Political parties, parliamentarism and representation in Britain

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I. Introduction

In her essay marking the centenary of Dicey’s Law of the Constitution, Professor Carol Harlow warns lawyers that they are always in danger of ignoring some important questions which should concern them by simply drawing arbitrary lines between matters political, economic or sociological and those of primarily legal nature. Such a sealing off of the world of political scientists, economists and sociologists leads lawyers “to misinterpret legal rules and to mistake political ideology for legal fact.” (Harlow 1985 : 62, 81) This warning seemed to be taken to heart by some British “public lawyers” when they came to examine the “fragmented, informal, pragmatic and secretive nature of British government” and explore the possibility of utilising European–American experience to try to make the British system more “open, integrated, principled and formal.” (Loughlin 1988 : 531; Cf. Murphy 1990 : 151-153, 155-158; Murphy 1986) However, so far as British lawyers are concerned, the nature, status and role of political parties in constitutional arrangements remain largely ignored. (1) This tendency is strengthened by the fact that, despite political parties being among the most important and powerful institutions in the British political system, the law has very little to say about their constitutional role or their internal organization. As a matter of fact, the law of the constitution does not regulate political parties at all and indeed, as we shall see, barely acknowledge their existence. It can be said that this lack of statutory or even common law recognition of political parties provides lawyers with some justifications for their indifference to the role of the political parties in a modern democracy and how political parties affect constitutional conven-

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(1) Contrasting experience can be found in the constitutional development of the party state in Western Germany. See K. Dyson 1977; G. Smith 1979 : 65-72.
tions which, in reality, are at the very heart of the British constitution.

Yet, one might argue it is quite unfair that the machine (the party) and the mechanism (the party system) which create the conventions of the constitution and thus are central to government should be so recklessly set aside by lawyers whose self-imposed task is to justify the use of political power and verify the legality of government actions. The ultimate aim of this essay is, therefore, to uncover and examine some constitutional implications in the context of the emergence and development of political parties in Britain.

Yet in examining the development of political parties, the aim of a student of law is probably different from that of the historian or the political theorist. In other words, a student of law may be excused of not minding precise dates as the historians should. Nor is his approach like that of the political theorist whose analysis may well be behaviourally based and who tends to be more interested in creating by comparative studies a paradigm within a particular period. What primarily concerns the student of law may be the following questions. In what ways have parties been their role, albeit without legal recognition of their role, in constitutional arrangements? To what extent did the development of the party system modify or constrain the constitution? To what extent and how did the legal system of representation affect this development?

Perhaps we can best answer these questions by first posing a number of further more basic questions: What are political parties? What are their functions in a society? These questions, however, open up a wide range of further and no less fundamental issues such as the origin of the state or society, the nature of government, the relationship between the state and the individual and the nature of the human being and social conduct. While these issues have provoked a wide spectrum of response, here we shall limit our consideration solely to what theorists and commentators have had to say in light of these issues regarding our central concern, namely representation. The raison d'être of parties, whether in the modern or premodern sense of the term, has always been the representation of interests, be it national and collective or personal and individual. In his *The Funding of Political Parties in Britain*, Keith Ewing defines the function of parties as being “essentially three fold: they organise, they represent and they govern.” (Ewing 1987: 1) Yet the activities of organising and governing have a meaning only when they are pursuing repre-

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(2) This does not mean, of course, that lawyers can drift in 'a sea of non-referentiality'. See T. Murphy 1986: 643.
sentation of interests. At all times, political parties have been "the vital link between the government and the governed." And for this purpose, "political parties bring about the election of MPs, provide governments and opposition to governments, and are engines for the creation of government policies." (C. Turpin 1990: 546). The immediate aim of this essay is to demonstrate the constitutional implications of the development of political parties in light of the development of parliamentarism as a persistent legacy of the British constitution.

This essay is composed of two main sections. The first section looks into the emergence of political parties in Britain. The first part of this section demonstrates that the emergence of a permanent parliament played an important role in the formation of political parties in Britain. The ensuing part argues that even if some distinctive changes, which took place in the nineteenth century including the extension of the suffrage, tend to be taken as the key elements generating the present constitutional order, it is equally worth noting that there has been a characteristic continuity in British politics in that, even before these changes occurred, the party system has, since the late seventeenth century, presented a general framework of political alternatives to a parliamentary democracy. In the second section, the authors set out those British theories of representation which were based on the elitist tradition of British politics. We shall also demonstrate that this elitist tradition was indebted to the Old Whig-cum-Liberal view of parliamentarism. Our main argument in this second section traces logical process covering three distinct dimensions.

The first dimension is that, by adopting an adversarial party system relying on political solution in constitutional matters rather than legal ones, Britain was able to enjoy a democratic system earlier than other countries. The second is that, this early establishment of representative democracy generated a characteristic hostility to extra-parliamentary bodies. Finally, dependence on political solutions in constitutional matters and hostility to

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(3) A comparative political scientist, Peter Mair, terms this traditional perspective as "the mass party model", which, by concentrating on the relationships of party organizations primarily with civil society, tends to conceive parties only in terms of representation of interests. For him, the linkage between party and state is important as much as the linkage between parties and civil society. In his view, as the organizational resources of political parties such as staff and money become dependent upon the state, the political parties are becoming increasingly state-oriented, and thus parties had moved from an earlier, post-suffrage stage in which they had represented the interests of civil society vis-à-vis state, to a stage in which they acted almost as independent brokers between state and civil society, and then recently a new stage in which they actually move closer to becoming part of the state. Mair 1994: 1-3, 7-12, 18.

extra-parliamentary bodies resulted in a less democratic constitutional order than Britain professed to have. In the concluding part of this essay, we assess, from within the spectrum of contemporary constitutional debates, both the significance and limitations of the preceding argument.

