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**SOCIETY AND SOVEREIGNTY: IDENTIFYING AND
UNDERSTANDING THE LABOUR PARTY'S
APPROACH TO RIGHTS ACROSS THE 20th
CENTURY**



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Thesis submitted for the degree of Doctor of Philosophy

November 2024

Declaration for SOAS PhD Thesis

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ABSTRACT

This thesis provides a novel discursive and analytical legal-historical account that reveals how the Labour Party and its key or leading figures—individuals who held important positions or exercised significant authority—understood and approached the theory and practice of rights across the 20th century. More specifically, influenced by different ideological frameworks, this research explains how key figures in the Labour Party rooted their understanding of rights in ideas about the nature of society and sovereignty. While consolidating existing literature, this thesis utilises archival material (National, Labour Party, Travaux Préparatoires, and stored personal Papers etc), various primary sources, and political thought to construct a new account. Part I (1900-1955) explains how ethical socialism, communitarianism, and a socialistic-political constitutionalism caused leading figures in the early Labour Party and Clement Attlee’s government to support the creation of an “ethical society” (an other-regarding/interdependent citizenry) and maintain “untrammelled sovereignty” (the elected majority in Parliament, whose authority derived from the electorate, controlling domestic decision-making). Consequently, rights were linked to societal duties (strict/non-correlative) and codified rights, judicial authority, and supranational instruments e.g., European Convention on Human Rights were fiercely resisted. Part II (1956-1979) shows how revisionism and a liberally orientated socialistic-political constitutionalism influenced key figures from the early revisionist right and Harold Wilson’s government to reject an ethical society and liberally reframe untrammelled sovereignty. This saw societal duties be replaced by personal choice and acceptance of individual petition/jurisdiction of the European Court of Human Rights. Lastly, influenced by Thatcherite ethics and a modernising constitutionalism, Part III (1980-2000) explains New Labour’s societal emphasis on responsible individualism/market entry and desire to reduce the elected majority in Parliament’s political capacity (a reduced untrammelled sovereignty). Accordingly, paternalistic responsibilities were linked to social entitlements and the Human Rights Act 1998 was created. These conclusions elucidate the Labour Party’s shifting approach to rights.

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This research was a product of a process that I found to be simultaneously enjoyable, difficult, enriching and, at times, mentally draining. My key reflections are, firstly, undertaking a Ph.D. will forever be a unique period in my life. I have been able to acutely focus on a specific subject and dedicate all my time, effort, and skill set to it. For that, the lessons learnt, and quiet moments in-between I am thankful. Secondly, at the time of writing, I am 31-years old. I have dedicated most of my adult life, with some unsuccessful career attempts along the way, to studying. Despite this coming at some form of cost e.g., time, I have consistently reminded myself how fortunate it is to have the opportunity and freedom to pursue further education.

This research would not have been possible without the three people who made up my day-to-day support system. First, my brilliant wife Meredith. Over the years you have been steadfast, consistently my strongest source of encouragement, and provided immense emotional support. In addition to being our main earner, this cannot have been easy—particularly when the end never seemed in sight. But your boundless generosity, kindness, and love gave me the invaluable time and space to read, think, and write. Quite simply, this Ph.D. would not have been possible without you. Secondly, my wonderful parents Raj and Jaz—to whom I owe everything. For my entire life you have provided unwavering support, and throughout the Ph.D. it has been no different. I will forever be grateful to you for lifting me up during difficult times, financially aiding me when required, and showing me great patience. The selflessness all three of you have shown is inspiring and means more to me than I could ever express—this thesis is dedicated to you.

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Academically, I would like to express deep gratitude to my supervisors Dr. Paul O’Connell and Dr. Kanika Sharma. At each stage of this journey, I have been motivated by your own enthusiasm for research, pursuit of critical thinking, and commitment to freedom of

thought. I have truly appreciated your incredibly pertinent, constructive, and wise advice over the years—without which the ideas and arguments crafted in this thesis would not have been possible. Importantly, I will always remember your collaborative and encouraging supervision style. For that, and the number of hours you have dedicated to me and my work, thank you.

I end these acknowledgements with a short word about the Labour Party. It has been an enormous pleasure devoting multiple years to historically understanding a political party at the intersection of genuine subjects of interests. More specifically, I have enjoyed ‘getting to know’ political figures that I have great admiration for. This includes, among others, George Lansbury and Clement Attlee. Both stemmed from a radical English tradition that aimed to construct a better society based on fellowship. While not on the same scale of ambition, I hope that this research will play a small part in contributing to and broadening academic or general debate. Of course, there will always be much more to do. With that said, I aim to move forward in the spirit of William Blake:

*I will not cease from mental fight,
Nor shall my sword sleep in my hand
Till we have built Jerusalem
In England's green and pleasant land.*

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LIST OF ABBREVIATIONS

CoE	Council of Europe
ECHR/the Convention	European Convention on Human Rights
ECtHR/the Court	European Court of Human Rights
EU	European Union
EEC	European Economic Community
ESCTP	Travaux Préparatoires for the European Social Charter
EM	European Movement
HRA 1998	Human Rights Act 1998
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LAC	Legal and Administrative Committee
LSE Digital Library	London School of Economics Digital Archives
MPs	Members of Parliament
NHS	National Health Service
NEC	National Executive Committee
National Archives:	
CAB	Cabinet Office
CO	Colonial Office
FO	Foreign Office
HO	Home Office
LCO	Lord Chancellors Office
PMO	Prime Minister's Office
PLP	Parliamentary Labour Party
The Committee	Committee of Ministers (Council of Europe)
The Assembly	Parliamentary/Consultative Assembly (Council of Europe)
TP	Travaux Préparatoires
TPUDHR	Travaux Préparatoires for the Universal Declaration of Human Rights
UDHR	Universal Declaration of Human Rights 1948
UN	United Nations

Chapter 1: Introduction

Socialism is not bread alone. Economic security and freedom from the enslaving material bonds of capitalism are not the final goals. They are means to the greater end—the evolution of a people more kindly, intelligent, free, co-operative, enterprising and rich in culture...we in the Labour Party—men and women from all occupations and from every sphere of life—have set out to create a community that relies for its driving power on the release of all the finer constructive impulses of man. We believe that all citizens have obligations to fulfil as well as rights to enjoy.¹

- 1950 Labour Party General Election Manifesto

1.1. Overview of the Argument

Political ideas are consequential as, where they are subject to electoral success and consent, they can go on to fundamentally alter the polity that we live in. British political actors have played a central, if not critical, role in, among other things, shaping societal arrangements, framing the constitution, and determining the types of rights that have been extended to the citizenry. The approach to such matters usually originates from ideological positions developed and debates held within political parties. Therefore, the value of examining a set of issues, legal or otherwise, through a political lens cannot be understated.

