the test came from David Davis, Secretary of State for Exiting the European Union. Following

⁴⁴⁵ Gaitskell, H. (1962) *op. cit.*

⁴⁴⁶ Starmer, K. (2017) Speech. What next for Britain? Chatham House. 27 March 2017.

⁴⁴⁷ May, T. (2017) Speech. The Government's negotiating objectives for exiting the EU. Lancaster House. 17 January 2017.

the Supreme Court decision on the role of Parliament and ahead of the subsequent legislation, Davis responded to his own Backbencher, Anna Soubry, that "what we have come up with...is the idea of a comprehensive free trade agreement and comprehensive customs agreement that will deliver the exact same benefits as we have".⁴⁴⁸ Though it might be unfair to hold him to those words before negotiations had even begun, it seems equally foolish to have made such a statement in the first place. The inclusion of the quote was Labour's attempt at ensuring that any failure to meet the test was not a failure on their part but a failure of the Government in not meeting its own standards. However, as with the 170 questions strategy pursued by Labour's Brexit department previously, the six tests would never be stringently applied in any meaningful sense later in the process; the tendency not to maintain strategies for any significant period would arguably prove detrimental to Labour success in challenging the Government. However, it did have the effect of maintaining party cohesion on the Brexit policy as Labour Members were able to draw on them. Despite the Government's position there was little evidence of significant preventive influence in the Bill as introduced. The inclusion of pacifying measures which had significant support across the House, such as the use of a sifting committee, could have been included by the Government or added prior to debate. This move suggests that the Government was not overly concerned by the threat of defeat.

When the time came for the Government to introduce the EU (Withdrawal) Bill to the House on 13 July 2017, there was little evidence to suggest that it had composed the bill to reflect the concerns of MPs and Committees alike. Though it was still maintained that the Bill was a purely technical exercise to ensure the functionality of the statute book post-Brexit and to support legal continuity, the proposed legislation proved far more complex than that. There was little difficulty in accepting the need to repeal the ECA or to retain the *acquis* of EU-law post-Brexit but the bill also intended for the Government to be able to implement the withdrawal agreement through the provision of delegated powers supplied by clause 9 of the Bill.⁴⁴⁹ This action would allow for the Government to make potential policy changes, and significant ones at that, which were the result of the negotiations between the UK and the EU; the

⁴⁴⁸ HC Deb. (24 January 2017) vol.620 col.169

⁴⁴⁹ Bill (House of Commons) *European Union (Withdrawal) Bill*. (2017) HC Bill 005 2017-19.

Government could argue that the measure was indeed within the spirit of the bill given that the deal needed to be given statutory footing but by the time in which it was agreed that would just mean a rubber stamp. The argument was highly reductive and the expectation that Parliament would allow such a power was naïve. To her opponents the Government was acting dubiously and trying to circumvent the involvement or scrutiny of Parliament over the withdrawal agreement. Non-Government Parliamentarians, particularly those in opposition, were being asked to allow for a deal when negotiations had barely progressed and would result in them voting blind. This furthers the idea that the process of the UK's withdrawal from the EU can be described as an extra-ordinary policy programme (EOPP) given that Members of both Chambers were proactively preparing for a future event without a full understanding of all of the possible implications that could play out. It is worth highlighting here the difference between voting without an understanding and voting without any possibility to understand; when the final Brexit deal was subsequently voted it emerged that Victoria Prentiss, Department for Environment, Food, and Rural Affairs, had not had time to fully read the final deal before voting for it because she had been busy preparing for Christmas.⁴⁵⁰ Legislative activity of this nature (voting blind not the failure to read documents) is more akin to the Emergency Powers Act in which significant portions of the legislation is based on assumption as to all the possible scenarios that the Bill is intended to account for.

The next significant clause causing concern for the Government's opponents was clause 7 granting powers to Ministers to 'correct' any deficiencies in the retained EU-derived legislation.⁴⁵¹ Again, the Government argued that the powers were for technical measures owing to the fact that some laws, once retained, would not make sense in domestic law post-membership. However, the Government's *modus operandi* for the clause, as with other examples, was to grant exceptionally wide powers but insist that they would only be used for their (verbally) stated function rather than utilise the full extent of the powers; clause 7 as introduced would allow for ministers to make changes to law, including primary legislation and the EU (Withdrawal) Bill itself, if they felt it was appropriate in the context of Brexit. This would allow for policy changes to be made with few tangible restrictions in place.

⁴⁵⁰ PA Media (2021) Fisheries Minister did not read Brexit bill as she was bust at nativity. *The Guardian*. 13 January 2021.

⁴⁵¹ HC Bill 005. *Op. cit.*

Though there were many clauses and schedules which raised concerns in the House, schedule 7 was one which provided for the choice of procedures used in laying SIs at the discretion of Government Ministers. Issues relating to the appropriate role of Parliament, the extent and scope of delegated powers, the distrust toward the Government and overall, the constitutional implications of the Bill would dominate discussion throughout its passage.

‘Primarily technical’⁴⁵² or an ‘unprecedented power grab’⁴⁵³?

The passage of the EU (withdrawal) Bill

The EU (Withdrawal) bill would take almost a year to achieve royal assent, doing so on 26 June 2018, having spent more than 272 hours in the floor of the House; 112 hours and 33 minutes in the Commons and 160 Hours and 44 minutes in the Lords.⁴⁵⁴ The bill’s 19 clauses and eight schedules as at introduction would be increased to 25 sections and nine schedules with an increase in its length of 63 per cent.⁴⁵⁵ It is worth noting that the Government was only defeated once during the passage of the bill and though some of the changes made to the bill were not substantive the Government were forced to compromise or ‘think on’ different issues throughout. The Government were defeated 15 times in the Lords but only one amendment was to be accepted by the Government, there were compromises made to a further eight. Though the changes made by the Lords were more numerous than in the Commons and although some of the rebels involved had previously been in ministerial positions, defeats and rebellions in the Commons hold far more weight than those experienced in the Upper Chamber. This is perhaps in part due to the novelty of a Commons defeat given that they are much rarer in general and far more potent as a result. The role of the Lords within the passage of legislation often results in changes being expected from them more. The significance of defeats in the Commons is often heightened by the presence of Government Backbenchers voting alongside the Opposition to defeat their own party; this adds an intra-party conflict to the wider executive-legislature dynamics as it shifts the power balance towards

⁴⁵² Davis, D. HC Deb. (7 September 2017) vol.628 Col.346

⁴⁵³ Starmer, K. *Ibid.* Col.367

⁴⁵⁴ Thimont Jack, M. (2018) EU Withdrawal Act 2018: Explainer. *Institute for Government*.

⁴⁵⁵ Lilly, A., White, H. and Haigh, J. (2018) Parliamentary Monitor 2018. *Institute for Government*.

opposition control. Rebellions of significant numbers amounting to defeat are relatively rare but signify the influence and power that Government Backbenchers can wield. The single defeat in combination with the wider changes made to the Bill suggests that the Government were not fully able to dominate the process and that they were not operating with complete executive dominance comparative to the experience of the EU (Notification of Withdrawal) Act, 2017 and the earlier stages of Brexit in general. Given the substance of the topic and coming as it did after the loss of its majority in June 2017, it is perhaps not a surprise that this was the case; arguably more surprising was that the Government did not face stronger intra-party resistance at this time.

As indicated above, the Bill had been widely discussed and reported on by the time it had its second reading in September 2017. In moving the bill at this stage David Davis strove to ensure that the House understood that the legislation was “primarily technical” and pressed that it was essential to ensure a “smooth and orderly” end to the UK’s membership to the Union.⁴⁵⁶ While early interventions to his speech raised issues of devolution and the potential for policy changes under the powers, the first Brexiter to rise in intervention was John Redwood, MP for Wokingham, during which he called the accusations that the Government was attempting to bypass Parliament a “synthetic nonsense” because SIs as a Parliamentary procedure were “entirely in Parliament’s control”.⁴⁵⁷ It would be in this vain that much of the defence of the powers in the Bill was mounted; SIs had been a long-standing apparatus of Government which Parliament had never sought to overhaul. Chris Bryant, MP for Rhondda, was the first to call for a new type of secondary legislation requesting that the Government “allow for a new form of secondary legislation where we can amend and have substantial debate”.⁴⁵⁸ Even if the Government had been willing to invite additional scrutiny of, and Parliamentary input in, its activities, such a request was unrealistic given the workload and timeframe. Davis retorted that he was not willing to “reinvent the constitution at the dispatch box” but it is difficult to imagine that such a move would have improved the task at hand; imperfect though they were, the existing SI procedure was a well-practiced and understood mechanism.⁴⁵⁹ At this

⁴⁵⁶ Davis, D. *op. cit.*

⁴⁵⁷ Redwood, J. *Ibid.* col.344

⁴⁵⁸ Bryant, C. *Ibid.* col.346

⁴⁵⁹ Davis, D. *ibid.* col.346

time, all parties involved were working on the assumption that there would not be an extension to the Article 50 countdown of two years and so to devise a new measure for secondary legislation, learn how to use it appropriately and then to debate and potentially amend all pieces of secondary legislation would be impractical and unrealistic. In fact, such a request seems to undermine the reasons for, and use of, secondary legislation in the first place. One of the more pressing challenges for the Houses would be the workload of the incoming SIs and the distribution of this across the two Houses. Despite the immense challenges there were few calls for a bicameral approach, in truth some Committee reports were explicit in their rejection of the idea. The separation of the Houses is distinct and entrenched; in the face of potentially 1,000 SIs in addition to the standard workload and with nothing to dictate their pace and flow, the Houses were happy to work in parallel but not with each other. This is particularly curious given that Committees in both Houses had proposed a new sifting committee of some kind. There appears to be no specific or indeed explicit reason as to why the Houses are so reticent to work together in this way, even in instances of unique or national importance. Most Members seem more content to work across the Houses within their own parties.

Interventions to Davis' speech were naturally numerous though no-one rejected the necessity of the bill, there were many challenges to its nature. Yvette Cooper, MP for Normanton, Pontefract, and Castleford, took aim at "not what ministers say is the aim of the bill, but what are the actual powers in it".⁴⁶⁰ Even if trust were stronger between Parliamentarians and the Government, the law is judiciable in its wording and in what is and what is not binding. Davis acknowledged that "proposing a delegated power of this breadth is unusual, but the leaving the EU presents us with a unique set of challenges that need a pragmatic response".⁴⁶¹ The response epitomises the approach taken by Government that the unique and unprecedented nature of Brexit required legislative and constitutional flexibility of a type unknown to the institutions. This was something that the Lords Select Committee on the Constitution had expressly discouraged in its report of March 2017 in which it stated that "nor should the exceptional circumstances constituted by Brexit be taken in and of themselves to be a sufficient answer to legitimate concerns relating to the balance

⁴⁶⁰ Cooper, Y. *Ibid.* col.348

⁴⁶¹ Davis, D. *Ibid.* col.349

of constitutional authority as between the Parliament and the Government".⁴⁶² During the early phases of the Brexit process, it had been a repeated practice for the Government to withhold information owing to the sensitivity of their position within negotiations. Clearly the Committee recognised the ease with which the nature of Brexit could be used in avoidance of scrutiny and information sharing; though the warning was not heeded and there could be no repercussions for the Government in taking such an approach.

As with Brexit in general the difficulties faced by those attempting to challenge the Government was that they were so often being accused of attempting to derail or halt Brexit. This was the case even when the concerns being raised were of a distinctly domestic nature such as those of the constitution or Parliamentary processes and procedures. The Government were seemingly able to dissociate issues of policy and functionality but when Labour, or any non-Government MP for that matter, attempted to divorce the two issues, the kickback from pro-Brexit MPs, and the press at large, was fierce. While emphasis within this thesis has tended toward MPs or bodies which attempted to defeat the Government, such as the Official Opposition and the Government's own backbenchers, there was a small but significant contingent of Brexit supporting MPs in the Commons who worked equally hard to ensure that the Government were not challenged or defeated on issues relating to Brexit. These MPs were exemplified by the European Research Group (ERG), a secretive group founded in 1993 but who found significant attention during the Brexit process.⁴⁶³ Their power and influence over the Government would be most keenly felt from November 2018 once May's withdrawal agreement was published when the ERG started to work against the wishes of the Government but until that stage they could be relied upon to defend the Conservative Party line. The relative degree of influence possessed by the Government Backbenchers increases with the weakness of the majority held. Fortunately for May during the passage of the EU (Withdrawal) Bill the Brexiters across the House generally sided with her Government and the Conservative MPs willing to rebel against her would generally

⁴⁶² HLSCC (2017) *op. cit.*

⁴⁶³ Spicer, M. (2018) Move over Ukip, Jacob Rees-Mogg and the ERG are not the real Brexit watchdogs. *The Telegraph*. 25 January 2018.

not go so far as to support any amendments designed to wreck the bill or even amendments in the name of Opposition Members.