II. The emergence and development of political parties in Britain

Comparative studies of the party system have identified three main theoretical approaches to the emergence of political parties: institutional theory, historical (crisis) situation theory and the theory of modernization. (von Beyme 1985: 15-26) Works dealing with Britain by and large tend to rely on the institutional model. It is widely assumed that the emergence of parties in Britain was closely associated with the rise of parliament and with the gradual extension of the franchise. Therefore, many political theorists tend to argue in a rather abstract, ahistorical fashion, and thus parliament became “the incubator of parties as unified and disciplined organisations which provided capable, eventually, of sustaining party government.” (Judge 1993: 68)

Yet, so far as the formation of political parties in England is concerned, historians who see their task as using empirical research to get at historical truth, side with political theorists saying that by the end of the seventeenth century parties had emerged within parliament (both Commons and Lords). In stressing the importance of the institutional context of the formation of political parties, B. W. Hill is a typical exponent of this general understanding: “the beginning of the party system of modern Britain coincided with the emergence of a Parliament as a permanent institution.” (B. W. Hill, 1976: 15) For Hill, even though the overriding supremacy established by Parliament 1688-89 was not of itself the beginning of ‘full’ party government, “the permanent presence of a parliamentary body from that time gave the setting needed for the development of parties.”

However, this thesis has been criticised by two, radically different, arguments. On the one hand, Gardiner (quoted in Ingle 1987: 3) maintains that as early as 1641 there were two parties opposed each other “not merely on some incidental question, but on a great principle of action which constituted a permanent bond between those who took one side or the other.” Indeed, part of what Sir Herbert Butterfield indentified as a ‘whig interpretation of history’ tends to overemphasize the continuity, real or supposed, of the party system by mistaking certain political conflicts for signigicant manifestations of a two-
party system of government and so exaggerating the role and importance of party.

On the other, most influentially, Sir Lewis Namier and Namierite historians reject the idea that there were parties "in the modern sense" even in the 1760s. Namier refuses to see any ideological polarity in eighteenth century politics. He rules out "anything resembling general conclusions and wide-ranging interpretations" by insisting upon the significance of local affairs and reducing the body politic to a loose federation of country houses. (O'Gorman 1975 : 13) In his accounts, moreover, "material motives outweighed the importance of ideas drained politics of principle, of conscious human purpose and thus of any continuity." (O'Gorman 1975 : 13)

However, Gardiner's account failed to obtain the support of other historians because there is a consensus that only the Whigs evolved anything like a party organization before 1688 "for until then the Tories were too closely associated with the monarchy to have any independent existence." (Hill 1976 : 21 ; Clark 1980 : 296) On the other hand, a number of revisionists argued that whilst the 'Namierites' insistence on 'the end of ideology' in the history of historical writing in Britain contributed to the demolition of the whig interpretation of eighteenth century politics, "some of implications of its method, especially the redundancy of the concept of party, do not satisfactorily relate to their periods." (O'Gorman 1975 : 14) In particular, the fact that Namier's researches were confined to a narrow period has been highlighted. (Clark 1980 : 298) Namier's period is one of calm in the political arena "when talk of the death of party, centre parties... is encouraged by reflexion on the similarity of party creeds in most respects." (Clark 1980 : 295) The strongest critique of Namierite history came, however, from a revisionist historian, J. C. D. Clark, who criticizes both the whig account of the party system and the Namierites' scepticism. Clark points out that while the former overemphasizes the continuity of identities of parties from the seventeenth century on, the latter paid exaggerated attention to patronage and the role of corruption. (Clark 1982 : 5) That is, so far as England is concerned, Max Weber's distinction between ideology and patronage parties (quoted in von Beyme 1985 : 168) is not exactly applicable. Frank O'Gorman sums up the debates as follows:

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(6) In his late times, Namier himself acknowledged that his interpretation in this period might not be necessarily true "for an earlier or later period." See Namier & Brooke 1964 : ix.
Parties had existed since the reign of Charles II, and the party names 'Whig' and 'Tory' had acquired national currency during the Exclusion crisis of 1679–81. Notwithstanding a persistent court-country distinction in British politics, there had developed by 1688 first a Whig and then a Tory party, each held together not only by a set of political and religious attitudes but also by its ambitions and by a rudimentary party organisation based upon the territorial power of the aristocracy and gentry. In the 1690s when Parliament began to meet annually the goal of seeking executive power became a feasible political objective for parties. (O'Gorman 1975 : 14–15, emphasis added)

Even though, as we have seen, there is the consensus that parties for the first time grew into "part of a fully fledged party system" only after the Glorious Revolution, there is equally little doubt that it has taken over a century for political parties "to complete their conquest of the House of Commons, and became accepted as the organizations whose relative strength should determine the complexion of the government." (D. Beales 1971 : 11 quoted in Clark 1980 : 324) One may, therefore, imagine that there were two main stages in the history of the development of the party system into its modern form; the first stage coincided with the emergence of a permanent parliament, the second with the extension of the franchise and socio-political reforms in the nineteenth century. (Punnett 1994 : 71) In other words, the first was a movement from absolute monarchy to constitutional monarchy, and the second from limited to more general democracy. From one point of view, there is a clear distinction between the two stages. While in the first stage the monarch was still the dominant element of the triumvirate, i. e. King-in-parliament, in the second stage the Commons emerged as the dominant component.

Many lawyers and political scientists have a tendency to exaggerate the distinction between these two stages even in discussing the significance of the party system in constitutional arrangements, and thus begin considering the subject only from the second stage. But, this tendency is misleading, as, contrary to what many public lawyers maintain, there is no necessary connection between democracy and the development of political parties. For example, Alan Ware takes it for granted that it is right to adopt the distinction between the earlier, parliamentary, parties prior to the nineteenth century and those of the

(8) Aspinall's research demonstrating the development of all the features of party management until the early nineteenth century offers us an image of party organization in this period. See A. Aspinall 1926.
(9) It is the second stage that, as we can see today, the identification of parties with both government and opposition became possible.
(10) This means that from the middle of the nineteenth century constitutional monarchy began to gain its shape of representative and responsible government as the identification of parties with government and opposition became established.
twentieth century. But we would argue that this distinction is not in line with Ware's own broad definition of parties as "bodies that intend to exercise some control over a state, and [whose] members are not simply the representatives of a single interest in society." (Ware 1987: 22-23) Even if, during the first period, parties were not based on the democratic system, there would seem no good reason, given that they exercised political power in the national interest, to exclude them from a study of party political development. Of course, some sociological accounts may argue that party actions in the first stage were mainly directed at maximizing self-interest of the like-minded members. However, in this respect, as we can see in Robert Michels' study of the oligarchical tendencies of modern democracy, contemporary political parties are far from innocent. As Michels put it, "in modern party life aristocracy gladly presents itself in democratic guise, whilst the substance of democracy is permeated with aristocratic elements."(R. Michels 1959: 10) What is more, as Webb points out, British parties are still in no meaningful sense mass membership parties as opposed to elite-dominated parties.(See Webb 1994: 112-130)