This research provides a novel discursive and analytical legal-historical account that reveals how the Labour Party and its key or leading figures—individuals who held important positions or exercised significant authority—understood and approached the theory and practice of rights across the 20th century. More specifically, influenced by different ideological frameworks—a common thread of political thought or an aggregate of ideas that allow political actors to attribute specific meaning to ideas, facts, and events—this research explains how key figures in the Labour Party *shaped* and *rooted* their understanding of *rights* in ideas about the *nature of society* and *sovereignty*. By undertaking a legal-historical exercise, this research attempts to knit together and attribute the shifting theory and practice of rights to ideas about society and sovereignty through the political thought, history, and lens of key figures in the Labour Party. To do

¹ Labour Party, *Let Us Win Through Together: A Declaration of Labour Policy for the Consideration of the Nation* (Labour Party, 1950).

this, this research predominately draws from a wide range of primary sources that includes, but is not limited to, archival material (National, Labour Party, Travaux Préparatoires, and the stored Papers of political figures), published works of key figures in the Labour Party, policy pamphlets and tracts by the Labour Party, speeches, collections of private papers, and Hansard. From this material, complemented by secondary and other tertiary sources, this research identifies coherent support for specific theories and practices of rights. It traces any changes to this within and between leading figures of the Labour Party, while the Labour Party is in government or opposition, within specific rights-based contexts, and across the 20th century. More broadly, this research helps to provide a more nuanced understanding of the approach to and operation of rights in the British constitution.

Part I of this thesis argues that from the Labour Party's formation in 1900 to 1955, key figures were influenced by an ideological framework that comprised an ethical socialism, communitarianism, and socialistic-political constitutionalism. Importantly, stemming from this ideological framework was specific support for concepts that this research describes as an "ethical society" and "untrammelled sovereignty". The former sought to improve the moral quality of the citizenry, secure greater societal cooperation, and foster social cohesion. While the latter saw a reinterpretation of sovereignty in the British constitution as untrammelled sovereignty. This, firstly, understood the authority of the elected majority in Parliament, its legislators, and its political and policy agenda as deriving from the electorate. Secondly, it also meant the elected majority in Parliament having meaningful, effective, and independent exercise of domestic decision-making—something which had to be staunchly maintained to achieve desired social and economic reforms. The pursuit of constructing an ethical society (which manifested in several ways: organicism, fellowship, and civic participation) and a commitment to untrammelled sovereignty had specific implications for rights. More specifically, the attitude towards rights and how they were to operate was rooted within each concept. Consequently, for a sustained period of 55 years, key figures supported linking rights to strict and non-correlative societal duties. They also resisted codified rights, judicial authority, and any form of external (beyond the nation state) or supranational authority. This manifested most acutely within the context of the European Convention on Human Rights (ECHR or the Convention), the European Court of Human Rights (ECtHR or the Court) and

individual petition (a mechanism that permits British citizens to appeal directly to the ECtHR).

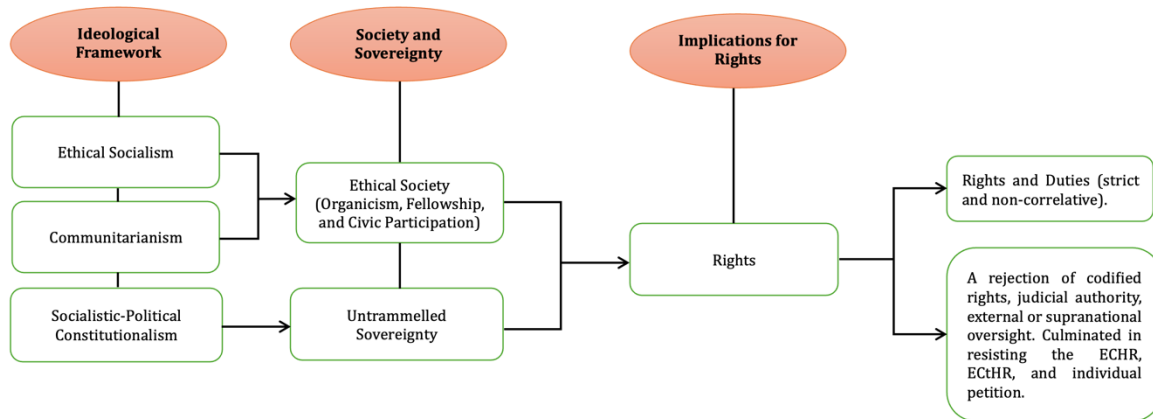


Fig. 1 – The Labour Party’s approach to rights, 1900–1955

Part II of this thesis will explain how, at the end of Clement Attlee’s Labour government and leadership in 1955, the ideological framework of ethical socialism, communitarianism, and socialistic-political constitutionalism began to wane and found less favour among leading figures from the early revisionist right and Harold Wilson’s Labour government. Instead, an ideological commitment to revisionism and a liberally reorientated socialistic-political constitutionalism saw, firstly, the construction of an ethical society being rejected and, secondly, a commitment to a liberal untrammelled sovereignty. The former led to rights and duties being replaced by personal choice. The latter meant a continued belief in untrammelled sovereignty, as understood. However, this was now seen as essential for the elected majority in Parliament to positively extend individual liberty. This meant there was an active desire to enhance individual rights and, as a result, accept more judicial and supranational controls. This position manifested most clearly during acceptance of individual petition and jurisdiction of the ECtHR.

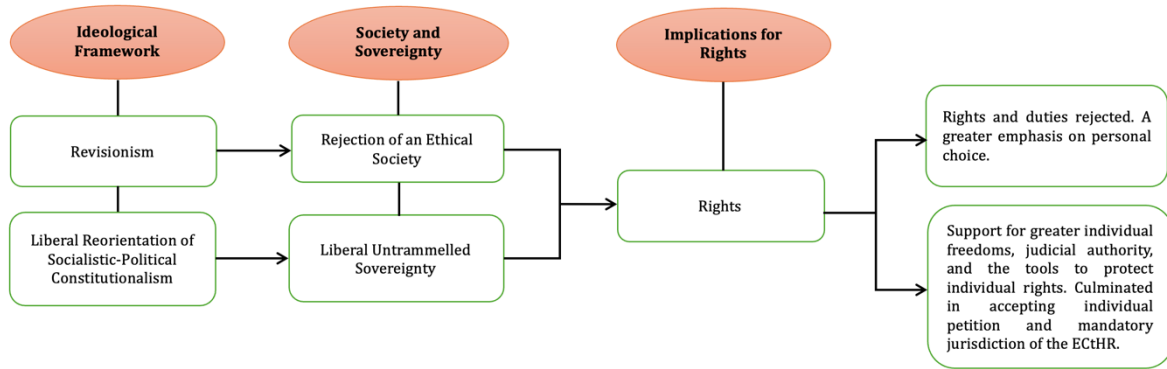


Fig. 2 – The Labour Party’s approach to rights, 1956–1970

Part III of this research will document and explain the final and definitive departure from the two positions on rights, as understood from 1900 to 1970. It will show how key figures in New Labour were influenced by a new ideological framework that consisted of Thatcherite ethics and a modernising constitutionalism. The former informed a view of society and citizenship that included responsible individualism and market entry. While the latter saw leading figures actively reduce the political capacity of the elected majority in Parliament (a reduced untrammelled sovereignty). As a result, these new ideas about the nature of society and sovereignty led to, firstly, social entitlements being linked to paternalistic, coercive, and exclusionary responsibilities and, secondly, the implementation of an enforceable set of individual rights (via the Human Rights Act 1998) —which significantly diminished the capacity of the elected majority in Parliament to pursue its desired domestic agenda uninhibited.