The Labour Party's attitude towards the bill, led by Keir Starmer, was exemplified by their own frontbench amendment which declined to progress the bill in its current form. The amendment moved by Starmer was as follows:

“this house respects the referendum result and recognises that the UK will leave the EU, believes that insisting on proper scrutiny of this Bill and its proposed powers is the responsibility of this sovereign Parliament, recognizes the need for considered an effective legislation to preserve EU derived rights, protections and regulations in UK law as the UK leaves the EU, but declines to give a second reading to the European Union (Withdrawal) Bill because the Bill fails to protect and reassert the principle of Parliamentary sovereignty by handing sweeping powers to Government Ministers allowing them to bypass Parliament on key decisions, without any meaningful or guaranteed Parliamentary scrutiny, fails to include a presumption of devolution which would allow effective transfer of devolved competences coming back from the EU to the devolved administrations and makes unnecessary and unjustified alterations to the devolution settlements, fails to provide certainty that rights and protections will be enforced as effectively in the future as they are at present, risks weakening human rights protections by failing to transpose the EU charter of fundamental rights into UK law, provides no mechanism for ensuring the UK does not lag behind the EU in workplace protections and environmental standards in the future and prevents the UK implementing strong transitional arrangements on the same basic terms we currently enjoy, including remaining in a Customs Union and in the Single Market”.⁴⁶⁴

There are clear and obvious references to Labour's six tests within the amendment laid and the content and strategy used by Starmer highlights an intention toward a coherent approach as opposition. Starmer sought to expose the extent of “constitutional implications” created by the proposed legislation and highlights an unwillingness to hand the Government a ‘blank cheque’ over Brexit and would be willing to risk the threatened political cost if it felt that the price was too high. Pointing

⁴⁶⁴ Starmer, K. HC Deb. *Op. cit.* col.358

to clause 9.2 and stating that it was as “wide a provision as [he] had ever seen”.⁴⁶⁵ Owing to the inclusion in the clause of a power to modify the EU (Withdrawal) Bill itself (outside of the exemptions relating to the imposition of taxes, making retrospective provisions, creating criminal offenses or amending the Human Rights Act).⁴⁶⁶ According to Starmer, “everything else is on limits” under the clause.⁴⁶⁷ Going beyond this, he established that not only would the proposed powers not be subject to enhanced scrutiny provisions but that the Government has given itself the ability to choose which of the standard SI procedures the changes can be subject to. It was clear that the majority of Labour MPs, smaller opposition parties and other members were concerned with the democratic health of UK governance and were disturbed by the potential transfer of legislative imperative to the Executive. On the second day of Second Reading Bernard Jenkin, MP for Harwich and North Essex, was to throw an accusation of insincerity at the Opposition Benches claiming that he “spent many years on the opposition benches- on the front bench and the back bench- practicing the professional outrage we saw practiced very effectively in the chamber last Thursday”.⁴⁶⁸ It is a statement of such kind which adds weight to the claim the opposition frustrations and protestations are never carried into Government when the time arrives. Opposition- turned- Government MPs do not attempt to lower the barriers which they came up against whilst on the Shadow Benches. However, the prospect of significant constitutional implications would not yet force Conservative Backbenchers into supporting Labour’s amendment to deny a Second Reading. To the Brexiters, such as the ERG, any challenges raised suspicions of an attempt to derail Brexit and for those wanting to challenge the Government there was a paranoia that such a charge would be levelled against them despite protests to the contrary. The amendment was rejected with 296 voting in favour and 318 voting it down; this would be a fairly consistent voting pattern in the Commons throughout the bill’s passage.⁴⁶⁹ On committee day six Chris Leslie spoke of the experience faced by MPs who desire a greater degree of scrutiny:

⁴⁶⁵ *Ibid.* col.359

⁴⁶⁶ *Ibid.*

⁴⁶⁷ *Ibid.*

⁴⁶⁸ Jenkins, B. HC Deb (11 September 2017) vol.628 col.458

⁴⁶⁹ Division 13 HC Deb (11 September 2017) vol. 628 col.589-592

“Conservative members will say I am making a point because I am sceptical about Brexit or something, but this is a constitutional issue. It is about ensuring that Parliament is sovereign, and that Members of Parliament can override the Executive and curtail excessive behaviour”.⁴⁷⁰

While Leslie was not alone in calling out the practice, it did little to curb the attempts to undermine the arguments of pro-European MPs. Wera Hobhouse, Liberal Democrat and MP for Bath would argue that the terms “‘democracy’ and ‘will of the people’” were being abused in relation to Brexit and calls her position “frustrating” in being “accused of undermining the will of the people” because of an inability to support a “deeply flawed” bill which “threatens to write into law a substantial loss of our Parliamentary sovereignty”.⁴⁷¹ The Bill was progressed to Committee Stage with a majority of 36 and the division was to witness seven pro Brexit Labour MPs crossing the floor to vote alongside the Government with no Conservatives doing the same in return.

“Eight days may not be enough”⁴⁷²

Commons Committee of the Whole House

As the Bill passed through the committee of the whole house during an eight-day debate between 14 November and 20 December 2017, there would be 400 amendments and 80 new clauses tabled to the bill and 41 divisions held. Of these, only four substantive changes would be made to the bill and while the Government would go on to suffer one defeat, they had also tabled some of their own amendments, accepted other non-Government amendments and committed to bring forth additional amendments at report stage. Topics covered by the amendments laid at committee stage included delegated legislation and Henry VIII powers, Northern Ireland and the Good Friday Agreement, the retention of EU derived laws and additional protections, devolution, rulings of the Court of Justice of the European Union (CJEU), the Charter of Fundamental Rights and the presence, or otherwise, of the inclusion of an exit day.

⁴⁷⁰ Leslie, C. HC Deb (12 December 2017) vol.633 col.218

⁴⁷¹ Hobhouse, V. HC Deb (11 September 2017) vol.628 col.502

⁴⁷² Lefroy, J. *Ibid.* col.524

As explored in this chapter previously, one of the main bones of contention about the bill was the constitutional implications it posed for the balance of power between the executive and the legislature; it should be noted the powers derived from the Bill were not new and their use had caused no major constitutional rifts prior to Brexit. Henry VIII clauses allow ministers to amend or repeal Acts of Parliament using secondary legislation.⁴⁷³ The name of the clause originates from the preference of Henry VIII to rule by decree and they can be found in the Statute of Proclamations, 1539 which stipulated that the King could make proclamations which held the weight of an Act of Parliament.⁴⁷⁴ The use of these powers was by no means unusual and somewhat expected with the increasing use of skeleton bills, there had been no major concerns as was experienced during the passage of the EU (Withdrawal) bill. However, it is evident that there were precautions in place, owing to the potential of Henry VIII clauses to increase executive power, as can be seen in the DPRRC's oversight role relating to their use.⁴⁷⁵ Arguably, it was the Government's decision to propose exceptionally wide delegated powers during a challenging Parliamentary period which resulted in the outrage displayed during the passage of this bill; the powers, necessary from the Government's perspective, were so wide that they would likely have caused some backlash because of the perceived transfer of power to the Executive through them. However, it is possible that the response was heightened because of the nature of Brexit and the increasing distrust between Parliament and Government which had resulted from the Executive's early attempts to reduce the role that Parliamentarians could play in the process. This is a challenging hypothesis to prove because it assumes a scenario in which it could be known how the individuals involved might have responded to the same proposals at a different time or in a different bill, which is naturally not possible.

Day six of the Committee stage was dedicated to debates associated with the 'correcting power' provided for by clause 7 of the bill as introduced. The clause stipulated that a Minister 'by regulation' could make such changes 'as the Minister considers appropriate to prevent, remedy or mitigate' any 'failure' or 'deficiency' in the operation of retained EU law resulting from the UK's withdrawal.⁴⁷⁶ Challenges to

⁴⁷³ Glossary (no date) Henry VIII Clauses. UK Parliament

⁴⁷⁴ DPRRC (2017) *op. cit.*

⁴⁷⁵ *Ibid.*

⁴⁷⁶ HC Bill 005

the clause were largely mounted on the issue that the terminology used was ill-defined with notable reference to 'appropriate' and 'deficiency'. It should be noted that the Governments own terminology had changed between the publication of the white paper and the publication of the bill; the white paper had proposed powers to allow for changes where 'necessary'.⁴⁷⁷ At some point between March and July 2017 the Government had attempted, for some reason, to expand the width of proposed powers and employed 'appropriate' as the legal term of reference. It is possible that in understanding the challenges likely to arise because of the composition of the Commons following the general election, the Government cast its powers more widely than originally intended to account for resistance to the powers; they wrote a buffer into the bill. If 'necessary' was the minimum the Government needed to fulfil the requirements of converting the *acquis* of EU law, attempts to minimise the scope of the powers would prove debilitating. However, by proposing a greater scope of powers in the Bill, any changes made to limit them, could potentially be absorbed by the buffer.

Matthew Pennycook in rising for Labour identified the change to the language and wanted to know why the Government now believed that 'appropriate and not necessary' was now the required language of the Bill.⁴⁷⁸ He focused too on the ability within the bill for ministers to confer additional powers on themselves and others as being "delegated legislation piled on delegated legislation".⁴⁷⁹ The strategy adopted to limit the correcting powers was to restrict the potency and scope of the proposed powers; amendment 32 would remove the capability to amend the EU (withdrawal) Act, once enacted, through delegated legislation. This would have the additional effect of limiting the Government's capacity to implement the withdrawal agreement through this manner as it had intended. Amendment 25 having the effect of safeguarding rights and protections against dilution or removal with specific emphasis on the Equality Act 2010.⁴⁸⁰ New clause 1 was designed to establish a scrutiny committee with the express condition that the Chair of such committee be a member of the official opposition.⁴⁸¹ New clause 63 would have created an

⁴⁷⁷ DExEU (2017) *op. cit.*

⁴⁷⁸ Pennycook, M. HC Deb (12 December 2017) vol.633 col.231

⁴⁷⁹ *Ibid.*

⁴⁸⁰ Laing, E. *Ibid.* Col.189

⁴⁸¹ *Ibid.* col.201

enforcement body to oversee environmental standards and protections previously regulated to EU bodies.⁴⁸² None of the main amendments laid and pushed by the Labour Frontbench team would witness success on the issue of the correcting powers, or indeed on any issue. The necessity of the Party to incorporate policy into their amendments made it easier for opponents to attack them.

Returning to the selection of language in the bill, the debates main amendment which envisioned the adoption of a ‘necessity test’ was tabled by Labour’s Yvette Cooper. Amendment 49 would ensure that powers provided by the Bill to retain EU law could only be used if the change was necessary.⁴⁸³ Arguing that the term necessary met a much higher legal threshold and would create less confusion for the Courts in deciding on matters emanating from changes made under the powers. Cooper articulated that the amendments she had laid to clause 7 were the result of “concerns...that Parliament is being asked to hand over considerable powers to the Executive without sufficient safeguards” and the Parliament had a “historic obligation...to prevent concentrations and abuses of power”.⁴⁸⁴ As an experienced Committee member, serving both the Liaison Committee and Home Affairs Committee among others, Cooper was well versed in the application of scrutiny. Cooper, as with all who pushed their amendments to division on Day 6, would be unsuccessful at division and have her amendment negatived.

It was the Government’s own backbenchers who would have more success on the day. Dominic Grieve, then MP for Beaconsfield, would lay one new clause (82) and 11 amendments to clause 7 of the bill.⁴⁸⁵ These were designed to fulfil two functions; first to improve the scrutiny applicable to delegated legislation made under the bill and second to limit the scope of the proposed powers. Grieve, as with others, found himself offended by the scale of the powers and the potential threat posed to Parliamentary sovereignty because of them. He dealt with the issue of Government majorities and the consequences of this number game on the passage of primary legislation. By day 6 of Committee, it appeared that the Government’s working majority, small as it was, was standing firm against opposition. Grieve argued that:

⁴⁸² *Ibid.* col.194

⁴⁸³ *Ibid.*

⁴⁸⁴ *Ibid.* col.252

⁴⁸⁵ Amendments 15, 1, 388, 5, 2, 389, 16, 13, 3, 4 and 12.

“This House, not without good reason, has over time evolved processes and procedures that present the Government with hurdles when it comes to the enactment of primary legislation...have come to understand that this is the way, by a process of debate through which we moderate each other’s ideas, we are likely to achieve the most sensible outcome...However, that is the very reason we should be so cautious when the Government ask us to change the rulebook”.⁴⁸⁶

Articulating therein the reliance of the House on procedure and precedent to place limitations on the Government’s overreach and maintain the appropriate balance of power between the two institutions. In scenarios where precedent cannot be relied upon to provide answers to questions of Parliamentary sovereignty, such as with Brexit, there is a greater threat of executive dominance in a system dominated by implicit constitutional boundaries. No Government had yet experienced the reversal of pooled sovereignty thus there was no litmus test for what to do with the newfound powers. It was on this basis that Grieve established his difficulties in supporting the Government’s activities without additional safeguards in place. He identified his view that the scrutiny of statutory instruments was ‘deficient in a whole range of matters’ and that the Bill presented an opportunity to overhaul the system and putting in place a ‘proper triage mechanism’.⁴⁸⁷ Grieve, as a former Attorney-General, was widely accepted by many members of the House as being a beacon for the legal acceptability of proposed legislation. In calling the proposed powers “far too stark, far too great and not necessary”, he argued that the “Government have to think again”.⁴⁸⁸ His position still being one of compromise, Grieve was not yet willing to test his amendments at division but rather preferred to give his government the opportunity to bring forward their own changes to the bill. His reputation and influence adding weight to the threat he posed if they should fail to propose adequate changes themselves. This action epitomises the near perfect outcome for a Government Backbencher: influence Government activity without causing a government defeat. The strength of this position increases as the Government

⁴⁸⁶ Grieve, D. *op.cit.* col.255

⁴⁸⁷ *Ibid.*

⁴⁸⁸ *Ibid.* col.258

majority shrinks and where such a Backbencher has significant reputational influence, the position is strengthened all the more.