Nevertheless, in so far as our concern is with the significance and role of the party within the British constitution, we are in no position to overemphasize the difference between the two stages, and in any case we cannot overlook the constitutional significance common to both stages. Despite there being a strong connection between the process of democratization and the growth of the party system, the fact must not be overlooked that in Britain, the first stage already witnessed a remarkably higher acceptance of party politics than was the norm either on the continent or in America. Thus, the unique style of British party political theory was already well established in the absence of any formal constitutional control long before the extension of the franchise.(Robbins 1958)

In this regard, a historian's insight may provide us with a very useful instrument with which to demarcate our object of study. In an instructive essay, J. C. D. Clark outlined not only an unique 'general' theory embracing party, opposition and government but schematized what he saw as the dynamics of the party system over the past three hundred years. Within this period, Clark traces the emergence of no less than eight political systems, seven of which no longer exist as such but which gradually gave birth to the present-day system. From Clark's point of view, in dealing with these dynamics three factors in particular have to be taken note of: party personnel, organization and, most important part of all, those conventions to which parties adhere and which in turn dictated the parameters of political discourse. Clark points out that while the first two factors in-
variably involved "a large and necessary degree of continuity", this was far from true of
the third factor for thanks to "high political manoeuvres" (Cf. M. Peters 1984) 'the rules
of the game' often underwent radical shifts of emphasis. Even though his account focuses
on the dynamics and consequent discontinuity of the party system in the history of British
political parties, Clark's theory equally implies that the general 'framework of political
alternatives presented to a parliamentary democracy by the party system' has been in exis-
tence since the late seventeenth century. In short, according to this view, parliamentary
parties have been at the centre of the British constitutional development for well over
three hundred years.

This early establishment of the party system represents the strength of the British con-
stitutional system, and offers us a useful clue as to how we should treat such issues as de-
mocracy, representation and sovereignty in terms of constitutional theory.

III. Representation, political parties and the legacy of parliamentarism in
Britoin

1. Theories of representation and parliamentarism

In Samuel Beer's view, over the past three hundred years in Britain the representation
of interests has taken by and large four principal forms—the Old Whig, the Liberal, the
Radical and the Collectivist—which are "not necessarily the product of a political philoso-
pher, but rather an operative ideal of people in politics." (Beer 1957: 613-14. See also A.
Tant 1993) In the Old Whig view of representation, Parliament emerged as the representa-
tive of the community as a whole, in contrast to their rivals, the Old Tories, who continued
to regard the monarch as the guarantor of the common good. (11) The thrust of this
parliamentarism lay in the notion that the MP was the representative of the whole com-
munity as well as of its component interests. A constituency MP was called upon to repre-
sent not only his own constituency but those areas of the country with similar interests
and concerns but lacking their own parliamentary representation. Another basic assump-
tion was that the process of 'parliamentary deliberation' was the best way of deciding the

(11) Therefore, parliament which regularly assembled after the Glorious Revolution can be discerned
from parliament which had been irregularly assembled to cope with monarch's fiscal crisis. In
Habermas' terminology, representative publicity, i.e. "representation not for but before the people"
was the main principle of the Old Tory theory of representation. See Habermas 1989: 5-26, 200-
207.
great questions of state. This parliamentarism ruled out all "authoritative instruction" and "mandates" from the electorate. It also ruled out associations formed outside Parliament "for the purpose of determining what Parliament ought to do and for pressing these decisions on it as coming from a higher authority." (Beer 1957: 616) This Old Whig parliamentarism not only survived but was developed by Liberal views of representation. One of significant differences between these two views was that while in Old Whig views the basic unit of representation involved corporate bodies, interests or classes, the Liberals centred on the individual. The Liberals were committed to parliamentarism under the umbrella of 'representative democracy'. The two basic principles of liberal representation which was ultimately based on utilitarianism were (1) all members of a political community have the right to be fully represented, (2) any group of persons with specific shared interests has the right to form a stable organization to promote these interests. (Pizzorno 1981: 248) Once these two principles were put into practice, they generated the third principle, namely that of 'political professionalism'—the recognition of someone whose profession specifically represents various interests of the community in as "balanced" a way as possible.\(^{(12)}\) To this end, political association within parliament was not only tolerable, but positively desirable. Mill as a liberal thinker even went so far as to say; "No body of men, unless organized and under command, is fit for action, in the proper sense." Furthermore, Mill proposed a new image of parliamentarism—parliament as an institution not directly governing but criticizing and influencing the government of the day. (Mill, *Representative Government*, ch. 5 quoted in Bagehot 1993: 8) But it should be borne in mind that the Liberal's ultimate unit of action was always the independent individual. Therefore, the independence of MPs was crucial to the Liberal view of parliamentarism and thus a rigorously disciplined party organization was not compatible with the Liberal view of representation. While the Radical view, like the Liberal, took the independent, rational man as the ultimate unit of action, it tended to stress the role of associations outside the legislature by stressing the democratic principle. As the Radical view equated democracy and representative government with "popular" control, its ideal tended to veer away from

\(^{(12)}\) This does not mean that the duty of politicians must be confined to the public good as opposed to the self-interests or the interests of their own class. As Max Weber puts forward in his "Politics as a Vocation", "'politics' means striving to share power or striving to influence the distribution of powers, either among states or among groups within a state." "He who is active in politics strives for power", Weber adds, "either as a means in serving other aims, ideal or egoistic, or as 'power for power's sake', that is, in order to enjoy the prestige-feeling that power gives." See Gerth 1993: 78.
parliamentarism and towards a more direct form of democracy. Finally, the Collectivist view tended to favour stronger party government. In the Collectivist view, the popular will have to be mediated by the party which, unlike direct democracy, was able to achieve a unity of state policy thanks to its greater authority and tighter discipline. This view was not exactly compatible with the parliamentarism of the Old Whigs and the Liberals. In a nutshell, while, in giving precedent to parliament, the Radicals and the Collectivist differed fundamentally from the Old Whigs and the Liberals, in adopting individualism, the Old Whigs and Collectivists differed from the Liberals and Radical.