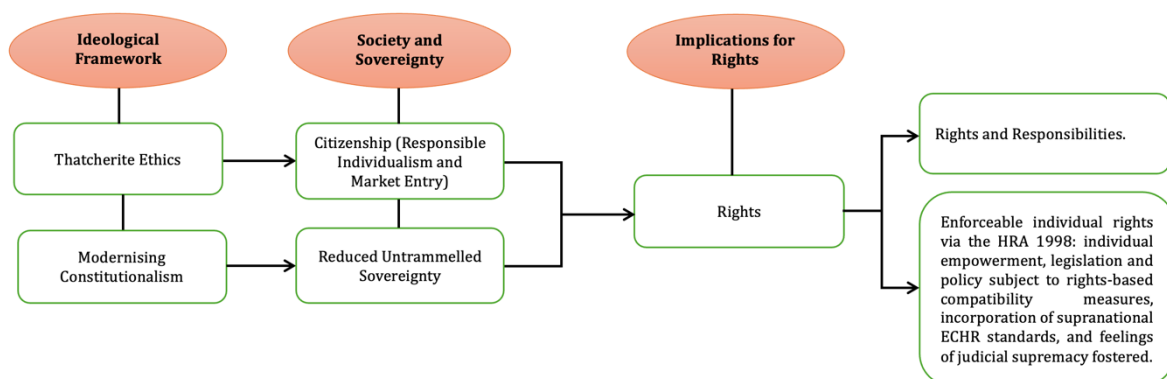


Fig. 3 – The Labour Party’s approach to rights, 1997–2000

By using specifically chosen moments across the 20th century, this research will clearly show the relationship between the shifting theory and practice of rights and the Labour Party's changing ideas about the nature of society and sovereignty—all of which were influenced and informed by broader ideological frameworks.

1.2. Understanding the Ideological Frameworks

Before entering the substantive legal-historical discussion and analysis, it is important to understand, firstly, what this research means by ideology and, secondly, the three ideological frameworks that are suggested to have influenced ideas about the nature of society and sovereignty. This resulted in leading figures or certain sections of the Labour Party advancing specific theories and practices of rights.

The term “ideology” is subject to competing interpretations.² To give the claims made throughout this research firmer theoretical grounding, it is important to clarify how ideology is being used and its function in relation to political thought. As I briefly set out earlier, ideology is understood as *a common thread of political thought or an aggregate of ideas that allow political actors to attribute specific meaning to ideas, facts, and events.*³ This definition derives from Michael Freeden's comprehensive study that outlines the ways in which we can understand and analyse a variety of ideologies in the real world. For Freeden, ideologies are like “cognitive maps” that chart important aspects of political ideas. They do not represent an external reality, instead they simply allow us to make sense of political thought and navigate its terrain.⁴ When viewed like this, ideologies can be understood as a sustainable and accessible way to present a pattern of thought or set of ideas. According to Freeden, there are several benefits of understanding ideologies in this way. Firstly, it allows for hotly contested concepts to be neutralised within a specific space. By way of example, the concept of “liberty” can inform two diametrically opposed ideologies. However, when it is viewed through a specific set of patterns or ideas, it gains coherence and becomes somewhat de-contested.⁵ Where this happens, Freeden claims political actors begin to adopt a shared understanding and inter-ideological

² Terry Eagleton, *Ideology: An Introduction* (Verso, 2007) 1-2.

³ Michael Freeden, *Ideologies and Political Theory: A Conceptual Approach* (Oxford University Press, 1996) 50-55, 74-88.

⁴ Ibid.

⁵ Ibid.

disagreements are, for the most part, minimised.⁶ Secondly, understanding ideology in this way helps to cut through a multitude of interpretations. More specifically, it allows for a set of core and peripheral ideas that dynamically engage one another to coalesce into a manageable set of claims.⁷ Lastly, Freedden's method avoids an ideology being fixed or labelled as unique to a specific period. This is because it allows for collectively held ideas to be traced among various political figures from different periods of time and places.⁸

Overall, using Freedden's guide allows this research to, firstly, claim key figures in the Labour Party collectively united around a set of ideas and beliefs that stemmed from a specific ideological framework. Also, it allows for a pattern of core, adjacent or peripheral concepts to interrelate and acquire ideology status because of their proximity to one another or because they seek to achieve the same aim. Lastly, it allows ideas that stem from an ideological position to be identified and interpreted across different actors and periods of time.

1.2.1. Ethical Socialism, Communitarianism, and Socialistic-Political Constitutionalism; 1900–1955

Ethical socialism, communitarianism, and political constitutionalism are somewhat amorphous and subject to varying interpretations. However, all three have been recognised within the canonical history of the Labour Party.

Ethical socialism can be understood as a radical tradition that makes a series of claims in relation to, among other things, people and society. Often dubbed the "heart of socialism", it is a blueprint for social reform that includes creating the best conditions for the moral development of citizens and the harmonisation of social relations.⁹ The doctrine can be traced back to the likes of William Morris, John Ruskin, and T.H. Green. While rejecting capitalist exploitation, these figures departed from the sole emphasis that they felt was being placed on arid questions of economics. Instead, it was argued that equal or greater attention should be placed on how to improve human nature and, more

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ Norman Dennis and A.H. Halsey, *English Ethical Socialism: Thomas More to R.H. Tawney* (Clarendon Press, 1988) 2–7.

specifically, altruism, principles of responsibility, and communal life.¹⁰ Contemporary critics have also understood ethical socialism as an ideology that seeks a moral revolution in civil society.¹¹ Within the Labour Party, the tradition of ethical socialism saw a rejection of the legalistic, managerial, and technocratic conception of law, politics, and society.¹² Instead, moving beyond economics and redistribution, leading figures centred their political thought around building civic virtue and community. As a result, questions of ethics were weaved into policy debates (economics, regulation, planning, and a more judgemental attitude towards the utility of rights in society).¹³ Leading figures like Ramsay MacDonald, George Lansbury, and Clement Attlee have all been understood as hailing from the ethical socialist tradition – with the latter consistently referring to the utopian ideal of building a “New Jerusalem” in Britain.¹⁴

Secondly, a specific strand of communitarianism also found footing in the Labour Party’s ideological framework from 1900 to 1955. This version of communitarianism places substantive, not superficial, stress on community, intra-community relationships, and the nature of social relationships. It suggests that most of our lives are spent in communities and, because of this, there ought to be a strong obligation to strengthen said communal ties. Without these bonds, our lives would be isolated, atomised, and lonely.¹⁵ For advocates of this type of communitarianism, there is a specific emphasis on building on what is shared. For example, this can include values, human encounters, and goals. Consequently, communitarians look at ways to increase social interactions via social policy. This might include encouraging community action, creating the conditions that foster civic bonds via citizen participation schemes, and generally trying to tackle social alienation.¹⁶ Critics have suggested this type of communitarianism has been closely linked to and complemented the ethical socialist tradition within the Labour Party.¹⁷ Taken together, the ideologies of ethical socialism and communitarianism led to key

¹⁰ Matt Carter, *T.H. Green and the Development of Ethical Socialism* (Exeter: Imprint Academic, 2003) 2–4, 21–51, 53–76. E.P. Thomas, *William Morris: Romantic to Revolutionary* (first published 1955, Merlin Press Ltd, 2011) 739–740; Jon Cruddas, *A Century of Labour* (Policy, 2024) 25–26.