He lauded the proposals tabled by Sir Charles Walker, MP for Broxbourne, and longstanding member of the Procedure Committee (PC), who, as Chair of the PC at that point, tabled amendments to establish a sifting committee to handle the SIs resulting from Brexit. The Procedure Committee conducted an enquiry into the scrutiny of delegated legislation under the EU (Withdrawal) Bill under its remit of considering the practices and procedures of the House.⁴⁸⁹ Releasing an interim report in 6 November 2017, the Committee proposed the establishment of a new scrutiny Committee of a type which would model the European Scrutiny Committee; operating with a scrutiny reserve resolution which inhibits the capacity of Ministers in laying secondary legislation until the Committee has passed its judgment on the measure.⁴⁹⁰ The focus of the proposed Committee would be on negative and made affirmative instruments which, by their nature, experience less scrutiny. Affirmative instruments, which allow for debate (albeit minimally), would be subject to normal procedure unless the Committee or Members of the House identified that it is of political or legal interest to be considered more closely.⁴⁹¹ Though Walker's Committee was not the only source of calls to establish a sifting or triage procedure to deal with the SIs, they were clearly the most palatable for the Government. Grieve called the measures a "reasonable compromise" but suggested they lacked bite in its failure to include a "revision mechanism" which would ask a Minister to reconsider an instrument laid and encouraging them to re-lay the measure in a better form.⁴⁹² The Government however, keen perhaps not to push the limits of opposition against secondary legislation in the Bill, would support Walker's amendments.⁴⁹³ A Temporary Standing Order was laid which would establish the new European Statutory Instruments Committee (ESIC) once the bill achieved Royal Assent.⁴⁹⁴ On rising to speak to the amendments in his name, Walker emphasized that the measures were agreed unanimously by the PC's 15 members, six of whom were

⁴⁸⁹ HCPC (2017) *op. cit.*

⁴⁹⁰ *Ibid.*

⁴⁹¹ *Ibid.*

⁴⁹² Grieve, D. *op. cit.* col.242

⁴⁹³ Baker, S. *Ibid.* col.275

⁴⁹⁴ Accounting Office (2018) Government Motion relating to standing orders: European Union (Withdrawal) Bill – European Statutory Instruments Committee (Temporary Standing Order). 22 Jan 2018

Government members.⁴⁹⁵ Though not overly critical of the Government's record on Brexit, he argued that they should not "let the pursuit of perfection get in the way of a sensible compromise" and that having heard from all sides of the Chamber that there was "broad acceptance" that the proposals were a "very positive step forward".⁴⁹⁶ He acknowledged that the sifting committee as envisioned would not have the power to force a Minister to withdraw and re-table an 'unacceptable' SI, as had been highlighted by Grieve. He spoke though of the "political cost" of a Minister failing to heed the words of the Committee. On this he stated:

"Because what we do most effectively of all in this place is to generate political cost. When a government fail, or even, indeed, when an opposition fail, there is a cost to their credibility and reputation. It is important to highlight that".⁴⁹⁷

This reflects two key aspects of UK governance as emphasised by this thesis; that executive dominance is monitored and influenced by the House in a manner which results in restraint of its use by the Government itself. Governments, particularly those with a minority or small majority, are forced to consider the wider implications of its activities owing to the vocality of the House on perceived overstepping of its authority. Further, it evidences that in the absence of a written constitution, the capabilities of the Legislature to reprimand the excessive use of executive authority are fundamentally lacking, assuming that the activities are not actually illegal or in contradiction to the Ministerial Code. Members of the House offended by such Government activity have no practical means to hold the Government to account. Written and Urgent Questions can be asked, Ministers can be called in front of Committees for questioning and the Speaker might have a few choice words as to the Government's conduct but, the consequences will be felt most prominently if the party suffers so-called political cost in the form of reduced public approval. Governments can respond as they wish to the measures employed by the House but the potential reduction in public support is a more threatening prospect, particularly within the context of a first-past-the-post voting system. That being said, a government with a secure majority, strong Parliamentary party loyalty, and with no

⁴⁹⁵ Walker, C. HC Deb *op. cit.* vol.633 col.265

⁴⁹⁶ *Ibid.*

⁴⁹⁷ *Ibid.* col.266

upcoming election in the foreseeable future, can and will have the capacity to push the boundaries and risk the political cost if it is deemed that they have enough time to recover it; it is, in essence, a cost-benefit analysis. The degree to which they might be able and willing to suffer the political costs of overstepping its authority or resisting scrutiny can be increased if the Official Opposition are themselves subject to equivalent or greater levels of public scrutiny. This might be most effectively witnessed during Starmer's incumbency as Labour Party Leader. In early 2021, the Conservatives were increasingly accused of 'shady' behaviours around the way in which Prime Minister Johnson was circumventing rulings on party donations. The accusations of 'sleaze' from the Labour Party permeated the Press but were quickly dropped when Labour suffered disastrous results in the May 2021 local elections. It was once again Starmer in the limelight.⁴⁹⁸ This raises the question as to whether political cost is still an effective currency by which disagreeable political active is inhibited. This too would play out in the post-Brexit arena when Prime Minister Boris Johnson was accused of breaking pandemic lockdown rules to attend several parties in and around government. It is no longer the case that such alleged behaviour will automatically result in the removal of an individual from power and seemingly there are fewer matters of confidence than there were prior to the Fixed Terms Parliament Act, 2011.

Grieve would find himself convinced of the Government's assurances to work with him outside of the Chamber to remedy his concerns associated with proposed powers deriving from the bill. He would not at this stage be willing to attempt a defeat of his government. Other MPs had no such concerns, but they also had far less hope of the successful passage of their amendments.

Division number:	Title or number:	Lead MP or origin:	Purpose:	Ayes:	Noes:
63	NC63	Opposition Frontbench	Establish new domestic governance arrangements	293	315
64	A49	Yvette Cooper	Introduce a necessity test to the use of delegated powers	295	312

⁴⁹⁸ Halliday, J. (2021) Labour crashes to humiliating byelection defeat in Hartlepool. *The Guardian*. 7 May 2021.

65	A124	Tom Brake	Prevent powers being used to create barriers to the UK's membership to the Single Market	93	215
66	A158	Stephen Doughty	Restrict powers under clause 7 from being exercised to amend devolution Acts.	291	315
67	A25	Opposition Frontbench	Prevent the use of delegated powers to reduce protections conferred by EU law, or to revoke or repeal the Equality Act, 2010	292	314

As will be seen in most of the divisions held in the Lower Chamber over the course of the bill, there was a degree of consistency in the voting patterns. Amendments such as A124 which were perceived as being attempts to disrupt the Brexit process (withdrawal from the Single Market was concomitant with withdrawal from the EU) would not be supported by the Labour Party at large. Despite a policy preference of continued, unfettered access to the market, the Party did not advocate for continued membership as this was in contradiction to the act of withdrawing; the political cost that Labour could not afford to suffer was being labelled as 'Brexit-wreckers'.

"It is too late. I am sorry but you cannot treat the House in this fashion"⁴⁹⁹.

Implementing the Withdrawal Agreement versus a Meaningful Vote

Though the Government were forced to compromise over issues relating to clause 7, it had done so largely unscathed; they had supported Walker's amendments and established a sifting Committee, but they were never defeated on a vote. From the Government's perspective the Committee established as a result of the compromise would never be in a position to force a Minister into changing a Statutory Instrument

⁴⁹⁹ Grieve, D. HC Deb (13 December 2017) vol.633 col.517

and though it might apply pressure, it could do little more in practical terms. Arguably, the first major challenge to May's Government over the EU(W) Bill had been met. The next significant challenge to the Government over its intended proposal in the Bill were associated with Clause 9.

Clause 9 of the EU (Withdrawal) bill as laid was intended to provide powers to a Minister to implement any withdrawal bill which resulted from negotiations between the UK and the EU as prescribed by Article 50.⁵⁰⁰ Further, clause 17 would allow a Minister to make consequential provisions to primary and secondary legislation should the need arise as a result of the bill itself.⁵⁰¹ It should be noted here that prior to the commencement of the EU(W) Bill's Committee Stage, the Government announced its plans to lay an additional bill, the Withdrawal Agreement and Implementation (WAI) Bill, the sole purpose of which was to enshrine the final deal into UK law.⁵⁰² In addition to this, the Government had committed to ensuring that there would be vote in Parliament on the outcome of the negotiations but there was uncertainty as to the timing, influence, and legal weighting of such a vote.⁵⁰³ In sum, the combined effects of the EU(W) Bill and WAI Bill would be to provide the Government with two routes through which they could implement the withdrawal agreement; one using primary legislation and the other secondary. There was no indication during the committee stage of the EU(W) Bill as to what would happen to clause 9 once WAI Bill had been enacted but the likely scenario was that maintenance of clause 9 would allow the Government a swift, and largely unchallenged, opportunity to implement the deal should the negotiations continue late into the timeframe. As the WAI bill had yet to be laid (or even explored in any real depth) at this stage, Parliamentarians could only deal with the legislation in front of them and, for many, clause 9 posed significant problems.

Amendments tabled against the clause included its removal outright (new clause 3), Parliamentary approval at least three months prior to withdrawal (new clause 68), Parliamentary approval of the final deal by statute (amendment 7), and approval by statute of the final deal by the Houses of Parliament and the devolved

⁵⁰⁰ HC Bill 005 *op. cit.*

⁵⁰¹ *Ibid.*

⁵⁰² DExEU (2017) Press release. New Bill to implement Withdrawal Agreement. 13 November 2017.

⁵⁰³ May, T. (17 January 2017) Speech. *Op. cit.*

administrations (amendment 355).⁵⁰⁴ In a written statement to the House prior to the debate on clause 9, Davis re-emphasised the Government's commitment to a vote on the final deal and stated that clause 9 would not be operated until any such vote had occurred.⁵⁰⁵ Additionally, he reminded the House of its role in the ratification of international treaties as provided by the Constitutional Reform and Governance Act (CRaG) 2010.⁵⁰⁶ He explored in his statement that the House had 21 days under CRaG to lay a resolution and vote against the ratification. Though what he failed to mention was that the Government controlled the diary for scheduling such a vote and they were under no obligation to ensure sufficient time was given for it. The clear problem with the strategy adopted here was that the Government was once again asking the House to trust that they will follow through on such commitments. The second, and perhaps insurmountable, problem for many Parliamentarians was the nature of the vote proposed under these intentions; there would be a resolution of both Houses on the withdrawal agreement and the future relation with the EU.⁵⁰⁷ In the first instance, resolutions of the House are not binding unless given statutory footing to make them so and as such are often only referenced as reflecting the will of the House of Parliament.⁵⁰⁸ An additional problem, and one of the Government's own making, stemmed from their own activities and attitudes towards Opposition Day debates since the start of the Parliamentary session. In response to Opposition motions laid in September and October 2017 the Government, despite having argued against the motion during debate, whipped its Members to abstain from voting.⁵⁰⁹ This gave the impression that the Government held the measures in contempt and fundamentally undermined its own strategy for the vote on the final deal. It had effectively ignored the motions laid by the Opposition but found themselves asking Parliamentarians to use and trust in the efficacy of the very same mechanism. It is little wonder that during day 7 of Committee stage there were such vociferous attempts to remove or amend clause 9.

⁵⁰⁴ HC Deb (13 December 2017) vol.633 col.404-417

⁵⁰⁵ Davis, D. [written statement] HC Deb (13 December 2017) vol.633 col.18ws [HCWS342]

⁵⁰⁶ Constitutional Reform and governance Act 2010 [online]. Part 2: Ratification of Treaties. HM Government.

⁵⁰⁷ *Ibid.*

⁵⁰⁸ House of Commons Public Administration and Constitutional Affairs Committee (hereafter PACAC) (2018) Status of Resolutions in the House of Commons. Fifteenth Report of Session 2017-19. HC1587.

⁵⁰⁹ *Ibid.*

Yvette Cooper opened the debate in rising to speak to new clause 3 which would have the effect of removing the clause from the bill and ensuring that implementation of the withdrawal agreement could only happen through a piece of primary legislation.⁵¹⁰ Cooper spoke of clause 9 as being a conflation of the significant concerns she, and others, held over the bill: the extensive use of Henry VIII powers resulting in a concentration of power being handed to the executive and the need to ensure that Parliament could play a full role in the approval of the final Brexit deal.⁵¹¹ She highlighted that Grieve's amendment 7 would have much the same effect as her new clause but that his, owing perhaps to his legal background, was more "elegant".⁵¹² She argued that it was the job of MPs to ensure that they were "not just handing over a blank cheque" and this was a phrase that had been floated by Parliamentarians to account for their position and role in the Brexit process. The Executive was negotiating for the withdrawal at the same time as the Legislature was passing the legislation to ensure the legality of it. This resulted in a situation in which Parliamentarians were being asked to create laws for unknown future scenarios which, owing to the negotiations being relatively new by December 2017, not even the UK Government nor the European Union would have been in a position to know the full final details. The notion of 'voting blind' with limited capacity to place parameters on such legislation was neither a familiar nor comfortable position for most non-Government Parliamentarians. The notion of acting in such a way might have been more closely associated with legislation relating to emergency situations but few acting MPs would have experienced such legislative practice during their Parliamentary careers.⁵¹³ The idea that Brexit produced legislation which required, to a degree, *carte blanche* voting supports the theory that some legislation which passes through Parliament can be considered as Extra-ordinary Policy Programmes (EOPP).

Returning to Cooper, she argued that the "Government's unwillingness to put their promises on the face of the bill is a problem" and that:

⁵¹⁰ Cooper, Y. (13 December 2017) *op. cit.* Col.417

⁵¹¹ *Ibid.*

⁵¹² *Ibid.* col.418

⁵¹³ The Civil Contingencies Act (CCA), 2004 had never been called upon and during the Covid-19 pandemic, Boris Johnson's Government chose to introduce new primary legislation circumventing the CCA because the parameters written into the bill to curb executive dominance and abuse were reportedly too restrictive to deal with the dynamic response needed to deal with the pandemic.

“Parliament should hand over no more power to the Executive than it needs to and should not hand over power to the Executive until it needs to and until it knows what is going on”.⁵¹⁴

Clearly, what she was advocating for was certainty in the face of the Government’s drive for flexibility. In true Brexiter style, Bernard Jenkins challenged Cooper on the motivations behind her new clause and suggested that she was trying to “dress up this attempt to reverse Brexit as an argument in favour of Parliamentary sovereignty”.⁵¹⁵ Cooper unwilling to stand for such accusations retorted by asking:

“how insecure are Members who object to any changes to the Bill, if they cannot see that it is Parliament’s job...to take some responsibility by scrutinising legislation and proposing amendments to it?...the idea that this somehow undermines the referendum decision is just a load of rubbish and the hon. Gentleman well knows it, and if he had any better arguments, he would put them, rather than using something that is so ridiculous”.⁵¹⁶

In an intervention to Cooper’s speech, Anna Soubry, then MP for Broxtowe, articulated the key issue that Clause 9 posed for many MPs. She asked if Cooper shared her concerns that once the Government had negotiated the withdrawal agreement, they would then, as a result of clause 9, be able to implement it which would subsequently mean “there will be no further involvement of this sovereign Parliament”.⁵¹⁷ Naturally, Cooper agreed with the assessment and furthered that the extent of the Government promises on associated issues such as having a meaningful vote, having recognised in the debate on clause 7 the risks of concentrations of power laying with the executive and in announcing plans for the WAI bill, that they might just accept new clause 3 or amendment 7.⁵¹⁸ The Government, it transpired, was willing to do neither.