Nevertheless, the whole of British politics has developed a common and unique tradition: elitism. (See A. Tant: passim.) Despite unceasing attempts to achieve a sort of populist (or radical) democracy, parliamentarism as the institutional tenet of the Old Whig and Liberal views of society and representation still persists and forms one of the strongest and most interesting aspects of present British constitutional theory.\(^{(13)}\)

The most important aspect of parliamentarism, which has given rise to new controversies is the issue of the independence of MPs. The Rt. Hon. George Thomas, then speaker of the House of Commons, in the 1982 Hansard Society lecture manifested his strong belief in the doctrine of Edmund Burke that “Members of Parliament are not delegates of a caucus; they are representatives of constituencies.” (G. Thomas 1982: 353) Parliament is, he said, a mirror of the nation. Thomas, who was a Labour MP, emphasized that “[British] parliamentary democracy would suffer grievous change if members were simply mandated delegates on every issue which comes before the House.” This stance is not merely individual but reflects a significant change, namely a loosening of party discipline in the House of Commons, accompanied by an enhancement in the role and importance of back-benchers, this in turn has reopened a number of old theoretical controversies. Since

\(^{(13)}\) In contrast, Beer argued that British theories of representation have developed a common and unique mode of “functional representation.” For Beer, functional representation is

Any theory that finds the community divided into various strata, regards each of these strata as having a certain corporate unity, and holds that they ought to be represented in government—(since) they are regarded as performing an important function in the community as a whole—Moreover, the unity of such a stratum is not that of mere voluntary association—On the contrary, its integration is seen as arising especially from objective conditions that give its members a function and are the ground for deeply rooted, continuing—even “fixed”—interests. Recognizing this function and these interests, the members act as a unit and find in the group a sphere of moral fulfillment and an instrument of political action. (Beer 1982: 71)

But, it should be borne in mind that this characteristic anti-individualistic bias is not compatible with the Burkean theory of representation which has prevailed British constitutional theory. For a modern account of this aspect, see Judge 1980.
the 1970s the number of government defeats in Parliament resulting from the dissent of the government's own back-benchers has increased significantly. According to Norton's statistic referred to by Birch, whereas no government bills or clauses had been defeated in the House of Commons between 1945 and 1970, the government suffered six defeats in the Parliament of 1974–9. (See Birch 1989: 93) One of the main reasons for this change was the emergence of certain important issues which cut across normal lines of party conflict, among these issues were the proposed reform of the Lords, Britain's application to join the EEC, and the proposal to establish national assemblies in Scotland and Wales. Current disputes regarding the EU within the ruling Conservative party may in turn provide further evidence of the survival of parameters which seem to be at the very heart of British parliamentanism.

There is no better illustration to show this distinctiveness or peculiarity of British politics than the judicial attitudes to political parties and the question of representation. In Conservative and Unionist Central Office v. Burrell (Inspector of Taxes) (14), Lawton L. J. took it for granted the Burkean theory of representation in dealing with the legal nature of political parties. A corporation tax in relation to the profits was levied to the Conservative and Unionist Central Office, as an "unincorporated association" under the Income and Corporation Taxes Act 1970. Against this decision, an appeal was made to the commissioners, but rejected. However, in the first instance, the appeal was upheld by Vinelott J. who argued that the party was not an "unincorporated association" within the ambit of relevant section of the Act, but rather a political movement with many parts working together towards a common end. This judgement was later affirmed by the Court of Appeal which held that there was no contractual and direct link between members of local constituency associations and members of Parliament; the one, indirect and political, link being between them and the leader of the party. Lawton L. J., on the other hand, in true Burkean style, maintained that "Once elected members of the House of Commons they become representatives of the constituency for which they have been elected, not delegates of the local constituency associations which may have put them up as candidates." ([1982] 1 W. L. R. 525)

This is a rare but by no means the only court case showing a judges' attitude to the

matter of representation. In *Bromley L. B. C. v. Greater London Council* ([15], Lord Diplock held that "a council member once elected is not the delegate of those who voted in his favour only: he is the representative of all the electors.") ([1983] 2 W. L. R. 107)

Here we find parliamentarism or parliamentary sovereignty accepted, directly or indirectly, as a basic constitutional principle. Even though many constitutional lawyers take it for granted that a more disciplined party system has transferred significant measure of power from the House of Commons to the party, nevertheless the courts still favour the classic liberal theory of parliamentarism. One might argue that, in a modern society, this stance of the courts is becoming increasingly inappropriate. (See Harlow 1985: 77-80)

But, to justify their position, the courts would doubtlessly point to the distinctive nature and history of the British constitutional development in regard to parliamentarism, representation and political parties.

First of all, it is vital to realize how deeply embedded in the British constitution is the legacy of parliamentarism. What A. V. Dicey had in mind in suggesting the separation between legal and political sovereignty, which many lawyers still regard as a cardinal principle, was that such distinction could fill the gap between democratic and liberal parliamentary ideas. (See Dicey, *The Law of the Constitution*, pp. 26-35). Yet a socio-political implication of parliamentary sovereignty, the nature of which has recently been questioned, is the characteristic hostility to extra-parliamentary bodies. In Britain, parliamentary democracy with its combination of democratic and parliamentary ideas is achieved by eliminating interference from outside in the deliberations and activities of parliament. This desire to eliminate outside influence has been seen as contributing to the development of a constitutional monarchy the essence of which is either the limitation or removal of the powers from the crown. Nevertheless the interests of the community have, of course, never been excluded from representation, however, only parliament was said to represent the 'national interest' and the 'public good'. British conception of democracy is a very unique and narrow one in which parliament has come to be seen as virtually the sole representative institution of democracy. Dicey writes:

The sole legal right of the electors under the English constitution is to elect members of Parliament. ... [the opinion of the electorate] can be legally expressed through Parliament, and through Parliament alone.

2. Parliamentarism and political parties

Two specific issues now arise with regard to British parliamentary democracy. First, to what extent did the development of the party affect the maintenance of parliamentarism? Second, how did the unique relationship between parliament and extra-parliamentary bodies come about?