¹¹ Mark Bevir, *The Making of British Socialism* (Princeton University Press, 2011) 215–298.

¹² Cruddas (n 10) 24–27.

¹³ *Ibid.*

¹⁴ John Bew, *Clement Attlee: The Man who Made Modern Britain* (Oxford University Press, 2017) 123, 554.

¹⁵ Sarah Hale, *Blair’s Community: Communitarian Thought and New Labour* (Manchester University Press, 2005) 22–24; Cruddas (n 10).

¹⁶ *Ibid.*

¹⁷ Cruddas (n 10) 25.

figures in the Labour Party supporting the idea and construction of an “ethical society”— all of which will be explained from Chapter 2 onwards.

Lastly, a political constitution or political constitutionalism are highly contested concepts in constitutional discourse. Before explaining the difference between the two terms and how this research negotiates said difference, both share the aim of placing greater emphasis on the political character of the British constitution. The commonly suggesting starting point is John Griffith’s “The Political Constitution” lecture, which, among other things, suggests we must look at more than legal norms to understand the constitution.¹⁸ Or, as Michael Gordon aptly explains:

In foregrounding the political aspects and principles of the operation of our constitutional system, Griffith’s work provides an increasingly necessary reminder that we must look at more than simply legal norms to understand the constitution, while also making it clear that the political dimensions of state activity are open to analysis from a perspective which is explicitly constitutional in focus. As such, in emphasising the political character of the constitution, and the potentially constitutional character of the political, Griffith’s approach enhances our ability to understand the norms and institutions of the UK’s constitutional order (and perhaps any other constitutional order).¹⁹

Therefore, it provides another way in which we can analyse and evaluate the operation and efficacy of the British constitution. Critics have differentiated between a political constitution and political constitutionalism.²⁰ The former usually offers a descriptive or functional account of the political nature of the constitution by outlining some of its key tenets (parliamentary sovereignty; primacy of the House of Commons; elections; the manifesto; mandates; a unitary state government from the centre with the executive pursuing policies applicable to all citizens in the national interest or common good; disagreement being managed by the ordinary democratic process and political

¹⁸ J.A.G. Griffith, ‘The Political Constitution’ (1979) 42 *Modern Law Review* 1.

¹⁹ Michael Gordon, ‘Parliamentary Sovereignty and the Political Constitution(s): from Griffith to Brexit’ [2019] 30 *King’s Law Journal* 125.

²⁰ Adam Tomkins, ‘In Defence of the Political Constitution’ (2002) 22 *Oxford Journal of Legal Studies* 157; Adam Tomkins, *Our Republican Constitution* (Hart, 2005); Richard Bellamy, *Political Constitutionalism: A Republican Defence of the Constitutionality of Democracy* (Cambridge University Press, 2007); Graham Gee, ‘The Political Constitutionalism of J.A.G. Griffith’ (2008) 28 *Legal Studies* 20; Aileen Kavanagh, *Constitutional Review under the UK Human Rights Act* (Oxford University Press, 2009); Paul Scott, ‘(Political) Constitutions and (Political) Constitutionalism’ (2013) 14 *German Law Review* 2157; K.D. Ewing, ‘The Resilience of the Political Constitution’ (2013) 14 *German Law Journal* 2111.

institutions; and an ambivalence on placing any restrictions on the power of those who are elected beyond political limitation).²¹ The latter is more normative in nature and is premised on giving the political constitution and its functional elements theoretical grounding, away from real world norms and constitutions.²² This thesis avoids making that distinction and simply uses the terms political constitution and political constitutionalism interchangeably. Or, in other words, this research is not concerned with making sharp distinctions between the functional and normative; it simply recognises a political constitution or political constitutionalism as an ideology that believes in the political dimensions of the constitution and rejects extra-political controls. Importantly, the focus will be on how the Labour Party and its key figures approached the British constitution under the ideological influence of a specific type of *socialistic*-political constitutionalism. As Robert Greaally argues, it is possible and plausible to delineate different types of political constitutionalism through political prisms. More specifically, he claims that the ideas, concepts, and tenets usually associated with the political character of a constitution acquire a more specific and substantive meaning when viewed through the lens of any given political ideology.²³ Therefore, while critics have suggested key figures in the Labour Party accepted the traditional “Westminster model” and its commonly understood political constitutional characteristics—as outlined above—this research goes one step further and argues they also imposed their own ideological dimension to it.²⁴ By this, I mean there was a reimagination or reinterpretation of political constitutionalism and its associated features. Of course, many of the commonly held ideas about a political constitution could be analysed through the lens of the Labour Party’s *socialistic*-political constitutionalism. However, the focus will be on sovereignty or, what this research goes on to delineate and describe, “untrammelled sovereignty”—as discussed and analysed from Chapter 2 onwards.

²¹ Ibid, Ewing; Peter Dorey, *The Labour Party and Constitutional Reform: A History of Constitutional Conservatism* (Macmillan, 2008) 4-5

²² Bellamy (n 22); Tomkins, *In Defence of the Political Constitution* (n 22).

²³ Robert Greaally, 'Ideologies of Political Constitutionalism' (2024) 20 *Oxford Journal of Legal Studies* 1.

²⁴ Dorey (n 21); Richard Johnson and Yuan Zi Zhu (ed), *Sceptical Perspectives on the Changing Constitution of the United Kingdom* (Hart, 2023) 10-11.

1.2.2. Revisionism and a Liberal Reorientation of Socialistic-Political Constitutionalism; 1956-1970

In his original 1969 study, Steven Haseler confirmed revisionism was a genuine ideology and that the ideas that stemmed from it became a practical guide to political action for leading figures in the Labour Party.²⁵ Revisionism can be best understood as a modernising ideology, in that its aim was to rework the nature of the Labour Party's socialism. In many ways, it was reminiscent of Eduard Bernstein's aim, in the late 1890s, to revive socialist ideology and move it beyond Marxist analysis—so that it could gain electoral success.²⁶ Of relevance was Bernstein's attempt to: focus on short-term strategies that saw the implementation of practical policies instead of the pursuit of an abstract end goal; accepting capitalism as a reality; recognise that that liberal democracy was the best method to pursue social justice and equality; and ensure socialism was open to change as and when circumstances demand it.²⁷ For Bernstein socialistic political parties had to keep up with “real evolution” and this meant, firstly, criticism was “indispensable” and, secondly, recognising “tradition can become an oppressive burden, a restraining factor”.²⁸ Overall, Bernstein suggested that a reformist and moderate approach to socialistic politics was required.