Grieves amendment 7 would have required that a statute be passed to approve the terms of withdrawal before any regulations could be laid using clause 9. Early in his speech Grieve detailed his efforts to work with the Government over the previous

⁵¹⁴ *Ibid.*

⁵¹⁵ Jenkins, B. (13 December 2017) *op. cit.* col.419

⁵¹⁶ Cooper, Y. *Ibid.*

⁵¹⁷ Soubry, A. (13 December 2017) *op. cit.* col.420

⁵¹⁸ Cooper, Y. *Ibid.* col.420-1

four weeks to try to ascertain the challenges they were facing and what it felt was the minimum legal necessities in order to achieve its aims in fulfilling Brexit.⁵¹⁹ In doing this, Grieve stated, he had been attempting to aid the Government in finding an acceptable path through Parliament; measures which would be palatable to the majority of the Members of the House while functioning well enough to allow the Government the capacity to achieve its goals.⁵²⁰ However, on Clause 9 his interactions with the Government were stilted and they were reportedly silent despite his efforts at communication and that he “was left in the lurch as a Back Bencher trying to improve” the legislation.⁵²¹ He suggested that he was expected to accept the information given on the clause and the written statement tabled that morning as evidence enough of the need for clause 9 and to toe the party line.⁵²² For Grieve however, this was naturally not enough. He argued that it was his view that the Government had included clause 9 at a time when it had (clearly) intended to minimise the role of Parliament in the process but such a strategy was no longer practicable following the Miller judgment and the Government’s successive compromises. For Grieve, clause 9 pre-existed these events and as such was “incompatible” with the programme set out by the Government since then.⁵²³ Though in the face of the Government’s commitments it was possible to argue that there was no requirement for clause 9 but the Government continually resisted its removal or amendment suggesting they had some notion as to its eventual use. Grieve identified early in the debate that he would be unwavering in his commitment to his amendment, in an intervention to Labour Front Bencher Matthew Pennycook’s speech, Grieve stated that amendment 7 had but two outcomes: it would be accepted by the Government or it would be put to the vote.⁵²⁴ Grieve had clearly exhausted his energies in attempting to influence the legislation outside of the public forum and his remaining option, as he saw it, was to defeat his own Government. He highlighted that this was an action he had only done once previously in his 20-year Parliamentary career and that “there is a time for everybody to stand up and be counted”.⁵²⁵ Grieve’s activities relating to the Clause exemplifies the work of many

⁵¹⁹ Grieve, D. *Ibid.* col.440

⁵²⁰ *Ibid.*

⁵²¹ *Ibid.* col.446

⁵²² *Ibid.*

⁵²³ *Ibid.* col.442

⁵²⁴ *Ibid.* col.439

⁵²⁵ *Ibid.* col.447

Government Backbenchers. He had, as far as was concerned attempted to influence the legislative process in a manner which wouldn't embarrass the Government. He attempted to use the political apparatus available to him as a member of the governing party. However, the Government had misjudged his commitment to the amendment potentially because of his loyal voting history and had not heeded his advice on the issue. Consequently, Grieve made use of the institutional opportunities open to him and would cross the floor in support of his proposed amendments. Given his reputation in the House, he was to be supported by other Backbenchers who had, up to that point, also toed the party line.

It was the job of Dominic Raab, then Minister of State for the Ministry of Justice, to defend clause 9 on behalf of the Government. He outlined the "material benefit" of the clause being one of timing; it would allow the Government the legislative freedom to take negotiations to the latest possible point but still have time to implement the withdrawal agreement using statutory instruments via powers derived from clause 9.⁵²⁶ He reiterated the Government's commitment to introduce the WAI Bill and called clause 9 "residual" and "supplementary" to this.⁵²⁷ He argued that clause 9 would be predominantly used to implement necessary technical regulations and not the substance of the final deal.⁵²⁸ This, though, was challenged by Antoinette Sandbach, MP for Eddisbury, because the powers provided for by Clause 9 were so widely cast that it could very well be used to conclude the business of Brexit.⁵²⁹ Additionally, he emphasised that MPs would have a vote on the final deal and that vote would come before the powers under clause 9 are invoked and outlined that the resolution offered to the House would be a 'take it or leave it' vote; they could vote for the deal, or they could reject it in favour of no deal at all but there was no in-between. Dealing only briefly with Cooper's new clause 3 he argued that wholesale removal of clause 9 would increase legal uncertainty.⁵³⁰ He focused more extensively on amendment 7 and though he spoke positively of Grieve's conduct and record in dealing with the Government, he called his amendment "defective".⁵³¹ He argued that the amendment would have the effect of "significantly curtailing the

⁵²⁶ Raab, D. (13 December 2017) *op. cit.* col.475

⁵²⁷ *Ibid.*

⁵²⁸ *Ibid.* col.476

⁵²⁹ Sandbach, A. *Ibid.* col.477

⁵³⁰ Raab, D. *Ibid.* col.482

⁵³¹ *Ibid.*

timely advantage” that was to be gained from the clause.⁵³² In addition to this, the Minister consistently referenced the notion that amendment 7 could have the potential effect of jeopardising Brexit and/or the Government’s ability to achieve a positive outcome. While he did not explicitly accuse Grieve of attempting to wreck or stop the UK’s withdrawal from the EU, his repeated emphasis on the detrimental effect of amendment 7 implicitly supported such rhetoric. On the matter of trust, the Minister argued that “a political assurance...ought to adequately address his concerns”.⁵³³ This highlighted that even for consistently loyal Back Benchers such as Grieve, the absence of commitments on the face of the Bill could prove to be an insufficient guarantee of action. As the clock ticked towards the end of the debate, more members rose in support of the amendments laid by Yvette Cooper, and in particular, Dominic Grieve; support for amendment 7 was evident across the Chamber. Just before 6:45pm, Raab rose to speak once more stating:

“reflecting the mood of the Committee, having taken advice, and, in particular, having listened very carefully to my right hon. and learned friend the Member for Beaconsfield and my right hon. friend the Member for West Dorset -the Government are willing to return on Report with an amendment on the face of the Bill clarifying the undertaking and assurance that I gave in my speech that statutory instruments under clause 9 will not come into effect until we have had a meaningful vote in Parliament”.⁵³⁴

In response to the concession, Grieve, who had been out of the Chamber when the announcement was made, rejected the Government’s compromise, and stated “it is too late. I am sorry, but you cannot treat the House in this fashion”.⁵³⁵ The Government had misjudged Grieve’s willingness to rebel against his party and accept political assurances in lieu of judiciable material. Any hope that his absence from the Chamber at the time of the announcement might cause some of his supporters to falter were dashed by his swift return and response. To bolster the support for amendment 7, Cooper chose to withdraw new clause 3; though it was likely that she might have gained significant support at division, the probability of an opposition amendment being passed was lower than that which had originated from

⁵³² Raab, D. *Ibid.* col.483

⁵³³ *Ibid.* col.484

⁵³⁴ *Ibid.* col.515

⁵³⁵ Grieve, D. *Ibid.* col.517

a Government Backbencher. It was one thing for Conservative Members to rebel against their Party on so significant an issue, it would be another altogether if they did so on an amendment in the name of a Labour MP. Cooper's decision to withdraw her new clause concentrated opposition to clause 9 onto amendment 7. As Grieve had identified early in the day's proceedings, the amendment had two fates. The Government failed to support it and so he pushed it to a vote, and it was passed by a margin of four votes, with 12 of them coming from Government Members.⁵³⁶

Stephen Hammond, MP for Wimbledon, was sacked as the Conservative Party Vice-chair for his role in the rebellion.⁵³⁷ Many of those who had been willing to rebel against their Government had been labelled as 'Brexit Mutineers' by the Daily Telegraph the month prior as a result of their unwillingness to support the Government into fixing an 'exit day' within the EU(W) Bill; Heidi Allen, Kenneth Clarke, Jonathan Djanogly, Steven Hammond, Oliver Heald, Nicky Morgan, Robert Neill, Antoinette Sandbach, Anna Soubry, Dr Sarah Wollaston and Dominic Grieve were all subject to the media attack on 15 November 2017.⁵³⁸ The Paper's effort to pressure and shame the MPs for their action had failed to halt the MPs rebellion but it did highlight the extra-Parliamentary pressures they faced.

*'We should decide today to leave on our terms and at a time of our choosing'*⁵³⁹

Brexit Exit Day

The lead amendment of day one of Committee stage was in the name of Labour MP Frank Field who sought to fix a specific exit day into the Bill which would be the day that the ECA was repealed. Prior to this, the Government had provided for an exit day without a specific date but would rather be a date which a Minister by regulation may appoint.⁵⁴⁰ The working theory had been that the date would be 29 March 2019 given that date was the end of the two-year timeframe provided for by Article 50. The absence of a date provided legal certainty to the Government to be able to extend the two-year timeframe should an extension be needed, and agreed to, with the EU. This would mean that they would not have to return to the statute to change the date

⁵³⁶ Division HC Deb (13 December 2017) vol.633 col.521-525

⁵³⁷ Sharman, J. (2017) Stephen Hammond: Tory MP sacked as a Conservative vice-chairman after Brexit rebellion. *The Independent*. 13 December 2017.

⁵³⁸ Swinford, S (2017) The Brexit mutineers: at least 15 Tory MPs rebel against leave date with threat to join forces with Labour. *The Telegraph*. 14 November 2017.

⁵³⁹ Field, F. HC Deb (14 November 2017) vol.631 col.199

⁵⁴⁰ HC Bill 005 *op. cit.*

to prolong the use of the ECA. In an unusual change of roles, it was the Government's opponents questioning the loss of such flexibility and would argue that not having a date would better serve the British negotiations. The Government table its own amendment on the issue putting forward a time of 11pm GMT on 29 March 2019 which account for the one-hour time difference between the UK and the continent.⁵⁴¹ In contrast, Field had desired a time and date of 12am GMT on 30 March 2019.⁵⁴² Field argued that this was an act of submission to the EU and that such a move was to leave on European, and not British, terms. This, he argued, would have an impact on the quality and outcome of the negotiations and qualified that he wanted "the balance of power to move swiftly from their boot to our boot".⁵⁴³

In defence of his amendment, Field offered the analogy of buying a house which he stated would include within the contract a date on which the property would be legally his, but this was challenged by Hilary Benn stating that "nobody commits to a date to buying a house before they know what it is that they are buying"⁵⁴⁴. It is clear that some MPs were more willing to vote in advance for what needed to happen in order to leave the EU, but it is equally evident that there were many MPs who disliked the practice of 'voting blind' and operating on a *carte blanche* basis with the Government. The dividing line between such MPs was, in the early stages of the withdrawal process, drawn between Brexiters and Remainers and as the process progressed it became a battle of 'hard Brexiters' versus 'soft Brexiters'.

In an intervention during Baker's speech on the Government's amendment, Grieve called the Field and Government amendments "strange" stating that it would only "fetter the Government, to add nothing to the strength of their negotiating position, and, in fact, potentially to create a very great problem that could be visited on us at a later stage".⁵⁴⁵ This idea was grounded in the notion that negotiations might overrun slightly but not enough to warrant a full-blown extension and any subsequent last minute agreement would be hindered by the presence of an exit date in the UK statute. Field identified that his amendment was a political one that aimed at providing finality to the process on British terms and stated that there is a "clear

⁵⁴¹ Amendment 381, 382 and 383.

⁵⁴² Amendment 49. HC Deb (14 November 2017) vol.631 col.191

⁵⁴³ Field, F. *Ibid.* col.198

⁵⁴⁴ Benn, H. *Ibid.* col.199

⁵⁴⁵ Grieve, D. *Ibid.* col.205

choice about how we negotiate with the group we face in Europe”.⁵⁴⁶ However, Field withdrew his amendment on the grounds that ‘amendments are necessary, but...the Government, without the fingerprints of anybody else, have tabled an amendment stronger than my new clause’. The Government amendments on the issue would pass on day eight of Committee stage. There was little legal necessity for the presence of a defined exit day and the Government’s action of laying an amendment on the issue was a political one which contradicted the arguments that the Bill was of a technical nature. The Government’s intentions behind the move was to reassure those on the furthest right of the Party that Brexit would not be disrupted or extended. The likes of the ERG would support any changes which aimed to make concrete the UK’s departure from the EU and as such might have supported Field’s amendment. Better then, from the Government’s perspective, to introduce an amendment of its own to avoid its members from supporting a Labour-derived one.

On day eight when discussion would return to the issue of an exit day and the Government amendment would be tested, Sir Oliver Letwin, MP for West Dorset, would table an additional package of amendments on the issue. Identifying that there was a potential for a significant problem to arise if the statute dictated that the ECA was abolished on a certain date, but circumstance resulted in the UK’s membership status persisting beyond this point, he proposed measures which would allow for the exit date to be amended by secondary legislation after the EU(W) Bill receives Royal Assent.⁵⁴⁷ He argued that the Government’s amendment would have necessitated that primary legislation be used to change exit day because there was no provision for secondary legislation within it. While any such legislation would likely have been a one-line Bill, “it is a laborious task and might jam up the works” at just the moment when the Government needed to act swiftly.⁵⁴⁸ Primary legislation would also present the opportunity for significant debate and was not a situation in which the Government wanted to find itself at the eleventh hour; the Government agreed to support the package of amendments.⁵⁴⁹ It is clear from this that while Back Benchers have the capacity to pose significant challenges to the Government’s activities, their expertise can provide the Executive with much needed support at times also. Having

⁵⁴⁶ Field, F. *Ibid.* col.256

⁵⁴⁷ Letwin, O. HC Deb (20 December 2017) vol.633 col.1139

⁵⁴⁸ *Ibid.*

⁵⁴⁹ Baker, S. *Ibid.* col.1155

had his amendments accepted Letwin turned to the parliamentary process and said, “this is exactly the way to deal with these things: find a sensible compromise that brings everyone on the Government Benches together and make the Opposition entirely irrelevant to the discussion”.⁵⁵⁰ Letwin being clear here that his efforts to improve the bill did not make him a bedfellow of the Opposition; far from it.

“Foolhardy and, indeed, outrageous”⁵⁵¹

The EU (Withdrawal) Bill and devolved consent

The Committee stage also saw frequent discussion relating to devolution and the consent of devolved administrations in the Brexit process. Amendment (79) tabled by Hywel Williams of Plaid Cymru was designed to ensure that the repeal of the ECA was dependent on the consent of the devolved administrations.⁵⁵² Though this research has given little attention to issues relating to devolution, owing in part to the scale of that topic, the EU (withdrawal) Bill raised many issues and caused concern to members of devolved nations specifically, but to many English MPs also. One such consternation was the reservation of matters in policy areas which fell within the purview of the devolved administrations; rather than return such matters to these areas, the Westminster Government had designs on bringing them back to the national Government first. It could be argued that such matters were devolved to Scotland, Wales, and Northern Ireland precisely because they fell within the scope of the EU, that successive Governments could claim that they were giving greater rights and powers to the administrations of these nations purely because there would subsequently be no actual differentiation between policies of the four nations of the UK. Consequently, when the time came to take over these policy areas again, there was a new threat of significant divergence between the four nations. Though this research offers no significant defence of such a theory, this thesis will cover the fate of amendments relating to devolution, but there is little attempt to make any analytical contribution to the debate on the issue or the ‘state of the Union’ over the course of Brexit.