It is noteworthy that the role, political though non legal, of political parties in government is acknowledged across all the forms of representation of interests above mentioned. The only identifiable difference between those theories is the extent to which each acknowledges the influence of the extra-parliamentary associations over parliament. If we put forward the conclusion first, the continuance of the elitist solution to the question of representation is due in part to the relatively early acceptance in Britain of party politics. It was because of the party system minus constitutional control that an ideal of government by an elite came to dominate British politics. As Gash remarks, "the old aristocratic society which had lost its supremacy in the country at large still retained its preponderant power in the narrowly based parliamentary constitution." (Gash 1953: xv)

As we shall see, the development of party in Britain coincided with the triumph of parliamentarism. In other words, the British aristocracy and business interests created what Bagehot called a "disguised republic" through parliament pretending to represent 'national' interests. On the other hand, it was the party system which made it possible for parliament to disguise the fact that it was a representative institution responsible to the people. "Party", Bagehot says, "is inherent in Parliament, is bone of its bone and breath of its breath." (Bagehot : 160) Despite Ostrogorski's rather rash argument that since late nineteenth century the party has obstructed the development of a more democratic mass political system, it must be borne in mind that eighteenth century party development was a major factor in the growth of a unique parliamentary democracy which was at the time the envy of the world. It is interesting to see that in eighteenth century

(16) An interesting comment reveals that Burke as the first influential advocate of political parties in Britain had a predecessor as early as 1743. See P. Campbell 1955 : 166.
(17) The aristocratic tradition did not see the duty of the ruling few to be confined to the interests of their own class. This point was taken by Bagehot rebutting a utilitarian model of Mill and Bentham: "[The partisans of the English Parliament] are Whigs, or Radicals, or Tories, but they are much else too. They are common Englishmen, and, as Father Newman complains, 'hard to be worked up to the dogmatic level.'" See Bagehot, The English Constitution, p. 161 and R. Crossman's analysis at pp. 11-16. For an attempt to uncover a piece of mental furniture that generated this tradition, which is sharply contrasted with the continental experience, see W. E. Klein 1987.
debate concerning discordant political parties irrespective of whether the debate occurred inside and outside parliament, the argument which has been raised most persistently and forcefully was that the party system per se was likely to undermine national uniformity and thus prevent government from pursuing the 'national' interest. Robinson clearly reveals the situation in eighteenth Britain:

Unity was an ideal, uniformity a discipline and a bulwark of security. Good men, "men to no faction sworn", should find it easy to agree on measures to ensure the well-being of their country. Heresies in religion led to anarchy in the state. factions among politicians provided opportunities for the increase of tyranny. Management by ministers led to a decline in public spirit. Combinations among citizens might ferment conspiracy and strife. (Robbins 1958: 507)

Bolingbroke, in a Dissertation upon Parties (1734) and The Spirit of Patriotism (c. 1740), presented the image of the true patriot on the one hand, and deplored party and expatiated on the evils of faction on the other. But this was nothing more than the Old Tory advocacy of "patriot" monarch, as the representative of the country, together with Tories as the true, disinterested patriots. Bolingbroke's "Patriot" King was "to be above party himself and to unite the whole country under his rule." (Robbins 1958: 508) This view was, however, slowly eroded thanks to the development of a parliamentary democracy in which monarch played only a symbolic role, parliament itself being the chief representative of the whole community. Though part of the populace continued to long for a utopian chimera—the neutral king as a security of national unity and liberties—, the hard realities of political life eventually drove the British to adopt a powerful party system. But this was far from revolutionary for what John Cam Hobhous, later Lord Brougham, styled "His Majesty's opposition" was every bit as supportive of constitutional monarch as "His Majesty's government." The opposition was regarded to be in opposition to the ministers and government not Monarch as a symbol of the country itself. Any party could exist provided it was, at least in theory, not a threat to national interests, and acknowledged parliament as the legitimate arena for deliberation for national deliberation. Thus parties became the key element in British parliamentary democracy. It is not surprising, in this regard, that Burke not only saw the independence of MPs as the essence of parliamentarism but was an equally outspoken advocate of the party. Burke defines party as

A body of men united for promoting by their joint endeavours the national interest upon some particular principles in which they are all agreed. ...It is the business of the speculative philosopher to mark the proper ends of government. It is the business of the politician, who is the philosopher in action, to find out the proper means towards those ends, and to employ them with effect ... without the proscript.
tion of others, they are bound to give their own party the preference in all things ... such will easily be distinguished from the lean and interested struggle for place and emolument. (Burke quoted in Robbins 1958: 510, Emphasis added)

Despite unceasing scepticism to the necessity of party, it has been generally accepted that the best state policy can be obtained by the collision of different opinions when all aim at national interest or the public good.

In looking into the unique relationship between the development of the political party and British parliamentarism, it would be useful to compare British experience with that of the Americans. In the new American Republic, facing up to the contemporary reality, i. e. the inevitability of party and fear of the effects of the conflicting interests, resulted in a constitutional control based on checks and balances.¹³ A typical feature this control theory left is found in the legal regulation of party nominating procedures and party financing. Under constitutional monarchy, on the other hand, the party in the absence of any form of control was, of necessity, a part of a centralized structure of power. In Britain, restraints on political parties as bearers of national interest were considered contrary to the ideal of parliamentary democracy. Thus, Britain came to depend for "the control of party excesses on the national temperament, on the checks afforded by individual's propensity both to combine and to escape from regimentation." (Robbins 1958: 529)¹⁹

Some commentators, in our view, went too far and argued that as the function of representing the national interest, "once attributed to the Sovereign, and later to Parliament, is now performed through party", party is in effect "King", and "Representative government is Party Government." (H. Finer's phrase quoted in Beer 1957: 647) Schmitt was highly critical of the concept of a liberal, debating, politically sovereign parliament. The activities of disciplined parties and organized interest groups, plus the expansion of bureaucracy has, according to Schmitt, reduced parliament to a mere facade thus totally undermining original political importance of the institution. (Schmitt 1985: 1-32) Similarly though different in its implications-- is the view put forward by Habermas, who in analysing modern democracy speaks of the transformation of the public sphere's political

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(18) An authority which most frequently quoted in this regard is Madison, The Federalist, No. 10.
(19) According to Rose, the modern arguments against statutory regulation and judicial arbitration on the affairs of parties are two fold: "Judges conventionally avoid intervening in the 'political' part of government, and party officials distrust expensive and unpredictable courts. In addition, politicians profess scepticism about the usefulness of Acts of Parliament—at least when they are intended to regulate the parties themselves." See Rose 1974: 248.
function which in the classical form of parliamentarism had for its legitimation relied almost entirely on the process of rational-critical debate. (20) Traditionally, parliament had been a political public sphere (established as an organ of the state) primary function of which was to forge a link the state itself and society at large. Thus, by means of deliberation and debate, parliament stroved to realise the ideal of a balanced society and produce those policies which would bring it about. But the development of mass democracy undermined the central institutions of this liberal parliamentarism. That is, paradoxically, its function has become weaker while the public sphere has steadily widened. As state and society penetrated each other, Habermas notes, parliament as an organ of state lost a number of its bridging functions. Society was gradually infused into the state, i.e. pressure groups, interest groups and political parties replaced parliament. The advent of parties as the key sector in politics was evident:

It is precisely the interlocking of organized interests and their official translation into the political machinery that lends to the parties a paramount position before which the parliament is degraded to the status of a committee for the airing of party lines—-and the member of parliament himself "to the status of an organizational-technical intermediary within the party, who has to obey its directives in case of conflict." (Habermas STPS: 205, Emphasis added.)