Following the end of the post-war (World War II) Labour government's extensive legislative agenda and two general election losses in 1951 and 1955, there was a degree of intellectual exhaustion within the party. Kenneth Morgan has reflected that the Labour Party was no longer able to provide fresh ideas. He claimed, “the programme was complete... England had indeed arisen, and Attlee's idea of socialism had nothing else to offer”.²⁹ This, coupled with cultural change in Britain and rising living standards, saw the emergence of a revisionist ideology that looked to depart from old gospels. More specifically, it sought to provide ideas that were applicable to the creation of a free, socially equal, and rich society.³⁰ Suspicious of “large” and general ideas, revisionism

²⁵ Steven Haseler, *The Gaitskellites: Revisionism in the British Labour Party 1951–64* (Macmillan, 1969) 7.

²⁶ For more on Bernstein, see: Robert Fletcher (ed), *Bernstein to Brandt: A Short History of German Social Democracy* (Edward Arnold, 1987).

²⁷ Eduard Bernstein, *Evolutionary Socialism* (Schocken Books, 1961) 170-200.

²⁸ *Ibid.*

²⁹ Kenneth O. Morgan, *Labour People; Leaders and Lieutenants; Hardie to Kinnock* (University Press, 1987) 14.

³⁰ Haseler (n 25).

looked to redefine the Labour Party's socialism around specific egalitarian, freedom-enhancing, and individualistic policies.³¹ According to Jeremy Nuttall, revisionism in the Labour Party departed from moralism and no longer placed it at the centre of its creed. More specifically, unlike the ideologies of ethical socialism and communitarianism, revisionism did not systematically explore the relationship between the achievement of a cooperative society and the levels of responsibility among the citizenry.³²

In addition to revisionism, this research claims key figures in the Labour Party were influenced by another ideology that can be described as a *liberally reorientated* socialistic-political constitutionalism. This meant a continued belief in a socialistic-political constitution, but this was now framed by liberal ends. Or, in other words, leading figures viewed a socialistic-political constitution, its tenet of untrammelled sovereignty, and democratic institutions as a means to further individual liberty. Indeed, Jasper Miles has argued that the Labour Party, during this time, wanted to “utilise the existing structure of the British state” in accordance with its values.³³

To better explain a liberally reorientated socialistic-political constitutionalism, it can loosely be compared to a *very weak* version of a purely liberal reading of political constitutionalism—as advanced by Jeremy Waldron.³⁴ This account and series of claims was offered as an alternative to those who were either frustrated or did not agree with the traditional political constitutionalist view. To summarise, in a liberal model of political constitutionalism, Waldron suggests democracy and “ordinary democratic politics” are the central means of protecting liberty.³⁵ By ordinary democratic politics, Waldron means decision-making processes that combine a representative legislature and the electorate. The former is understood to be a pluralistic public body, which makes and amends laws, that gives respect to and ensures equal decision-making—this allows the views of all individuals in the polity to be duly considered. While the latter is considered important, Waldron's liberal version of political constitutionalism places significantly less emphasis

³¹ Ibid.

³² Jeremy Nuttall, *Psychological Socialism: The Labour Party and Qualities of Mind and Character; 1931 to the present* (Manchester University Press, 2006) 73.

³³ Jasper Miles, ‘Sovereignty and the State’ in Kevin Hickson et al. (ed), *The Struggle for Labour's Soul: Understanding Labour's Political Thought Since 1945* (Routledge, 2018) 148.

³⁴ Jeremy Waldron, ‘Theoretical Foundations of Liberalism’ (1987) 37 *Philosophy Quarterly* 127, 133-136; Jeremy Waldron, *Law and Disagreement* (Oxford University Press, 1999) 88-146, 221-223, 232-255, 268, 308-313; Jeremy Waldron, *Political Political Theory* (Harvard University Press 2016) 75-76, 93-124, 125-144, 149-165.

³⁵ Ibid.

on electors and election consent conferring *total* moral authority. Instead, this is simply seen as one step of the overall democratic decision-making process.³⁶ From here, Waldron claims ordinary democratic politics can offer an effective and legitimate means of managing the circumstances of politics that respects human liberty and autonomy.³⁷ It does this by exercising sovereignty responsibly and through layered decision-making (slow reasoning and argument during legislative debates)—all of which helps to avoid imposed rules.³⁸ Lastly, a liberal political constitution supports total respect for the legislature and the deliberation process. There is a limited degree to which strong forms of extra-political checks, e.g., judicial review, can be accepted.³⁹ Overall, critics have suggested that Waldron’s liberal reading of a political constitution ensures legislative sovereignty functions as a means for both limited government and the protection of human autonomy and liberty.⁴⁰

The reason this research compares the ideology of a *liberally reorientated* socialistic-political constitutionalism to a *weak version* of Waldron’s liberal political constitutionalism is due to the somewhat constitutionally fuzzy nature of the former. By this, I mean key figures in the Labour Party tried to reconcile contradictory positions within its ideological commitment to socialistic-political constitutionalism and its key feature of untrammelled sovereignty. More specifically, in addition to supporting a commanding elected majority in Parliament there was a simultaneous commitment to enhancing liberty through democratically sanctioned extra-political controls e.g., individual rights and judicial authority. Steven Haseler alludes to the same contradiction when explaining the difficulties the Labour Party had when pursuing both freedom-enhancing and equality-based ideas. More specifically, he claimed it was hard to understand how leading figures, at the time, “squared” large amounts of state control and social interference with their desire to eliminate social and economic “restraints” on the individual.⁴¹ Haseler goes on to claim that they “understood this dilemma but seemed unable to resolve it”.⁴² Overall, the constitutional fuzziness of this ideological position is best understood as a liberally reorientated socialistic-political constitutionalism. Or, in

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Grealley (n 23) 13-17.

⁴¹ Haseler (n 25) 93.

⁴² Ibid.

other words, a commitment to the socialistic-political constitutional tenet of untrammelled sovereignty as a means to respecting and promoting individual liberty—as will be shown in Chapter 4.