⁵⁵⁰ Letwin, O. *Ibid.* col. 1141

⁵⁵¹ Williams, H. HC Deb (14 November 2017) *op. cit.* col.239

⁵⁵² HC Deb (14 November 2017) *op. cit.* col.257

In rising to introduce the amendment Williams identified that while the Sewel Convention was not a legally binding mechanism, it was one which governed relations between Westminster and the devolved nations by providing that though the UK Parliament could legislate for the administrations, it should not normally do so without the consent. The challenge posed to the Government by such a provision was the obvious and explicit opposition from the assembly of Wales and the Scottish Parliament to the bill and though there was no sitting executive in Northern Ireland, the MLAs elected were predominantly anti-Brexit and consequent consent would unlikely be forthcoming. Much of the discontent emanating from Plaid Cymru and the SNP was two-fold; their respective nations each voted in the majority to remain in the EU in the referendum and their inclusion in the Brexit process beyond that was minimal. Members of the assemblies were included in a joint ministerial council (JMC) but these were infrequent and at the Government's behest. The amendment when put to a vote failed with 318 noes against just 32 ayes with Labour having abstained.⁵⁵³ This trend of the official opposition failing to show up in support of SNP or minority party amendments would continue throughout the Bill's passage. As a collective it was apparent that Labour Party strategy was not to pursue amendments that it felt would be unlikely to pass; they were more active in supporting Conservative backbench amendments during the legislative process. An additional factor in Labour's decision making might have stemmed from the issue of devolution particularly in relation to Scotland. The EU referendum had fractured the relationship between Holyrood and Westminster and calls for a new independence referendum were mounting. The fracture would only deepen as Brexit continued. Taken in its own right, the results of the EU referendum in Scotland and other devolved administrations, had been to remain in the EU but collectively the UK result was one to leave. This contradiction exacerbated already splintered relations and the discussion as to the return of devolved matters to devolved administrations rather than Westminster was highly complicated. Labour, though supporting the plight of MPs from the devolved nations, couldn't be seen to fan the flames of the ruptured relations and appear to be encouraging disunity between the nations.

"Conservative Members are suddenly the champions of enhanced workers' rights"⁵⁵⁴

⁵⁵³ Division 33. *Ibid.* col.258-9

⁵⁵⁴ Pennycook, M. HC Deb (15 November 2017) vol.631 col.399

Enhanced protection of rights:

Day two of committee stage, 15 November 2017, would cover issues relating to clause 2, 3 and 4 which would give effect to the retention of EU-derived legislation. The first amendment discussed was a Labour Frontbench amendment in the name of Matthew Pennycook, Shadow Minister (Exiting the European Union). New clause 58 would give enhanced protection to guarantee that after exit day only primary legislation, or subordinate legislation under the EU(W) bill, could amend, repeal, or modify EU retained law in the areas of employment, equality, health and safety, consumer rights and environmental standards. This was a clear attempt by the opposition, and others would follow suit with similar amendments, to ensure that the Government could not use delegated powers in other Acts of Parliament to alter rights and protections. The EU(W) Bill was written and would be debated and passed within a context of retention rather than alteration of EU-derived legislation and as such would include restrictions and limitations on relevant powers. Other Acts of Parliament, particularly pre-existing legislation, would not have such heightened regard of the political sensitivities of such activity and so would unlikely safeguard against changes to issues of political substance. In essence, the Labour Party did not trust that the Conservatives would not try to change these rights through some other means, even if they committed to not making changes via the EU(W) bill. During his speech Pennycook made explicit reference to a variety of conservative ministers and MPs who had called for deregulation. He quoted Boris Johnson, Secretary of State for Foreign Affairs and future leader of the Conservative Party and Prime Minister, in stating that there was a need to 'root out... job-destroying regulations' which included the working time directive. He quoted Priti Patel who, during the referendum called for the halving of the 'burden of EU social and employment legislation'.⁵⁵⁵ She was at the time, Minister for Employment. Quoting Lord Callanan, Minister of State at DExEU, who argued for the scrapping of the working time directive, the temporary agency work directive and the pregnant workers directive and 'all the other barriers to actually employing people'.⁵⁵⁶ It was not without reason that MPs suspected that Brexiters would try to cull large swathes of EU-derived protections as many had campaigned to leave the EU on the grounds

⁵⁵⁵ *Ibid.*

⁵⁵⁶ *Ibid.* col.398

of the perceived excessive bureaucratic red tape that accompanied membership to the bloc. In an intervention Caroline Lucas raised the issue of the continued regulatory alignment necessary in any instance of a 'deep and special relationship' between the UK and the EU post-Brexit.⁵⁵⁷ Pennycook agreed that such harmonisation would be essential.⁵⁵⁸ This point was not one which featured particularly during the referendum that in the instance of a deal there would need to be continued regulatory alignment in most areas and so for those who championed the 'slashing' of red tape during the referendum campaign were either misinformed or purposefully vague on the matter. Grieve's intervention highlighted the importance of the legislation being discussed; he argued that despite the regard that the public would likely hold these rights and issues in, they were being brought back into the UK statute with the lowest possible status, meaning that they were amendable by delegated legislation derived from any legislation. New clause 58 deigned to reserve the rights in the five areas in a way which ensured they were given a special status. New clause 58 was debated alongside Grieve's new clause 55 which was designed to offer protection for EU retained law from amendment outside of primary legislation or the EU (withdrawal) Bill but allowed for a distinction between technical and substantive retained law allowing the former to be amended by standard delegated legislation.⁵⁵⁹ While NC55 did not offer protection to specific areas of retained law as NC58 would do these would be indirectly protected. Unlike Labour, Grieve as a Conservative backbencher did not wish to put NC55 to a vote but rather raise the Government's awareness as to the necessity for action on the issue. Rising in support of the Bill was Robert Buckland, Solicitor General, who argued that clauses 2 and 3 were sufficiently written to provide clarity and order and as such amendments were unnecessary.⁵⁶⁰ Kenneth Clarke rose to challenge the breadth of powers in the Bill, a recurring trend of the debate regardless of the topic under discussion, and suggested that the Solicitor General,

"Sounds as though he is about to reassure us that the policy of the present Government is that although they are taking the powers, they have no intention of using them for such purposes...and I quite accept that a

⁵⁵⁷ Lucas, C. *Ibid.* col.396

⁵⁵⁸ Pennycook, M. *Ibid.*

⁵⁵⁹ *Ibid.* Col.392

⁵⁶⁰ Buckland, R. *Ibid.* col.412

Government led by this prime minister is about to use draconian powers to lower standards, as her instincts are quite the other way. Given that the powers are therefore not needed- we do not need a bill to give us powers that no one wants to use- why can we not amend the bill to put it beyond doubt that no such attempt would be made?"⁵⁶¹

Buckland responded that the powers as written provided a safety net to ensure that unexpected gaps or problems arising from Brexit could be dealt with. In essence the Government could not know with complete certainty that they would not need to call upon these powers even if at that time the Government had no intention of using them. Grieve would go on to invite the Government to review the discussions had and return at Report stage with a solution to the issues identified and the Solicitor General accepted the invitation. However, Pennycook argued that the 'Minister offered no meaningful concessions' and would push the amendment to a vote. New clause 58 was defeated with 299 MPs in favour and 311 against.⁵⁶²

Day two would end with a discussion of new clause 30 in the name of Caroline Lucas. NC30 would see the transfer of Article 13 of the Treaty on the Functioning of the European Union (TFEU) into UK law. This move would have ensured that animals would be recognised as sentient so that there was entrenched legal protection of animals against abuse and harm post-Brexit. Lucas' argument was that the only legal mechanism guaranteeing animal sentience in the UK was provided by Article 13 and that during their membership the UK had been integral in the creation and implementation of laws protecting the rights of animals starting with the formation of Article 13 on sentience being driven by the UK and made significant moves to protect animals such as the banning of seal skin imports and the ban on testing of cosmetic products.⁵⁶³ While she lauded the UK's track record on the issue, she highlighted the obvious flaw in the EU(W) Bill in that while EU regulations on animal rights would be retained, Article 13 given that it was in the body of text of the TFEU would not. Given that Article 13 was the only mechanism to recognise sentience in UK law, the wording of the article would be lost. In responding for the Government, Dominic Raab described the new clause as 'superfluous' owing to the

⁵⁶¹ Clarke, K. *Ibid.* col.414

⁵⁶² Division 39. *Ibid.* col.471-475

⁵⁶³ Lucas, C. *Ibid.* col.480

presence of the Animal Welfare Act, 2006, which provided protection from abuse for any animal which could experience pain and suffering.⁵⁶⁴ The proposed new clause was defeated at division with 295 votes in favour with 313 against.⁵⁶⁵ Despite the protestation against the need for the inclusion of it, the Government published a draft Bill on animal welfare on 12 December.⁵⁶⁶ Lucas had very clearly identified an upcoming gap in the UK statute, but the Government were reluctant to see any inclusion of it within the EU(W) Bill. The most likely reason for this was that the inclusion of such issues would make it harder to argue that the Bill was of a predominantly technical nature in retaining the *acquis* of EU law if there were very obvious gaps in that process.

The working majority of the Government held firm over the first few days of committee with a consistent 311-313 MPs going through the Government lobby. One reason as to the consistency of voting by party members and its supporters was not necessarily due to subject matter but rather due to intra-party relations; most amendments being pushed to a vote did not originate from the Conservative Party but from Opposition MPs and the only Conservative MP to consistently rebel was Kenneth Clarke. Other Conservative MPs were more comfortable with pressuring the Government into making concessions or agreeing to 'look again' at specific issues. There would be no significant Government backbench rebellion on Opposition tabled amendments in the Commons during this Bill. Instances of rebellion which did occur did so on votes relating to Conservative derived divisions. This speaks to the failure of the Government to provide satisfactory responses and ultimately concessions on the issues and the willingness of backbench MPs to defeat the Government when they deem it probable and necessary rather than joining opposition MPs on all occasions when defeating the Government would be probable but would risk party cohesion and intra-party relations more widely. This displays the power of Government backbenchers in the legislative process.

Day three of committee stage covered debate relating to the Charter of Fundamental Rights and as expressed previously the exclusion of the CFR caused outrage among opposition MPs who presented the move as evidence of the Government's desire to

⁵⁶⁴ Raab, D. *Ibid.* col.500

⁵⁶⁵ Division 40. *Ibid.* Col.531-534

⁵⁶⁶ Department for Environment, Food and Rural Affairs (DEFRA) (2017) [policy paper] Draft Animal Welfare (Sentencing and Recognition of Sentience) Bill 2017. Cm. 9554

affect the rights of UK citizens. The mood across the House was comparable to the time when the Government announced its intention to withdraw from Euratom; not an illogical move but one which caught most MPs and commentators by surprise. It was not necessarily the case that removal of the CFR was a pre-emptive strike at rights enjoyed by the UK population as the absence of the charter did not alter the rights contained within it which would be retained by the EU(W) Bill, though it would arguably make challenges against the abuse of such rights more complex for the Public. The amendments tabled relating to the Charter were numerous, the lead amendments discussed were that of Grieve (amendment 8), Chris Leslie (new clause 16) and the Labour Frontbench (amendment 46).⁵⁶⁷ Amendment 8 called for the application of the Charter in the interpretation of retained EU law and amendment 46 sought to keep the charter itself alongside other EU-derived law to be retained. The main argument mounted against the Government was that it was no hardship to retain the Charter which was a proven mechanism for the dissemination of rights and protections through the codification of rights contained elsewhere in EU law. Leslie attacked the Government's claim that this so-called 'copy and paste' exercise was a misnomer given the proposed absence of the Charter. Throughout the debate multiple MPs referenced a lawsuit in the name of David Davis challenging the Government on the Data Retention and Investigatory Powers Act 2014 which Davis, in citing article 8 of the Charter, argued was contrary to EU law.⁵⁶⁸ The use of the Charter in so high profile a case was an obvious bat with which to hit the Government especially considering that the complainant would be the Secretary of State for Exiting the EU and the defendant would be Prime Minister at the time of the EU(W) Bill's passage. Leslie's New Clause 16 sought to oblige the Government to publish a report, within one month of the passage of the Bill, on the implications of the removal of the Charter from domestic law⁵⁶⁹. Anna Soubry, MP for Broxtowe, described the proposed change as 'wet' arguing that she would really need persuading to vote for NC16 given that it only sought the publication of a report.⁵⁷⁰ Though it was quite clear, and indeed argued by Leslie, that this was an attempt at promoting cross-party consensus. This was an attempt by an opposition MP to offer

⁵⁶⁷ HC Deb (21 November 2017) vol.631 col.862

⁵⁶⁸ Leslie, C. *Ibid.* col.869

⁵⁶⁹ *Ibid.*

⁵⁷⁰ Soubry, A. *Ibid.* col.869

an inoffensive amendment which might be accepted by the Government or supported by Conservative backbenchers without seeming like an overt attempt at defeating the Government. As debate progressed to Grieve's amendments the two sides of the argument became more apparent; those opposing the Government argued that failure to retain the Charter in some manner would result in gaps which were covered by neither the Human Rights Act nor the ECHR. On the other hand, those in support of the Government argued that retention of EU-derived legislation covered such rights, that the UK statute already contained rights and protections in key areas or that Parliament had the capability to ensure, through legislation, that all rights were maintained.