Habermas, referring to Kirchheimer's observations, attributed this transformation in part to the diminishing parliamentary influence of "lawyers": the advocate type was given way slowly to that of the functionary. (Habermas STPS: 205)

However, despite claims by parties past and present, the conditions for the emergence of genuine party government as opposed to strict parliamentary government has never really been established in modern Britain. Every party, whether in power or opposition, lacked a coherent social philosophy. (21) Beer put it,

(20) Carl Schmitt, a German jurist who focused on the crisis of parliamentary democracy in the Weimar Republic, pointed out that the essential principles of parliamentarism are openness and discussion. Parliamentarism is based on the notion of representatives independent of their constituents and parties and thus rules out mandates from the electorate. The institutional elements of parliamentarism are the openness of its proceedings and immunity of representatives. Parliament's job, realised through debate and questioning, is to sort out conflicting opinions and evidence, so that it can govern not just by dint of holding power or through authority but because it comes closest to the truth. Accordingly the constituents of any theory of responsible and accountable government are organized around the securing of a dialectic of opinion-question time in parliament, legislative committees, press scrutiny, and the ultimate sanction of the ballot box all serve that end. See Schmitt 1985: 1-32.

(21) The most recent argument for this case can be found in Simon Jenkins' journalistic article in The Times, March 15 1995.
The parties through their powerful organizations undoubtedly do a great deal to impose policies upon their memberships and upon the electorate. Broad tendencies also unite each party, although within each the tendencies dividing one segment from another are hardly less profound than those uniting them. But to be united on broad tendencies is very different from having a coherent social philosophy and leaves ample opportunity for the typical democratic process of balance and compromise among interests. (Beer 1957: 650, Emphasis added.)

The recent resurgence of the importance of the independent MP and the conflict within parties over important policy issues would seem to support this view. Furthermore, when a party was in power, its front benchers, concerned with successful administration, party unity and victory at the next election, tended to adjust and reshape policy in response to pressure from the community. According to Rose, it is inevitable for the party’s leaders to put their own partisan preferences into the melting pot, to be reshaped and reformulated by heated bargaining with civil servants, pressure group spokesmen and even those who vote for the opposing party. (See Rose 1974: 20) The Callaghan government, in the face of inflation and the collapse of sterling, sought financial support from the International Monetary Fund, which imposed a condition that public expenditure be drastically cut. This condition was contrary to the party’s manifesto pledge to effect “a fundamental and irreversible shift in the balance of power and wealth in favour of working people”, and thus many on the left of the party criticized their own leaders for surrendering the interests of the working class to those of the capitalist Establishment. (See D. Oliver 1989: 118-119)

The unique tradition of parliamentarism will be made clear in dealing with our second issue, i.e. the relationship between extra-parliamentary bodies and parliament.

In examining the influence of extra-parliamentary bodies on parliament, we may look as example at the official relationship of two such bodies to political parties. We shall take as our examples, first, extra-parliamentary organization of political party, secondly, independent extra-parliamentary associations including interest or pressure groups. Despite various differences between them in terms of concrete aims and organization, both bodies have in common the fact that they are both equally subject to sovereignty of parliament.

Let us take first extra-parliamentary associations. Despite Ostrogorski’s rather rash conclusions in his Democracy and the Organisation of Political Parties, the influence of great extra-parliamentary bodies on British politics should not be overemphasized. As even

(22) As James Bryce pointed out in the preface of the English edition of Democracy and the Organisation of Political Parties, Ostrogorski overemphasized the importance and role of extra-parliamentary organization, what he calls the Caucus in England, in the formation of political parties in
Ostrogorski acknowledges, Britain had to struggle for centuries to gain the right to organize extra-parliamentary political associations on a popular basis. (Ostrogorski 1902, Vol. I) Even though political grouping has been gradually accepted, the legality of extra-parliamentary bodies were for a long time in dispute. Until the Reform Act of 1832 [even after that time], Parliament which, under a system of limited franchise, was easily corrupted and paid little attention to the public opinions gradually became more and more distrusted by the people who began to give voice to their opposition through the petitioning of parliament. From 1779, the county associations for parliamentary reform including the Yorkshire association of 1779–80 sprang up to command Parliament as “the principal to the delegate.” But majority of parliamentarians at that time regarded any unofficial “political” organization which could claim to represent the general petitioning public as an “anti-parliament.” What interests us is that the distinction between non-political associations and political associations was used for a justification against extra-parliamentary associations. Even many parliamentary reformers disapproved of “associations and committees without doors, to watch and control parliament.” In the debates on the constitutionality of these associations, which started with Sir George Savile’s motion in May 8, 1781, a number of independent MPs sided with the Ministerial majority by proposing that extra-parliamentary associations were illegal and unconstitutional in that the Commons was the proper forum for ‘delegates’ of the people and, therefore, all plans of reform should emanate from parliament. The conservatives justified their position against the legality of extra-parliamentary associations by arguing some technical problems such as the number of the petitioner, the representativeness of the associations and the distinction between non-political associations and political associations. But other reformers including General Burgoyne, Dunning and Fox rebutted these majority arguments by saying that the right to form associations was a result of the longstanding struggles for greater liberty including the right to petition, and, thus, the actions of the associations were not only legal but meritorious. However, the result was in the negative by 135 to 212. (See Hansard, XXII (1781–82), pp. 138–200; Ostrogorski Vol. I: 121–124; Pares 1953: 52)