1.2.3. Thatcherite Ethics and a Modernising Constitutionalism; 1997-2000

New Labour is often associated with the ideology of the “Third Way”. This looked to move beyond the Labour Party’s traditional forms of socialism and Margaret Thatcher’s neo-conservatism. Like revisionism in the mid-1950s, the Third Way was intended to be a modernising ideological development. But it differed in that its intention was to go beyond the usual left and right dichotomy—with the aim of becoming more electable. According to Anthony Giddens, New Labour sought to “temper free-market capitalism with social justice” while avoiding “excessive domination of the state over social and economic life”.⁴³ However, as Michael Freeden notes, the consequence of such an ideological position resulted in a mixture of socialism, liberalism, and conservatism being embedded within New Labour’s discourse and policies.⁴⁴ Freeden goes on to argue that while New Labour sought to exist between these ideological positions, it was *not* “equidistant from them all”.⁴⁵ This meant, on a range of issues, New Labour could be described as being ideologically closer to forms of Thatcherism. As Judi Atkins argues, emanating from New Labour’s ideology was a Thatcherite social policy that aimed to create a self-reliant society.⁴⁶ More specifically, New Labour’s position on human nature and society saw it try to reconcile cooperative and competitive instincts—ensuring that people were interested in others’ just as much as their own well-being.⁴⁷ This resulted in New Labour emphasising market forces as an enabling environment and responsible individualism as a way to serve the interests of society. Overall, New Labour’s attempt to harness self-interest can be best described as an ideological commitment to Thatcherite ethics—as Chapter 5 will outline and explain.

⁴³ Anthony Giddens, *The Third Way and Its Critics* (Polity Press, 2000) 13. Also see: Anthony Giddens, *Beyond Left and Right* (Polity Press, 1994).

⁴⁴ Michael Freeden, ‘The Ideology of New Labour’ (1999) 70 *Political Quarterly* 42.

⁴⁵ *Ibid.*

⁴⁶ Judi Atkins, ‘Justifying New Labour Policy’ (Palgrave, 2011) 84.

⁴⁷ *Ibid.*, 81-110.

New Labour's ideological approach to the British constitution is somewhat disputed. Several critics have argued New Labour adhered to either a political constitutionalism, legal constitutionalism, Commonwealth constitutionalism, or a legislative constitutionalism.⁴⁸ Some have even suggested that New Labour created an "unsettled" type of constitutionalism, which meant questions about the constitution would always be subject to "continuous disputation with deeply uncertain long-term consequences...".⁴⁹ Such diverse views and claims should not be surprising, considering the amalgamation of ideologies that informed New Labour, as suggested above. However, this research argues that the best way to identify and categorise New Labour's constitutionalism is by framing it firmly within their commitment to modernise the British constitution.

Firstly, modernisation can be understood as an escape from the past and the acquisition of a "qualitatively different condition to current circumstances".⁵⁰ This is premised on the idea that adherence to constitutional history or traditionalism has prevented radical governments from reengineering the form and function of the state.⁵¹ Secondly, modernisers also believe that seminal moments of constitutional change or upheaval in British history, from the Glorious Revolution onwards, have been fraudulent. Instead, what these events really show is that Britain has given way to an elective dictatorship—which means fewer rights and less democracy than many other Western European countries.⁵² Lastly, changes to the constitution was not just an end within itself for modernisers. Rather, it was instrumental to and would enable the achievement of wider social and economic goals. In the absence of change, deficiencies in the political system would create "deterioration in the condition of the nation as a whole".⁵³ Indeed, those close to the New Labour project claimed "[constitutional] reforms" must be accomplished "if the dynamism of capitalism is to be harnessed to the common good".⁵⁴

⁴⁸ Vernon Bogdanor, *The New British Constitution* (Bloomsbury Publishing 2009); Aileen McHarg, 'Reforming the United Kingdom Constitution: Law, Convention, Soft Law' (2008) 71 *Modern Law Review* 853; Richard Bellamy, 'Political Constitutionalism and the Human Rights Act' (2011) 9 *ICON* 86; Se-Shauna Wheatle, 'The Unintended Consequences of Legislative Constitutionalism: The Common Law Constitution and Judicial Comparativism' in Michael Gordon and Adam Tucker (ed), *The New Labour Constitution: Twenty Years On* (Hart Studies, 2022).

⁴⁹ Neil Walker, 'Our Constitutional Unsettling' (2014) 7 *Public Law* 529.

⁵⁰ Michael Foley, *The Politics of the British Constitution* (Manchester University Press, 1999) 119.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.*, 121.

⁵⁴ Will Hutton, *The State We're In* (Jonathan Cape, 1995) 326.

Overall, by acknowledging what they claim to be the chronic issue of traditional constitutional arrangements, modernisers specifically look to break away from tradition, continuity, and past rules. Consequently, attention is given to ideas relating to power redistribution, decentralisation, and redefining the relationship between state and citizen. This leads to modernisers supporting new constraints on the elected majority in Parliament, demarcating permissible government activity, and the construction of accountability processes. The overarching aim is innovation rather than restoration or adherence to past arrangements.⁵⁵ New Labour often spoke in similar terms, claiming constitutional reform was their basis for democratic renewal, the decentralisation of power throughout Britain, and would bring about the restoration of trust in the political process. Before becoming Prime Minister, Tony Blair argued:

...of course we have to change the Government if we are to turn the country around. But we also have to change the way things are run so that people exercise more power over those they elect and what is done in their name—not just a new set of politicians but a new set of politics... power to the people is not a slogan but a necessity if we are to reconnect politics with the majority and create the new politics on which a new Britain will, in part, be built.⁵⁶

With this commitment to modernisation in mind, this research suggests New Labour were influenced by an all-encompassing *modernising* constitutionalism. While including hazy boundaries instead of sharp dichotomies, this included reconciling aspects of a socialistic-political constitution and legal constitution. By this, I mean New Labour accepted the feature of untrammelled sovereignty but saw it as operating within substantive legal boundaries and rights-based controls. This, in other words, was an ideological commitment to placing substantive limits on the elected majority in Parliament. As Chapter 5 will show, adhering to a modernising constitutionalism represented a firm rejection of past trends and previous ideological approaches to the British constitution.

⁵⁵ Ibid, 120.

⁵⁶ Tony Blair, 'Power to the People must be our aim' *The Independent* (London, 7 February 1996).

1.3. Situating the Inquiry and its Importance

This research is multidisciplinary in that, while law is the substantive area of focus, there is significant engagement with political and historical literature. Undertaking a multidisciplinary approach is both vital and necessary to elucidate the issues this research is concerned with. It might be surprising to suggest, but between these areas of scholarship there are few detailed or focussed accounts about the Labour Party's approach to the theory and practice of rights. More specifically, little consideration has been given to how ideologies have informed the Labour Party's approach to rights, few accounts have explained whether the issue of rights have been linked to broader political aims, and the number of accounts that explain the Labour Party's shifting approach to rights across a defined period of time are few and far between. By extension, this literature deficit also means there is space to understand why, at certain moments across the 20th century and when the Labour Party has been elected to form a government, rights operated the way they did in the British constitution. Put simply, the importance of this legal-historical research is to remedy these gaps and offer a new perspective on the theory and practice of rights—through the lens of the Labour Party and its ideas in relation to the nature of society and sovereignty. Lastly, while this thesis is strictly a legal-historical exercise its findings have important implications for any contemporary studies of the Labour Party—at the intersection of rights and constitutional law. Namely, this research offers a new framework or criteria in which to measure, understand, and analyse how the contemporary Labour Party and government (at the time of writing) approach the theory and practice of rights in the British constitution.