Rising on an SNP amendment relating to the Charter, Joanna Cherry cited the use of the document within UK Courts amounting to a combined 1,209 citations.⁵⁷¹ She also challenged the Conservative backbenchers, as was seen elsewhere, to "have the courage of their convictions to push these amendments to a vote...despite the unpleasant pressure they have been subjected to" and went further in quoting Suella Braverman's article in *The Sun* in which she claimed 'if Labour, acting with others, manage to force this through, there will be legal chaos. Not only will it hand new and long-lasting powers to UK Courts' and that it had 'crept into many areas of UK law, from asylum to even national security'.⁵⁷² The implication being that there were reasons beyond duplication that had resulted in the exclusion of the Charter of Fundamental Rights from the Bill. This was a charge levied by many opposition members who claimed that the dynamism of the document had resulted in some rights having no other source than the document itself. When push came to shove Conservative 'rebels' did not fulfil the hopes of Cherry or others on the Shadow Benches; no amendment push to a vote would pass at this stage. Chris Leslie withdrew his amendment, and the others were rejected by majorities ranging from 10 to 19. As the Bill completed its initial stages in the House of Commons, having suffered just one substantive defeat at the hands of Grieve, the Bill would spend 160 hours and 44 minutes on the floor of the second Chamber. During this time, the Government would lose 15 substantive amendments and though not all of these

⁵⁷¹ Also includes ECHR and EU judgments

⁵⁷² Cherry, J. HC Deb. *Op. cit.* col.905

would find their way to the face of the Bill, the Government would be forced to accept one and compromise on eight of them.

Chapter Nine:

Conclusions and findings

As far as this research is concerned, the UK's accession into, and exit from, the European Community has demonstrated the nature and use of executive dominance within UK governance. So too, has it allowed for an exploration into the fluidity of executive-legislative dynamics within the Westminster model. This research has used the UK's entry into, and exit from, the European Communities as a case study to explore executive-legislature dynamics with a view to establishing the nature and extent of executive dominance. An assessment has been made of the activities of oppositional forces within the legislature and the degree to which they can influence the governance of the UK. In sum, this research has concluded that the Westminster Model favours the presence and use of executive dominance. However, it is suggested by this research that executive dominance is a self-limiting tool and there are factors which inhibit excessive use of it.

Resisting executive dominance:

Factors which affect the level of executive dominance in use fall into two camps: those internal to the governing party and those which exert pressure on it from outside. Of these, internal circumstances have the greatest ability to alter the use of executive dominance. Internal factors which limit the use of executive dominance include the fear stemming from political losses resulting from reputational damage if dominance has been mismanaged; failure of the Whips to accurately assess the mood and loyalty of Party members can result in unpopular activities being pursued. The potential of Government Backbenchers to inflict defeat if their demands (usually related to legislation) are ignored or not sufficiently met will have a significant impact on the Government who may need to manage its Backbenchers carefully during difficult periods. This factor is deemed to have the most potent effect on executive dominance. Unreliable loyalty from Government MPs or an unstable majority will also have the effect of prohibiting executive dominance if the ruling party needs to ensure compliance from Members across their benches. Pressure exerted on the Government by external forces such as opposition bodies, the courts and media can also have the affect of reducing executive dominance if it's continued use would jeopardise the Governments position. Factors which might have the result of

increasing executive dominance include government control of the parliamentary timetable and the precedence given to Government business, conflict within oppositional bodies, few binding institutional mechanisms available to non-government Parliamentarians, and situations which justify the use and extension of secretive practices which limits the possibility of scrutiny. It is the job of Government to manage these influences appropriately in order to practice executive dominance and for this reason it has been describe as a self-limiting tool of Government.

There are strikingly few mechanisms available to Members of Parliament which allow them to bind or inhibit the activity of Government. In a two-party majoritarian system, which utilises a first-past-the-post voting structure, there is a tendency to believe that the legislature should not have the right to bind the Government; the ruling party has returned a majority which provides a mandate for their activity. However, there absence of any mechanism to deal with abuse or excessive use of executive dominance can be argued as being problematic. The Fixed-Term Parliament Act, 2011 provides for motions which result in the dissolution of Parliament, but these require a two thirds majority (for an early general election) or a simple majority (vote of no confidence). A government with a healthy majority and strict party loyalty might easily win such votes. Institutional mechanisms available to non-government MPs are inherently non-binding and include Orders and Resolutions of the House and these are often used to express and record the view of the House on a specific matter. However, these cannot be used to force a government or its Ministers to act in a particular way. As with votes to dissolve Parliament as provided by the FTP, any government with a secure majority should be able to win these. However, as was seen by the Government's treatment of Opposition Day motions, they might also choose to abstain from these. One scenario in which non-binding measures might be harmful to the Government is when its own Backbenchers use any such motion to display discontent with Government activity or policy; voting against their party on a non-binding motion is a non-fatal but significant blow to the Government at times. These adds yet more credence to the idea that Government Backbenchers are the most influential force within the legislature in prohibiting government activity. One exception to the idea that institutional mechanisms are non-binding proved to be the Humble Address (a motion for a return). This parliamentary rule allowed for the request for publication of Government papers to be a binding one. While it could still

not be used to force a Minister to do more than this, it proved to be a useful mechanism through which the had to disclose information or be found in contempt of Parliament. The antiquated procedure, reportedly not used since the 19th century, became a key strategy of the opposition in reducing government secrecy.⁵⁷³ As was demonstrated within the body of this work, the ability of the Government to withhold information thereby reducing scrutiny of its activities is a way in which executive dominance can be increased. Imploring the Government to divulge its information is therefore one way in which opposition forces can influence Government use of executive dominance.

Executive-legislature dynamics in the Westminster Model:

This thesis has sought to establish that existing scholarship relating to executive-legislature dynamics in the Westminster model has often been inflexible in its assessment of influence and relations between the Government and Parliament. In light of this, the notion of a sliding-scale of executive-legislature dynamics has been established. This suggests that relations between the Government and non-government Parliamentarians can be found at multiple points of the scale: government control (executive dominance), consensual governance (multi-party cooperation) and Opposition control. It is argued that a parliamentary session is likely to bear witness to frequently changing relations along the spectrum mainly moving between government control and consensual governance. Opposition control is a rarer eventuality owing to institutional opportunities open to non-government Parliamentarians and the nature of majorities. However, as was later witnessed in the House when the final terms of Brexit negotiations were published by May's Government, opposition forces can become dominant. Executive-legislature relations may appear fixed on the scale when dealing solely with single policy areas, but trends are more likely to appear when parliamentary sessions are considered as a whole.

Identification of relations along the scale is mainly achieved by studying piece of legislation and the response these receive in Parliament. At times when the Government is dominant, there will be little evidence of preventive influence present

⁵⁷³ House of Commons Public Administration and Constitutional Affairs Committee (2019) *Status of Resolutions of the House of Commons*. HC1587

in the Bill as introduced, there will be numerous and substantive amendments laid by non-government Parliamentarians (including Government Backbenchers). If amendments are accepted these are likely to emanate from members of the ruling party. Opposition party amendments will be pushed to a division, but substantive amendments will not experience success. It is based on these criteria that it is clear the early Brexit period (June 2016- mid-2018) was characterised by executive dominance.

Episodes of consensual governance or multi-party cooperation will not display the heightened levels of conflict that is evident elsewhere on the scale. This is due to the willingness or necessity of the Government to include within legislation the wishes of members of the legislature. The position and stability of the Government will dictate the extent of any such influence. It is most probable in these periods that pacifying measures are included in the Bill as introduced, there will be more amendments accepted by the Government during the passage of legislation and more laid by the Government which include the policy designs of non-government Parliamentarians as evidence of their reactive influence. Opposition control of the legislature will be characterised by conflict with the Government being defeated in the Lobbies. The business of the House will appear to halt at this point because Westminster is not a policy-making body so while opposition forces may unite to overrule Government legislation, there will not be an alternative offered in its place. This too was evident following the rejection of May's deal when the Commons voted on a series of alternatives, and none proved fruitful.⁵⁷⁴ This highlights that while opposition control of the legislature designates a shift in the balance of power (and ultimately numbers) away from the Government and towards non-government Parliamentarians, this does not necessarily mean that the opposition forces are united.

An additional factor to consider is the very nature of majorities within UK governance. Fundamentally, the legislative process is a numbers game; the side with the largest number of MPs naturally wins. Consequently, when a government has a significant or stable majority, it can expect to fulfil its legislative ambitions. When a government is defeated, it is the result of a breakdown in their working majority; often this is limited to single amendments as was seen with the success of

⁵⁷⁴ Walker, P. (2019) 'MPs reject all alternative Brexit options', *The Guardian*. 27 March 2019.

Grieve's amendment during the passage of the EU (W) Bill. The Government miscalculated the threat posed by amendment 7 and the willingness of its own members to rebel to ensure that their desired outcomes are written onto the face of the Bill. It is unusual and was not seen during the legislative processes detailed within this research, for Government Members to defeat Legislation wholesale. The consequence of such action would be to risk losing the Party whip and effectively be forced out of their Party. This practice was witnessed more frequently in the latter part of the Brexit process not covered by this research when MPs such as Dominic Grieve had the whip removed, and arguably their Parliamentary careers ended, because of an unwillingness to support the party line. The numbers game in Westminster politics is a foundation on which the use of executive dominance rests. The bigger the Government majority, the easier they can use, and resist challenges to, their dominance of the legislature. As was witnessed during the UK's accession into the EEC, rebellions can occur within the opposition parties to boost the Government's ability to pass legislation when there is a potential for legislation to fail if Government lack an obvious majority. Conversely, a minority Government, such as that witnessed under Theresa May following the 2017 General Election, will have a smaller capacity to resist challenges to its dominance or its legislative programme. While there is constitutional flexibility to operate a minority Government through coalitions or 'supply and demand' agreements, there is a greater need for complete party loyalty particularly from Back Benchers in these periods.

In theory, it should have been the case that May's minority Government was forced to be more cognisant of the opposition and more willing to cede some of their dominance to Parliament. However, coming as it did at a time when an extraordinary policy programme was passing through the House, May had the ability to maintain her dominance and inhibit excessive scrutiny of her Government's activity. This was result, as established by this research, of the ability to extend the use of executive dominance and to do so justifiably during an EOPP. May's Government was allowed to use the Brexit negotiations as a reason for it to continue to operate without due regard for standard parliamentary procedures and the unprecedented nature of Brexit challenged the legislatures reliance on convention.

The scope of this research was forced to narrow throughout the research resulted from the ever-increasing complexities associated with Brexit which, from the

perspective of the researcher, has resulted in limitations. What was envisioned to account for the entire passage of Brexit through the Commons was an unattainable goal. As such, the work within was forced in some ways to take a potted view of the process and focus purely on early legislation with an emphasis on the House of Commons in particular. It would have been advantageous to have considered in more depth the work and activity of Select Committees over the same period. However, so vast was the work of the Committees, particularly in the Lords, that such an assessment would produce a thesis of its own. Further, while needing to take a close view of the passage of legislation, the work was never intended to be an amendment analysis for risk of losing the historical qualities of it, but this may have resulted in gaps associated with amendments which are fundamentally a key tool for opposition activity. Amendments to legislation identified by this work have been chosen because they were the main focal point of debate and conflict between the executive and the legislature. In addition, interviews which were planned with members of the Commons and the Lords were disrupted on multiple occasions; purdah ahead of the 2017 general election, the process of Brexit itself having the tendency to take priority for working members and finally the Coronavirus Pandemic and subsequent measures employed to reduce the spread of the virus inhibited access.

It is intended that this research be used to extend academic debate as to the nature of executive-legislature dynamics within UK governance. Significantly, it is the hope of this researcher that more scrutiny is applied to the use of executive dominance by the British Government. The UK's exit from the European Union has resulted in the British Government having more power; where matters of international relations were once pooled with the EU, Her Majesty's Government now has more freedom to act but with no new safeguards applied as to the role of Parliament. The use of executive dominance, relating as it does to the democratic health of UK governance, should be given more attention than it has traditionally received. Unfortunately, much of what this thesis hoped to prove has been more readily exemplified in the period following that which is studied within. The publication, and rejection, of May's deal highlights opposition control of the legislature. The coup she faced from within her party highlights perfectly the power held by Government Backbenchers. Government activity in the post-Brexit period and during the Coronavirus pandemic raised

significant opposition concerns as to the dominance of the Executive; these periods were laced with accusations of scandal levelled at the Prime Minister and his Government yet there was exceedingly little that opposition forces within the legislature could do to challenge such activity. In light of the events which followed the period studied here, there ought to be continued exploration of executive dominance and executive-legislature dynamics in a manner homogenous to this research.

To conclude, the nature and scope of the Brexit debate proved to be both complex and divisive. The tendency of some interested parties such as MPs, Governments, and the Press, and by lieu of these, the Public, to treat the debate in a binary manner failed to do justice to the multitude of factors and complexities at play. From the start of the referendum campaigns to the conclusion of negotiations, Brexit was a political and legislative 'grey area' which proved fertile ground for misinformation, secrecy, and division. Most significantly in the context of this thesis, Brexit was unprecedented. There were no blueprints for how the process could or should work and the reliance on precedent in UK governance left all sides uncertain. The Labour Party, as the Official Opposition, were often ineffectual in this period when it came to influencing the course and nature of government activity. While it is true to suggest that there were episodes in which the Party were disorganised in its approach or were challenged by intra-party disunity, they were often ineffective because the parliamentary system favours the Government by design, operating as it does on an uncodified constitution with an emphasis on convention, the majoritarian system caters more for dominant governments than for non-government Parliamentarians.

Bibliography:

Primary source material:

Historic Hansard

HC Deb (26 June 1950) Vol. 476, col. 1959-65

HC Deb (25 July 1960) vol 627 col 1211

HC DEB (31 July 1961) Vol. 645, col. 928-42

HC Deb (02 August 1961) vol. 645, col. 1495

HC Deb (03 August 1961) vol. 645, col. 1653

HC Deb Division (03 August 1961) vol. 645, col. 1778-85

HC Deb 02 May 1967 Vol. 746, col. 310

HC Deb (02 May 1967) vol 746 col 315

HC Deb (21 October 1971) vol. 823, col. 912

HC Deb (28 October 1971) vol 823 col 2217

HC Deb (28 October 1971) vol. 823 col. 2217

HC Deb (15 February 1972) vol. 831 col. 269-75

HC Deb. (17 February 1972) vol.831. col.629-49

HC Deb 17 February 1972 vol. 831, col. 754-5

Hansard

HC DEB vol.606 col.21-2. 22 February 2016

HC DEB vol.615 col.313-4 12 October 2016

HC DEB vol.616 col.1255 7 November 2016

HC DEB vol.618 col.220-1 7 December 2016

HC DEB vol.618 col.329-336 7 December 2016

HC Deb 24 January 2017, vol 620

HC Deb 24 January 2017, vol 620, col 163

HC Deb 31 January 2017 vol 620, col 824

HC Deb 31 January 2017 vol 620, col 818

Division 135 HC Deb 1 February 2017 vol 620, col 1136-1140

HC Deb 6 February 2017 vol 621, col 58

HC Deb 7 February 2017 Vol 621, Col 264

HC Deb 7 February 2017 Vol 621, Col 329.