Britain (Ostrogorski 1902: xliii). One would easily find one of reasons of this problem if he realised that what Ostrogorski, a frustrated deputy for the Liberal Cadets in the Russian ‘duma’, had in mind as an ideal was not the modern, well organized machine but the ‘free association of responsible individuals’ without a party bureaucracy or parliamentary group discipline. See Ostrogorski 1902: Vol 2.
There was, of course, a time when extra-parliamentary bodies were strong. But this was always a short-lived phenomenon at a time when the party, as a source of policy, was weak. It is true, as Ostrogorski observes, that three great reforms have transformed Britain giving it religious freedom, parliamentary democracy and economic liberty, each of which was achieved thanks to pressure from extra-constitutional bodies. (Ostrogorski Vol. I: 132) A good example of this successful extra-parliamentary pressure would be the repeal of the Corn Laws. But it should be borne in mind that the Anti-Corn Laws, like the Reform Bill itself, was passed by a parliamentary majority. Indeed, this short-lived strength of extra-parliamentary associations vis-à-vis parliament held up a mirror to "a political structure which gave too little power to the executive, too much to the private member[of the Commons]; too much to interest and too little to principle." (Gash 1953: xx) Since the late decades of the nineteenth century, furthermore, the influence of extra-parliamentary associations "has declined in importance and the parties with their growing research and publicity departments have become more and more the centres from which new ideas are propagated among the voters." (Beer 1957: 640)

The supremacy of parliament to extra-parliamentary bodies is also reified in the relationship between parliamentary party and its extra-parliamentary organization. Even after the extension of the franchise there was no fundamental changes in the status of 'parliamentary' parties. (23) Though, of course, the extended suffrage necessitated both an improvement and an expansion of political organizations which were called upon to mobilize the expanded electorate into voting for a particular party. This does not, however, necessarily support Ostrogorski's contention that there were centres of power outside Parliament—what he is called the 'English caucus'. (24) On the contrary, all the evidence points to the predominance of the parliamentary parties vis-à-vis their supporting organizations. This impression, as Webb observes, is reinforced by the fact that the only state financial subventions so far made available to British political parties (introduced in 1975), are directed exclusively towards parliamentary parties. (Webb 1994: 110) This tendency is largely thanks to a number of generations of parliamentarians' effective strategy which was intended to limit the task of organizing popular support for themselves among the

(23) For a modern discussion on the power of parliamentary parties, see J. Brand 1992: ch. 1.
(24) Some public lawyers refer to this point in criticizing that Dicey's representative model reflects a false reality of the nineteenth century. See, for example, P. Craig 1990: 39-47. But the question as to who possesses more acute 'historical sensibility' needs to be carefully answered.
newly enfranchised voters to the extent that their own freedom of action within Parliament was not sacrificed. As McKenzie rightly put it, "certainly after 1832 the self-interested and the high-minded could agree ... that the new extra-parliamentary party organizations must not be allowed to become Frankenstein's monsters which might devour (or at best enslave) their creators." (McKenzie 1964: 7) So far as the Conservative party is concerned, despite several attempts to "democratize" the parties including Joseph Chamberlain's "Birmingham Plan" in 1877 and Lord Randolph Churchill's campaign in 1881 (see McKenzie 1964: 166-173), the role of the extra-parliamentary organizations was confined to serve and support the party in Parliament as their masters. (25) The Labour Party continues to reproach this aspect as a crowning proof of the undemocratic nature of the Tory Party. But, as we will see now, it is questionable that the Labour Party's conviction can leave itself innocent. (26)

For the present authors, no better evidence of the privileged status of parliamentary party can be found than in what Tant called the "constitutionalization of the Labour Party." This is so partly because the issue of intra-party democracy comes for the most part from the ideological differences between the left and right wings within the Labour Party. One may argue that in the Labour Party, the Parliamentary Labour Party (PLP) play a role, but no longer a privileged one. This is not without plausibility if we pay attention to some facts. First of all, in the decision-making process of the party, Labour MPs, unlike members of the Conservative Party, are not in a dominant position. (27) The PLP, individual members, constituency Labour parties, affiliated unions, the National Executive Committee, and the party conference are linked together by the party constitution, which is contractually binding on all of them. (See In re Grant's Will Trusts, [1980] 1 W. L. R. 133-166.

(25) In 1972, the Chelmer Committee of the National Union recommended a proposal for a more democratic party organization. But it did not urge an end to the autonomy of the Conservative Party in Parliament. See Rose 1974: 265-266.

(26) Noteworthy in this regard is the organizational shift of the Liberal Democratic Party. As the LDP has made a noticeable effort to democratize its organizational structure, it can be regarded as more democratic than the old Liberal Party which, in organizational terms, used to be hardly distinguishable with the Conservative Party. Since the merger with the Social Democratic Party in 1986, the right to elect party leader has been moved from the hands of the parliamentary party to those of the rank and file individual members. In addition, the Federal Policy Committee is empowered to play an imperative role in the development of party policy. This shift in the organizational style of the Liberals, however, is not able to go further to change the British political culture which, as we shall see, still tend to be dominated by parliamentary elites. See Webb 1994: 111.

(27) For an illustration of the difference in organizational structure between the Conservative and Labour parties, see Rose 1974: 133-166.
In contrasting the Labour and Conservative Parties, McKenzie points out an interesting difference in the terminology used by the two parties: The term "The Conservative Party" applies strictly only to the party in Parliament; it is supported outside Parliament by its creation, "The National Union of Conservative and Unionist Associations." The term "The Labour Party" is properly applied only to the mass organization of the party outside Parliament; it supports in Parliament a distinct and separate organization, "The Parliamentary Labour Party." (McKenzie 1964:12 fn. 2) Thus, what the doctrine of free mandating means to Labour MPs is different from what it concedes to Conservative and Liberal MPs. Indeed, a series of reforms of the party constitution resulted in the achievement of a measure of success in asserting party control over MPs. The idea of collective policy-making led the Labour party to refer conference as the "Parliament" of the party (Attlee quoted in McKenzie 1964:10), and the party members are all bound by the constitution to "accept and conform to the ... Programme, Principles and Policy of the Party." (28) In practice, however, the Labour party refrained from attempting to follow this idea strictly. As the Labour Party became a main component of Parliament (as the main opposition or ruling party), namely was affected by the effects of the parliamentary environment, the importance and prestige of the Parliamentary Labour Party (PLP) vis-à-vis the wider party was dramatically increased. For example, when the 1960 Annual Conference endorsed unilateral nuclear disarmament, High Gaitiskell as the leader of the PLP declared that the Conference had no right to dictate to popularly elected MPs. (See Rose 1974:163) As pragmatism became more influential than ideology, the raised prestige of PLP was more and more associated with the claims for PLP autonomy and the rapid development of the leadership principle within it. A resolution was passed in 1907 to recognize the parliamentary group's autonomy by defining the relationship of annual conference to the Party's parliamentary leadership:

That resolutions instructing the Parliamentary Party as to their action in the House of Commons be taken as the opinions of the Conference, in the understanding that the time and method of giving effect to these instructions be left to the Party in the House, in conjunction with the National Executive. (1907 Labour Annual Conference Report, p. 49 quoted in McKenzie 1964:394)

On the basis of this formula, the PLP has successfully defeated over the years the repeated attempts of Conference to give specific instructions to the PLP as to the course of

(28) Clause 111(3). A Member of Parliament is in breach of the party constitution if he rejects party policy.
action it ought to pursue in Parliament, or to the course of action a Labour Government ought to follow when in office. When Harold Laski, as chairman of the National Executive Committee, claimed in 1945 that the party organization would expect some control over the foreign policies to be pursued by the next Labour government, Attlee, the leader of the PLP, did not accept the claim, and subsequently, as Prime Minister, rebuked Laski with the oftquoted words, "a period of silence on your part would be welcome." (K. Martin, Harold Laski (1953), p. 192 quoted in Birch 1989: 89) The primary justification for the autonomy of the PLP is the constitutional principle of 'parliamentary sovereignty'. In the 1960 Conference debate about unilateral nuclear disarmament, Hugh Gaitskell made it clear that Labour MPs, according to the principle of parliamentary sovereignty, will have to consider what they do in the House of Commons by using their conscience and honour. (See Rose 1974: 266–7) The main institutional means used by the PLP against pressure from participatory labourism is the "parliamentary veto." The leader of the PLP and the Shadow Cabinet can veto even important commitment of conference and the NEC in drawing up the manifestos. At the Clause V Meeting between the parliamentary committee and the NEC assembled in 1977 and 1979, Callaghan, as the leader of the PLP, effectively used vetoes over the party manifestos relating to the abolition of the House of Lords. Despite subsequent populist change, including the extended franchise for the election of the party leader, and ongoing proposal for mandatory reselection of the party's MPs, it seems unlikely that attempts to abolish the parliamentary veto and the mandating of MPs to comply with party policy will be implemented. (D. Oliver 1989: 123) Current Labour reforms including the revision of Clause IV, which is initiated by Tony Blair would support this perspective. This means that the Labour Party which initially armed with a participatory or instrumentalist rationale, associated with a delegatory sense of representation shifted to the right by assimilating itself to the liberal political culture relying on the idea of parliamentary party autonomy. This is less surprising than may be thought, given the various natures of elitism apparent among the Labour Party's founding organizations. Notable is the writing of the leading Fabians as well as the founders of the Labour Party, Sidney and Beatrice Webb in 1894: "the basis of the association of these ... wage earners is primarily sectional in its nature. They come together, and contribute their pence, for the defence of their interests as Boilermakers, Miners, Cottonspinners, and not directly for the advancement of the whole working class." (quoted in Beer 1932: 111)²⁹

(²⁹) R. Miliband put aside this elitist idea as a mere "interesting opinion" which can not be regarded as "a statement of fact." Miliband 1958: 172.
Elitism immanent in British socialism—which was evident within the article of Socialist faith\(^{30}\)—had an important role in converging participatory labourism and parliamentarism. In Tant’s view, as the Socialist goal was, in a sense, defeated by the ‘bourgeois’ political system and thus government became an end rather than a means, the Labour Party is thoroughly constitutionalized; “from initially representing a threat to the British Constitution[the parliamentary sovereignty] it has come to be one of its major guarantors.” (See Tant 1993 : 125–195) Accordingly, though the Labour Party originally rooted in trade unionism or the workers movement which has a tradition of collective decision-making through mandated delegates, the party opted to parliamentary principle as its basic tenet.

Consequently, British politics has been stable but less democratic—in a traditional sense—than it has professed itself to be. Because, whatever interpretations or personal utterances about the British constitutional order have been made, the pattern of British politics has, in one particular, remained unchanged: the major political questions have been decided, not by popular will, but within the system, by political manoeuvres in the tradition of the Durkhean view of representation. That is, political disputes had been very largely limited to the claims of competing elites; the role of the people has been essentially a passive, legitimizing one.

IV. Conclusion

But we should be careful to say that the fact that British politics has been less democratic than it has professed to be can provide justifications for any political campaign for a more democratic government in Britain today. What urgently needs, in this regard, to be taken into account today is a rather romantic but increasingly popular pursuit of participatory democracy in the public law discourse in Britain. Dawn Oliver, in her article contributed in the second edition of the Changing Constitution, argues that “it is the most important that ordinary people should be able to influence not only the choice of parliamentary leaders and candidates, but also ideally all levels of government policy and private decisions that affect their lives.” (Oliver 1989 : 136) But it is worth heeding to a sociologist’s warning that the strengthening possibilities of participation results in more burdensome increase of bureaucracy. (Luhmann 1990 : 223–226) In addition, it is also worth

\(^{30}\) For an analysis of this aspect, See Tant 1993 : 193, fn. 8.
noting that, having regard to complexity of functions and roles of political institutions, participation should not be regarded as a universal panacea. (31) Here any attempt to look in detail into the validity of participatory democracy, generally understood as having roots in Rousseau's theory of a 'general will', is beyond the limit of this essay. But what we need to realize is that any attempt to put the English representative system in a negative light for the reason that it contrasts sharply with more rationally constructed continental or American systems is in a danger of lacking sincere historical insight into how the present constitutional arrangements have developed. In Britain, few campaigns for populist (or radical) democracy have succeeded to prevail an almost mythical tradition of parliamentanism. That is, if we accept that elitism as a political and social culture is the cause of the "fragmented, informal, pragmatic and secretive nature of British government", this cultural specificity (32) must be put on the top of list which British "public" lawyers ought to consider before taking part in any campaign for "open, integrated, principled and formal" constitutional order.

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(31) From this point of view, Michael Rush deals with the issue of reforming selection of candidates in local parties. Rush argues that the selection process should not deal with solely in terms of whether or not the selection process is 'democratic'. For Rush, MPs are required to fulfill a variety of roles including constituency representative, party supporter, watchdog over the executive and so on, and thus political recruitment needs to be considered in the light of those roles rather than only in terms of participation. See Rush 1978: 16-29.
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