The available legal literature is valuable, to the extent that gives an insight into the Labour Party and a specific set of rights-based or constitutional issues. Firstly, Michael Gordon and Adam Tucker edit a set of essays which seek to combine legal and political perspectives that allow us to explore the legacy of the constitutional reforms that took place under New Labour from 1997 to 2010. Some attention is also given to the Labour Party's approach to rights prior to this period. Of relevance are chapters from Hélène Tyrrell, Roger Masterman, and Robert Knox. Between them, among other things, they consider Clement Attlee's Labour government's consolidation of parliamentary power, political arguments that informed the HRA 1998, and the increased role of judicial power

in the British constitution.⁵⁷ Secondly, Keith Ewing has written extensively about democratic socialism at the intersection of constitutional law and rights. However, only sometimes does he frame his work through the ideological lens of the Labour Party. For example, Ewing has suggested the Labour Party has had an ambiguous relationship with rights. Importantly, he recognises that there has been a deeper transition away from democratic socialism towards liberalism. This is evidenced, according to Ewing, by the Labour Party eventually supporting the creation and implementation of the HRA 1998—which shifted the emphasis from parliamentary to judicial protection of human rights. He suggests the challenge for the Labour Party is to break the link between liberalism and the individual.⁵⁸ What’s more, Ewing and Conor Gearty have co-authored publications that have criticised New Labour for incorporating the ECHR into domestic law—on the grounds that it would diminish parliamentary sovereignty. The implications for democracy in relation to a bill of rights, more broadly, has also been discussed. Lastly, they have neatly explained the difficulties of protecting civil liberties in Britain from 1915 to 1945—which occasionally mentions Labour Party figures within the context of emergency powers, Irish Home Rule, and protest.⁵⁹ Thirdly, Anthony Wright has addressed constitutional reform within the context of British socialism and the Labour Party. However, this predominately concerns the structure, role, and efficacy of the state, e.g., how Parliament might be organised.⁶⁰ Fourth, J.A.G. Griffith’s work on the political constitution provides useful socialistic-constitutional arguments about the inefficacy of a written bill of rights. More specifically, how they prevent radical change and uphold the existing distribution of political and economic power. Writing in the 1980s, Griffith criticised the then leader of the Labour Party’s, Neil Kinnock, for supporting the incorporation of a written bill of individual rights into the British constitution. He went on to argue that the cult of individualism was the cult of Thatcherism.⁶¹ Lastly, there are

⁵⁷ Michael Gordon and Adam Tucker (ed), *The New Labour Constitution Twenty Years On* (Hart Publishing, 2022).

⁵⁸ Keith Ewing, ‘Law and the Constitution: Manifesto of the Progressive Party’ (2004) 67 *Modern Law Review* 734; Keith Ewing, ‘Jeremy Corbyn and the Law of Democracy’ (2017) 28 *King’s Law Journal* 343; Keith Ewing, ‘Socialism and the Constitution’ (2020) 73 *Current Legal Problems* 27.

⁵⁹ Keith Ewing and Conor Gearty, ‘Democracy or a Bill of Rights’ (The Society, 1994); Keith Ewing and Conor Gearty, ‘Rocky Foundations for Labour’s New Rights’ (1997) 2 *European Human Rights Law Review* 146; Keith Ewing and Conor Gearty, *The Struggle for Civil Liberties: Political Freedom and the Rule of Law in Britain 1914-1945* (Oxford University Press, 2001).

⁶⁰ Anthony Wright, *British Socialists and the British Constitution* (Oxford University Press, 1990).

⁶¹ J.A.G. Griffith, ‘The Political Constitution’ (1979) 42 *Modern Law Review* 1; J.A.G. Griffith, ‘The Rights Stuff’ (1993) 29 *The Socialist Register* 106.

several important legal-historical accounts that offer insight into the Labour Party's position in relation to the ECHR, acceptance of individual petition, and the HRA 1998. Marco Duranti, Anthony Lester, Geoffrey Marston, and Elizabeth Wicks provide important contributions about the background development of the ECHR in conjunction with the Labour Party's motivations and concerns (political pressure from Europe, colonial stability, the fear of communism, and the effect of the ECHR on parliamentary sovereignty).⁶² While A.W. Simpson and Ed Bates also provide important context about acceptance of individual petition and the ECtHR, this is firmly located within the context of a declining British Empire and a wider narrative about Britain and European human rights.⁶³ Despite not covering the positions, issues, or shifts identified in this research these legal-historical accounts provide useful touchpoints and help to illuminate the account.

The political-historical accounts have given plenty of thought and attention to the Labour Party's attitude to specific sets of issues. First, several historians have edited sets of essays that address the Labour Party's approach to, among other things, social entitlements via the welfare state, sovereignty, supranational institutions, and constitutional reform.⁶⁴ These accounts provide valuable historical context and the political views of leading figures in the Labour Party. This help to contextualise issues in this research. Secondly, Peter Dorey has written a detailed and considered account of the Labour Party's "constitutional conservatism".⁶⁵ Dorey's work is all-encompassing, in

⁶² Anthony Lester, 'Fundamental Rights: the United Kingdom isolated?' (1976) 25 *University of Pennsylvania Law Review* 337; Anthony Lester, 'Taking Human Rights Seriously' (1994-1995) 5 *KCLJ* 1; Geoffrey Marston, 'The United Kingdom's Part in the Preparation of the European Convention on Human Rights, 1950' (1993) *ICLQ* 796; Elizabeth Wicks, 'Declaratory of existing rights—the United Kingdom's role in drafting a European Bill of Rights, Mark II' [2001] *Public Law* 527; Elizabeth Wicks, 'The United Kingdom Government's Perceptions of the European Convention on Human Rights at the Time of Entry' [2000] *Public Law* 438; Marco Duranti, 'Curbing Labour's Totalitarian Temptation: European Human Rights Law and British Postwar Politics' (2012) 3 *Humanity* 36; Marco Duranti, *The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention* (Oxford University Press, 2017).

⁶³ A.W.B. Simpson, 'Human Rights and the End of Empire: Britain and the Genesis of the European Convention' (Oxford University Press, 2004); Ed Bates, *The Evolution of the European Convention on Human Rights: From its Inception to the Creation of a Permanent Court of Human Rights* (Oxford University Press, 2010).

⁶⁴ Matt Beech, Kevin Hickson, and Raymond Plant (ed), *The Struggle for Labour's Soul: Understanding Labour's Political Thought Since 1945* (Routledge, 2019); Matthew Worley (ed), *The Foundations of the British Labour Party: Identities, Cultures, and Perspectives, 1900–39* (Routledge, 2016); Mark Evans, *Constitution-Making and the Labour Party* (Palgrave, 2003); and Duncan Tanner, Pat Thane, and Nick Tiratsoo (ed), *Labour's First Century* (Cambridge University Press, 2000).