HC Deb 7 February 2017 Vol 621, Col 349

HC Deb 7 February 2017 Vol 621, Col 352

Division 143 HC Deb 7 February 2017 Vol 621, Col 395-398

HC Deb 8 February 2017 Vol 621, Col 444

Division 152 HC Deb 8 February 2017 Vol 621, Col 525-529

Division 160, HC Deb 8 February 2017 Vol 621, Col 561-5

HC Deb 7 February 2017 Vol 621, Col 329-334

HC Deb 19 April 2017. vol. 624, col. 681

Division. HC Deb. 19 April 2017. Vol. 624 col. 708-712

HC Deb. 19 April 2017 vol.624 col. 666-677

HC Deb. 26 April 2017 vol.624 col.1100-1114

HC Deb 30 March 2017 vol.624 col.430-1

HC Deb 7 September 2017 vol.628 Col.346

HC Deb 11 September 2017 vol.628 col.458

Division 13 HC Deb 11 September 2017 vol. 628 col.589-592

HC Deb 12 December 2017 vol.633 col.218

HC Deb 13 December 2017 vol.633 col.517

HC Deb 13 December 2017 vol.633 col.404-417

HC Deb 14 November 2017 vol.631 col.199

HC Deb 15 November 2017 vol.631 col.399

HC Deb 21 November 2017 vol.631 col.862

HC Deb 20 December 2017 vol.633 col.1139

HL Deb 1 March 2017, Vol 779, Col 814

HL Deb 13 March 2017, Vol 779, Col 1717

HL Bill 111 Commons reasons, 13 March 2017

HL Deb 4 April 2017 Vol 782, Col 1013 and 1044

HL Deb 30 March 2017 vol. 782. Col. 804-5

House of Lords, 'Written Question: Euratom', 7 July 2016, HL911 & House of Lords, 'Written Question: Euratom', 2 November 2016, HL2652.

National Archive

CAB 134/1852

E. Bowden, (1967) 'The value of the Commonwealth to Britain': Cabinet memorandum 24 April 1967. NA CAB 129/129/9

CVCE

De Gaulle, C (1963). *Discours at messages. Tome IV: Pour l'effort (1962-65)* [online] Paris: Plon. 14/01/1963

De Gaulle, C. Press Conference. 14 January 1963. Elysee Palace

de Gaulle, C (1967) Statement. Le Grand "Non": Britain's Proposed Entry into the Common Market, 16 May 1967

Speeches

Cameron, D. (2016) Speech, 'EU referendum outcome: PM statement' Downing Street, London. 24 June 2016.

Corbyn, J. (2016). Speech to Senate House. 14 April 2016

Corbyn, J. (2016). Speech 'Addressing the PES', *PES Council "Saving Europe"*. 3 December 2016, Prague.

Gaitskell, H. (1962) Speech: 'Against UK membership of the Common Market', 3 October 1962. Found in: Britain and the Common Market, Texts of speeches made at the 1962 Labour Party Conference by the Rt. Hon Hugh Gaitskell M.P. and the Rt. Hon. George Brown M.P. together with the policy statement accepted by Conference. London: Labour Party, 1962

Hoey, K. (2016). 'Labour Leave Campaign Launch'. 20 January 2016, Birdcage Walk, London

Kerr, J. (2017) Speech 'Article 50: The Facts', Open Britain. 10 November 2017

May, T. (2016) Speech. Announcing her candidacy for leader and PM. 30 June 2016

May, T. (2016). PM Statement in Paris. 19 July 2016, 10 Downing Street.

May, T. (2016). Press Conference, Gulf Tour. 6 December 2016, Bahrain.

May, T. (2016). Speech: 'Britain after Brexit: A Vision of a Global Britain'. Conservative Party Conference, 2nd October 2016

May, T. (2017). Speech: 'The Government's negotiating objectives for exiting the EU'. 17 January 2017, Lancaster House

May, T. (2017) Speech. PM Statement: General Election 2017. 18 April 2017.

Starmer, K. (2017) Speech. What next for Britain? Chatham House. 27 March 2017

Wilson, H. (1967) Speech to Parliamentary Labour Party. 27 April 1967

Newspaper articles/media publications

Abbott, D. (2018) In interview with ITV. 18 April 2018

Boffey, D. (2016). 'Hilary Benn seeks Shadow Cabinet backing to oust Corbyn'. *The Guardian* 25 June 2016. <https://www.theguardian.com/politics/2016/jun/25/hilary-benn-jeremy-corbyn-labour-leadership-eu-referendum-Brexit>

'Brenda from Bristol', interview. *BBC* 18 April 2017

Burn-Murdoch, J., Stabe, M. and Leach, A. (2017) UK general election 2017 poll tracker. *Financial Times*. 20 August 2017

Bush, S. (2014) 15 by-elections that shook Britain. 9 October 2014, *The Telegraph*

Chisholm, J. (2017) 'How the markets are reacting to UK's snap general election', *Financial Times*. 18 April 2017.

Coates, S and Sylvester, R. (2016) 'Being a mother gives me edge on May – Leadsom'. 9 July 2016 *The Times*.

Coleman, C. (2016) Reality Check: How much UK law comes from the EU?. *BBC News*. 8 June 2016.

Corbyn, J. (2016). Interview 'Corbyn's three-line whip on Brexit A50 Bill'. *Sky News*, 19 January 2017

CRUSH THE SABOTEURS': Cover, *Daily Mail*. 19 April 2017

Ferrari, N. (2017) The Car-Crash Interview Everyone's Talking About: Diane Abbott on Police funding. *LBC*. 2 May 2017.

Gray, A. (2017). 'Article 50 author Lord Kerr: I didn't have the UK in mind', *POLITICO*, 3 March 2017

Halliday, J. (2021) Labour crashes to humiliating byelection defeat in Hartlepool. *The Guardian*. 7 May 2021.

Islam, F. (2016) reporting on a conversation with a senior Conservative MP, 26 June 2016 *The Independent*

Johnson, B., (2016) Boris Johnson: UK and America can be better friends than ever Mr Obama... if we leave the EU. *The Sun*. 22 April 2016

Leslie, C. Bailey, A. Bradshaw, B. Reynolds, E. (2016) 'Decisive EU referendum victory is essential – we must help deliver it'. *The Guardian*, 9 April 2016.
<https://www.theguardian.com/politics/commentisfree/2016/apr/09/labour-mps-eu-plea-to-corbyn>

Mann, T. (2017) Jeremy Corbyn's 'naughtiest thing' is way too naughty to even say. *Metro*. 8 June 2017

Mason, R. Walker, P. Wintour, P (2016) 'Boris Johnson ridiculed by European Minister after prosecco claim', *The Guardian*. 17 November 2017

Mason, R. and Campbell, D. (2017) Theresa May under pressure over 'dementia tax' social care shakeup. *The Guardian*. 21 May 2017

May, T. (2016) Interview. *The Andrew Marr Show*, BBC. 04 September 2016

Mosely, T. (2016). 'In quotes: Jeremy Corbyn and the EU Referendum' *BBC* [online] 14 April 2016

New Statesmen. (2016). 'MPs voted no confidence in Jeremy Corbyn after Shadow Cabinet result: as it happened'. 28 June 2016

PA Media (2021) Fisheries Minister did not read Brexit bill as she was bust at nativity. *The Guardian*. 13 January 2021.

Pasha-Robinson, L. (2017) Theresa May 'refusing to take questions she hasn't pre-approved', claims Michael Crick. *The Independent*. 09 May 2017.

Pope, C. (2016). 'Heated PLP meeting spills out into Commons corridors'. *LabourList*. 27 June 2016

Ross, T. (15 May 2016) Boris Johnson: The EU wants a superstate, just as Hitler did. *The Telegraph*

Robinson, N. (2017) Radio Four Today Programme, BBC. 19 April 2017.

Rudd, A. (2017) Interview *Peston on Sunday*, ITV. Televised 26 February 2017.

Sharman, J. (2017) Stephen Hammond: Tory MP sacked as a Conservative vice-chairman after Brexit rebellion. *The independent*. 13 December 2017.

Slack, J. (2016) 'ENEMIES OF THE PEOPLE': Cover, *Daily Mail*. 4 November 2016

Sky News, (2016). Hodge, M. speak to cameras. 'Corbyn: No-Confidence Motion in Labour Leader'. 24 June 2016, London.

Spicer, M. (2018) Move over Ukip, Jacob Rees-Mogg and the ERG are not the real Brexit watchdogs. *The Telegraph*. 25 January 2018

Stewart, H. (2016) 'Keir Starmer: UK should guarantee citizens' rights before talks begin', *The Guardian*. 30 November 2016

Sturgeon, N. 'Nicola Sturgeon: June election is huge miscalculation', *The Guardian*. 18 April 2017

Swinford, S (2017) The Brexit mutineers: at least 15 Tory MPs rebel against leave date with threat to join forces with Labour. *The Telegraph*. 14 November 2017.

The Telegraph [Online] 'Labour Shadow Cabinet and ministers resignations – the letters in full'. 30 June 2016 <http://www.telegraph.co.uk/news/0/labour-shadow-cabinet-resignations---the-letters-in-full/>

Walker, P. (2016) 'Labour MPs travel to Brussels aiming to 'shape debate' on Brexit', *The Guardian*. 9 November 2016

Walker, P. (2019) 'MPs reject all alternative Brexit options', *The Guardian*. 27 March 2019.

Walker, P and Stewart, H (2017) Corbyn to take part in TV Leaders' debate. *The Guardian*. 31 May 2017.

Wilson, P. (2016). 'Corbyn sabotaged Labour's remain campaign. He must resign'. *The Guardian*. 26 June 2016

Acts/Treaties/Legal Papers

Accounting Office (2018) Government Motion relating to standing orders: European Union (Withdrawal) Bill – European Statutory Instruments Committee (Temporary Standing Order). 22 Jan 2018

Constitutional Reform and Governance Act 2010 [online]. Part 2: Ratification of Treaties. HM Government.

Davis, D. (2016)'Skeleton argument of the Secretary of State', (2016) CO/3809/2016;CO/3281/2016.

Department for Environment, Food and Rural Affairs (DEFRA) (2017) [policy paper] Draft Animal Welfare (Sentencing and Recognition of Sentience) Bill 2017. Cm. 9554

European Union, (2007), *Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community*, 13 December 2007, 2007/C 306/01

European Union (2007) Charter of Fundamental Rights of the European Union. (2007/C 303/01)

European Union (Notification of Withdrawal) Bill [HC] (Bill 132,2016-17)

EU (Notification of Withdrawal) Bill, HC Bill 132.

European Union (Notification of Withdrawal) Act 2017

House of Commons *European Union (Withdrawal) Bill*. (2017) HC Bill 005 2017-19

Pannick, D. 2016, 'Santos and M –V- Secretary of State for Exiting the EU Morning transcript for 13 October 2016'.

R Miller V Secretary of State, (2016). 'Approved Judgment'. 3 November 2016. [2016] EWHC 2768.

Books/published works

Abrams, M. (1970). The opinion polls and the 1970 British general election. *Public Opinion Quarterly*, 317-324

Broad, R. (2001). *Labour's European Dilemmas: From Bevin to Blair*. London: Springer

Butler, D., & King, A. S. (1965). *The British General Election of 1964*. London: Macmillan

Camps, M., (1959), 'History of the Free Trade Area Negotiations', *PEP Planning*, Vol. XXV, No. 432, 13 April 1959

Camps, M., (1964) *Britain and the European Community 1955-1963*, Princeton: Princeton University Press, pp. 280-2.9

Delegated Powers Regulatory Reform Committee (2017) European Union (Withdrawal) Bill. 3rd Report of Session 2017-19. HL Paper 22.

DPRRC (2017) Special Report: Submission to the House of Commons Procedure Committee inquiry on the delegated powers in the "Great Repeal Bill". 23rd Report of Session 2016-17. HL Paper 143

Erskine, T. (1844) *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*. (twenty-fifth edn., 2019.) Digital Version. UK Parliament.

House of Commons Library (2019) General Election 2017: results and analysis. 2nd edn. CBP 7979

House of Commons Procedure Committee (HCPC) (2017) Scrutiny of delegated legislation under the European Union (Withdrawal) Bill: interim report. First report of session 2017-19. HC 386

House of Commons Public Administration and Constitutional Affairs Committee (2018) Status of Resolutions in the House of Commons. Fifteenth Report of Session 2017-19. HC1587.

House of Commons Public Administration and Constitutional Affairs Committee (2019) *Status of Resolutions of the House of Commons*. HC1587

House Of Lords Select Committee on the Constitution (2017) The 'Great Repeal Bill' and delegate powers. 9th report of session 2016-17. HL Paper 123.

King, A. S. (1966). *The British General Election of 1966*. London; Melbourne [etc.]: Macmillan; New York:

Lilly, A., White, H. and Haigh, J. (2018) Parliamentary Monitor 2018. *Institute for Government*

Low, S., (1904). *The Governance of England*. London: T. Fisher Unwin.

Hollis, C., (1950). *Can Parliament Survive?* London: World Affairs Book Club.

Rogers, I., (2019) *9 Lessons in Brexit*, London: Hatchette

Secondary Legislation Scrutiny Committee (2017) Special Report: Submission to the House of Commons Procedure Committee inquiry on the delegated powers in the "great Repeal Bill". 33rd Report of Session 2016-17. HL Paper 165

Thimont Jack, M. (2018) EU Withdrawal Act 2018: Explainer. *Institute for Government*

UK Parliament (2021) Statutory instruments procedure in the House of Commons. *House of Commons enquiries service*.

Von Ranke, L. (1915). History of the Latin and the Teutonic Nations, 1494 to 1514 G. Bell.

Walsh, M. (2017) Understanding Labour's ingenious campaign strategy on Facebook. *LSE Blogs*. 10 November 2017

Other

Alexander, H. (2016). *Letter to Jeremy Corbyn*, 26 June 2016.

Bassam, S. 2017. Email 'Labour Peers', 2 February 2017.

BBC interview with Jeremy Corbyn, 24 June 2016. London

Burnham, A. Twitter post: "Tory Party puts its own interests before the national interest." 18 April 2017

Cabinet Office (2017) Confidence and Supply Agreement between the Conservative and Unionist Party and the Democratic Unionist Party.

Chapman, J. (2016) *Meeting of the Shadow Brexit Department* [Closed group] 7 November 2016

Corbyn, J. (2017) Response to the Prime Minister's call for a general election. 18 April 2017. 2017 Press Archive, Labour Party.

Department for Exiting the European Union, 2017. 'Annual Report and Accounts 2016-17', 19 July 2017.

Department for Exiting the European Union (DExEU) (2017) Legislating for the United Kingdom's withdrawal from the European Union. [white paper] Cm 9446.

DExEU (2017) Press release. New Bill to implement Withdrawal Agreement. 13 November 2017

Dougan, M. (2015) Written Evidence Submitted by Prof. Michael Dougan. *Treasury Committee*. 3 November 2015

European Parliament (2016) 'Draft motion for a resolution to wind up the debate on negotiations with the United Kingdom following its notification that it intends to withdraw from the European Union'. B8-0000/2017.

Hayter, D. (2016) *Email to members of the House of Lords Labour Frontbench and Labour members of the EU Select Committee*. 7 October 2016.

Hayter, D. (2017). Email 'RE: Art 50 Bill: Amendments', 29 January 2017.

Her Majesty's Stationary Office (1970) Britain and the European Communities: An Economic Assessment. [white paper] cmd. 4289.

HMSO (1971) The United Kingdom and The European Communities. [white paper] Cmd. 4715

House of Commons, 'Notices of Amendments given up to and including Thursday 2 February 2017', 3 February 2017

ITV News, Interview with Tim Farron. 24 June 2016.

Jenkins, R., Owen, D. Rodgers, W. and Williams, S. (1981) Limehouse Declaration, 25 January 1981.

Kerr, J. (2016). *Meeting of the Shadow Brexit Department* [closed group] 7 November 2016

Leadsom, A. 2016. *Letter to Graham Brady, Chairman of 1922 Committee*. 11 July 2016

Leadsom, A. (2017) Oral evidence: Exiting the European Community: scrutiny of delegated legislation. House of Commons Procedure Committee. HC 386. 18 October 2017.

Opinium (2016). EU referendum and Brexit. [opinion poll] April 2016

Parliamentary Labour Party, (2016). Top lines for the process of invoking Article 50. 7 November 2016

Parliamentary Labour Party, (2016). Top Lines. 5 December 2016.

PLP Top Lines, (2017). Briefing 'Committee Stage and Third Reading'. *Parliamentary Labour Party*, 8 February 2017

Parliamentary Labour Party, 'European Union (Notification of Withdrawal) Bill: Labour Lords Frontbench Amendments' 10 February 2017

PLP top lines, 'Post Lords amendments of Bill amendments defeated', *Parliamentary Labour Party*, 14 March 2017.

Starmer, K. *Labour Peers Frontbench Meeting*. 1 February 2016.

Starmer, K. (2017) Labour Peers Frontbench Meeting. 19 October 2016 [closed meeting].

Smith, A. *Labour Peers Frontbench meeting* [closed meeting] 19 October 2016

Smith, A. *In conversation with Hayter, D and Mordue, C*. 7 December 2016

Smith, A. and Starmer, K. (2017) Letter 'Lords Amendments'. 10 March 2017.

Streeter, W. (2016). Twitter:@wesstreeter: *Lots of good people chose to serve in the Shadow Cabinet to keep the show on the road. There are no longer good reasons for good people to stay.*[Tweet] 26 June 2016. Available at: https://twitter.com/wesstreeter/status/746862815164661761?ref_src=twsrc%5Etfw

Taverne, D. (2017). *Private interview with Mordue, C*.

The Andrew Marr Show. 26 June 2016, BBC

The Labour Party, (2016). 'Labour Leadership Election 2016'. [Accessed 26 April 2017] <http://www.labour.org.uk/pages/labour-party-leadership-election-2016>

The Last Leg, (2016) series 8 episode 1. Channel 4. 10 June 2016

Thornberry, E. 2016. *Note to PLP members – responding to the EU referendum result*. July 2016

Thornberry, E. and Starmer, K. *Letter to David Davis* 12 October 2016.

Whitty, L. *Labour Peers Frontbench Meeting* [Closed meeting] 19 October 2016.

Whitty, L. *in conversation with* Mordue, C. 20 March 2017

Campaign material:

Conservative Party Manifesto (1964) *Prosperity with a Purpose*

Conservative Party Manifesto (1966) *Action Not Words: The new Conservative programme*

Conservative Party Manifesto (1970) *A Better Tomorrow*

Conservative Party Manifesto (2017) *Forward Together: Our Plan for a Stronger Britain and a Prosperous Future*

Labour Party Manifesto (1964) *THE NEW BRITAIN*

Labour Party Manifesto (1966) *Time for decision*

Labour Party Manifesto (1970) *Now Britain's Strong – Let's Make it Great to Live In.*

The Labour Party Manifesto (2017) *For The Many, Not The Few*

Secondary sources

Andeweg, R.B. (1992). Executive-Legislative Relations in the Netherlands: Consecutive and Coexisting Patterns. *Legislative Studies Quarterly*. 17 (2), 161-182

Arter, D. (2006b). Introduction: Comparing the legislative performance of legislatures. *The Journal of Legislative Studies*. 12 (3-4), 245-257

Auel, k., Rozenburg, O. and Tacea, A. (2015) 'Fighting Back? And, if so, how? Measuring Parliamentary Strength and Activities in EU Affairs' in Heffttler, C., Neubold, C., Rozenburg, O. Smith, J. (2015) *The Palgrave Handbook of National Parliaments in the European Union*, London: Palgrave Macmillan: pp.60-93.

Baimbridge, M., Whyman, P., & Mullen, A. (2016). *The 1975 Referendum on Europe-Volume 2: Current Analysis and Lessons for the Future* (Vol. 2). Andrews UK Limited

Barraclough, G., (1967). *An introduction to contemporary history*. London: Penguin

Blondel, J. (1970). Legislative Behaviour: Some Steps towards a Cross-National Measurement 1. Government and Opposition. 5 (1), 67-85

Bouton, C. (2016). The critical theory of history: Rethinking the philosophy of history in the light of Koselleck's work. *History and Theory*. 55 (2), 163-184

Brazier, A., Kalitowski, S. and Rosenblatt, G. (2008) *Law in the Making: Influence and Change in the Legislative Process*. London: Hansard Society

Broad, M. (2018). *Harold Wilson, Denmark and the Making of Labour European Policy, 1958-72*. Oxford University Press

Carr, E. H., (1961) *What is History?* London: Penguin, 1961.

Campbell, J. (2014). *Roy Jenkins*. Random House.

Collier, D. Mahon, J. E. (2013) Conceptual “stretching” revisited: Adapting Categories in Comparative Analysis. *American Political Science Review*. Vol. 87 issue 4. Pp.845-855

Collingwood, R.G. (1999). *The principles of history: and other writings in philosophy of history*, London: Clarendon Press

Collingwood, R.G. (2005). *An essay on philosophical method* Clarendon Press

Cram, L., Llewellyn, C., Hill, R., Magdy, W. (2017) UK General Election 2017: a Twitter Analysis. *University of Edinburgh*.

Crum, B., (2013) *Learning from the EU Constitutional Treaty: Democratic Constitutionalization beyond the Nation-State*, London: Routledge

Damgaard, E. and Jensen, H. (2006). Assessing strength and weakness in legislatures: The case of Denmark. *The Journal of Legislative Studies*. 12 (3-4), 426-442.

Daniels, P. (1998) From hostility to ‘constructive engagement’: The Europeanisation of the Labour Party. *West European Politics*, 21:1

Deacon, D., Downey, J., Smith, D., Stanyer, J., Wring, D., (2019) ‘A Tale of Two Parties: Press and Television Coverage of the Campaign’ in Wring, D., Mortimore, R., Atkinson, S. (eds) (2019) *Political Communication in Britain: Campaigning, Media and Polling in the 2017 General Election*. London: Palgrave Macmillan

Griffith, G. (2005). Parliament and accountability: The role of Parliamentary oversight committees.

Heidegger, M. (1996). *Being and time: A translation of Sein und Zeit* SUNY press

Hobsbawm, E. (1993). *The new threat to history*. New York Review of Books

Hobsbawm, E., (2011). *On history*, London: Hachette UK

Hollander, J. D., (2011), Contemporary History and the art of self-distancing. *History and Theory*. 50(4), pp.51-67

Jackson, P. T., (2008) ‘The Present as History’. In: Goodin, R.E and Tilly, C. (eds.) *The Oxford Handbook of Contextual Political Analysis*, Oxford: Oxford University Press

Jarvie, I. (2012) ‘*Thinking about Society: Theory and Practice*’, London: Springer.

King, A. (1976). Modes of Executive-Legislative Relations: Great Britain, France, and West Germany. *Legislative Studies Quarterly*. 11-36

- King, A. and Crewe, I. (2014). *The blunders of our Governments* Oneworld Publications
- Koselleck, R. (2004). *Futures past: on the semantics of historical time* Columbia University
- Kubat, M., (2010) *Political Opposition in Theory and Central European Practice* (Vol. 3) Peter Lang
- Ladurie, L. R. (1979) *The Territory of the Historian*. Chicago: Univ. of Chicago Pr.
- Lijphart, A. (1992). *Parliamentary Versus Presidential Government—Oxford Readings in Politics and Government* Oxford: Oxford University Press.
- Lijphart, A. (2012). *Patterns of democracy: Government forms and performance in thirty-six countries* Yale University Press.
- Ludlow, N.P., (2006), *The European Community and the Crises of the 1960s: Negotiating the Gaullist Challenge*, London: Routledge
- Martin, L. W. Vanber, G. (2011) *Parliaments and Coalitions: The Role of Legislative Institutions in Multiparty Governance*. Oxford: OUP
- McGann, A.J. (2006). *The logic of democracy: reconciling equality, deliberation, and minority protection*. University of Michigan Press.
- Mezey, M.L. (1979). *Comparative legislatures*. Duke University Press
- Middleton, A. (2019) 'For the Many, Not the Few': Strategising the Campaign Trail at the 2017 UK General Election. *Parliamentary Affairs*. 72:3 pp.501-21
- Milward, A. S. (2013). *The Rise and Fall of a National Strategy: The UK and The European Community: Volume 1*. Routledge; Wall, S. (2012). *The official history of Britain and the European Community, vol. II: from rejection to referendum, 1963-1975*. Routledge
- Norton, P. (2011). Divided Loyalties: The European Communities Act 1972. *Parliamentary History*, 30(1), 53-64
- Norton, P. (2013). *Parliaments in Contemporary Western Europe* Routledge.
- Olson, D.M. (2015). *Democratic Legislative Institutions: A Comparative View*. Routledge
- Phillips, M.S., (2004). Distance and historical representation. *History Workshop Journal*. Oxford University Press, 123-141.
- Parr, H. (2005). *Britain's Policy Towards the European Community: Harold Wilson and Britain's World Role, 1964-1967* Routledge
- Parr, H. (2005). A question of leadership: July 1966 and Harold Wilson's European decision. *Contemporary British History*, 19(4), 437-458

Polsby, N. W. (1975) 'Legislatures'. In Greenstein, Fred I. and Polsby, Nelson W. (eds), *Handbook of Political Science*, Reading, MA: Addison-Wesley

Quinn, T. (2012). *Electing and Ejecting Party Leaders in Britain*. Palgrave Macmillan, London

Ricoeur, P. (2010). *Time and narrative*, University of Chicago Press

Roth, P.A. (2013). HISTORY AND THE MANIFEST IMAGE: HAYDEN WHITE AS A PHILOSOPHER OF HISTORY 1. *History and Theory*. 52 (1), 130-143

Russell, M. and Cowley, P. (2016). The policy power of the Westminster Parliament: the "Parliamentary state" and the empirical evidence. *Governance*. 29 (1), 121-137

Russell, M. and Gover, D. (2017). *Legislation at Westminster: Parliamentary actors and influence in the making of British law*. Oxford University Press

Russell, M., Gover, D. and Wollter, K., (2016), "Does the Executive Dominate the Westminster Legislative Process? Six Reasons for Doubt." *Parliamentary Affairs*, 69 (2): 286-308

Russell, M. and Sciara, M. (2008). The policy impact of defeats in the House of Lords. *The British Journal of Politics and International Relations*. 10 (4), 571-589

Sartori, Giovanni. 1970. "Concept Misformation in Comparative Politics." *American Political Science Review*, 64:1033–53.

Shughart, M. S., and Carey, J. M. (1992) *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*, Cambridge: Cambridge University Press

Spohr Readman, K., (2011), *Contemporary History in Europe: from mastering national past to the future of writing the world*. *JCH*, 46(3), pp.506-530

Steinnes, K. (1998). The European Challenge: Britain's EEC Application in 1961. *Contemporary European History*, 7(1), 61-79

Thompson, L. (2013) "More of the Same or a Period of Change? The Impact of Bill Committees in the Twenty-First Century House of Commons." *Parliamentary Affairs* 66 (3): 459–479.

Thorpe, A. (2015). *A history of the British Labour Party*. London: Palgrave.

Thorsen, E., Jackson, D. and Lilleker, D. (eds) (2017) *UK Election Analysis 2017: Early reflections from leading academics*. *Centre for the Study of Journalism, Culture and Community*. Poole: Bournemouth University.

UK Parliament (2018) 'How does a Bill become law?', [online]
<https://www.Parliament.uk/about/how/laws/passage-bill/>

Wall, S. (2018). *The Official History of Britain and the European Community, Volume III: Volume III: The Tiger Unleashed, 1975–1985*. Routledge

Wall, S. (2020). *Reluctant European: Britain and the European Union from 1945 to Brexit*. Oxford University Press.

Wring, D., Mortimore, R., Atkinson, S. (eds) (2019) *Political Communication in Britain: Campaigning, Media and Polling in the 2017 General Election*. London: Palgrave Macmillan