⁶⁵ Dorey (n 24).

that it looks at how the Labour Party has historically approached the House of Commons, House of Lords, and devolution. Of particular use to this research is Dorey's explanation of how each Labour Party Prime Minister understood the constitution and the impact of their political ideology on such matters.⁶⁶ Lastly, several critics have looked at the Labour Party's approach to society. For example, Jeremy Nuttall has provided an extensive examination of the psychology of the Labour Party from 1931 to 1997. More specifically, Nuttall looks at the motivations of leading figures in the Labour Party in advancing moral progress. Nuttall's work is broad and covers aspects of character like intelligence, education, and psychology. But of relevance is Nuttall's general commentary on how some within the Labour Party believed rights and duties were an appropriate means to achieve a cooperative society.⁶⁷ Moreover, other critics have documented and explained the Labour Party's decline in both social democratic and egalitarian ideas from 1930 to 1970. They summarise this as social democratic "development, realisation, and decay", respectively, in the 1930s, 1945, and onwards. The suggestion is that since 1945 there has been a steady loss of social democratic positions held within the Labour Party—which was accelerated by the revisionism of the 1960s.⁶⁸ Furthermore, Eric Shaw has written about how the Labour Party underwent a form of decline in relation to the ethical state of the British citizenry. He argues that the spirit of the "People's War", inspired in the 1940s, gave way to an individualism that reduced the ambitions of the Labour Party's ethical ideas. Shaw claims that, compared to the "grand ethical socialist ambition" of the 1940s, the Labour Party after this period, and towards the end of the century, sought to merely "temper and dilute the impulses of... egoistic man".⁶⁹ While these historical accounts are useful for contextualising, they are extremely broad and only occasionally, if at all, touch on issues of rights. Finally, there are several accounts that shed light on sovereignty, British Empire, and the Labour Party.⁷⁰ However, these predominately relate

⁶⁶ Ibid.

⁶⁷ Nuttall (n 32).

⁶⁸ David Howell, *British Social Democracy: A Study in Development and Decay* (Croom Helm, 1976); Ben Jackson, *Equality and the British Left: A Study in Progressive Political Thought, 1900-1964* (Manchester University Press, 2007).

⁶⁹ Eric Shaw, *Losing Labour's Soul* (Taylor and Francis, 2012). Also see: David Marquand, 'Moralists v Hedonists' in David Marquand and Anthony Seldon (ed), *The Ideas That Shaped Post-War Britain* (Fontana Press, 1996).

⁷⁰ Peter C. Speers, 'Colonial Policy of the British Labour Party' (1948) 15 *Social Research* 304; Billy Frank et al (ed), *The British Labour Movement and Imperialism* (Cambridge Scholars Publishing, 2010); Rhiannon Vickers, *The Labour Party and the World, Volume I* (Manchester University Press, 2013);

to the British Empire's approach to sovereignty of overseas territories. This research is strictly concerned with the Labour Party's domestic approach to sovereignty at the intersection of rights.

In summary, this legal-historical research will simultaneously scrutinise the issues highlighted by the existing material and use it to help create a coherent and novel account about the continuities and discontinuities of the Labour Party's approach to rights across the 20th century.

1.4. Methodologies

This research uses two main methodologies: legal history and the hermeneutic method. The former can be understood as a study that focusses on the development or functioning of legal ideas at some time in the past.⁷¹ While the latter involves uncovering meaning. More specifically, this method is an interpretative exercise and usually relates to subject matters that centre around the meaning of human intention, belief, or actions.⁷²

The reasons for engaging these two methodologies are somewhat apparent. Firstly, a legal-historical method will allow for an understanding of key events, theoretical positions, and will help to document any continuity or change in relation to the Labour Party and society, sovereignty, and rights. In addition, it also lends itself to collating a range of fragmented material on specific issues—with a view to providing a coherent account and new analysis. Secondly, the hermeneutic method allows this research to clearly interpret the political thought of key figures in the Labour Party and, importantly, track any changes to it. Overall, considering the aims of this research, both methodologies have been determined to be the most appropriate to use.

When deploying the two methodologies, this research will rely on a range of primary sources that include, but are not limited to, the published work of leading figures in the Labour Party, policy pamphlets and tracts by the Labour Party, and speeches. Importantly, this research heavily relies on archival material from various Labour Party Archives, National Archives, The Travaux Préparatoires for the ECHR, and the collections

Dylan Lino, 'Albert Benn Dicey and the Constitutional Theory of Empire' (2016) 36 *Oxford Journal of Legal Studies* 751.

⁷¹ David Ibbertson, 'Historical Research in Law' in Peter Cane and Mark Tushnet (ed), *The Oxford Handbook of Legal Studies* (Oxford University Press 2003).

⁷² Jens Zimmermann, *Hermeneutics: A Very Short Introduction* (Oxford University Press, 2015).

of stored private papers. I understand an archive to be repositories of documents and historic materials which have been collected and maintained by public and private bodies. Within these archives, the following types of material has been relied on: Cabinet minutes, policy documents, ministerial correspondence, political debates (the House of Commons or other forums), and memorandums. Finally, this research uses several secondary and tertiary materials that help to support, clarify, or question events and the position of leading figures in the Labour Party.

Conducting a legal historiography of the Labour Party has required acknowledging the difficulties and pitfalls that commentators suggest are present when undertaking such a task. While the following points are not exhaustive, they are important matters that this research considered extensively when employing the chosen methodologies and outlined sources. Firstly, Geoffrey Foote notes that the difficulties of tracing the Labour Party's political thought and history can be "easily under-estimated".⁷³ He suggests that the development of the Labour Party's political thought is "not a simple sequence of one set of ideas replacing another". Instead, it should be viewed like an organism that was always looking for new ways to adapt and develop old ideas.⁷⁴ Therefore, Foote claims the difficulty of tracing a history of Labour's political thought is the absence of any agreed ideological boundaries.⁷⁵ To address this problem, this thesis has attempted to trace the ideological position of a specific set of issues across a specific time frame. More specifically, the rooting of rights in ideas about the nature of society and sovereignty—along with the practical effects of this. By doing this, the field of study becomes narrower and, as a result, it is easier to identify a clearer set of ideological positions.

Secondly, Nick Randall argues that there is a large and varied amount of literature available on the ideological changes in the Labour Party, political parties, and social democratic parties. As such, the ideological transformation of the Labour Party from "old" to "new" Labour is "a complex political problem which requires a multidimensional and disaggregated interpretation".⁷⁶ To circumvent this challenge, Randall suggests "the application of some form of classification" e.g., thematically organising the material.⁷⁷

⁷³ Geoffrey Foote, *The Labour Party's Political Thought: A History* (Macmillan, 1997) 4-6.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Nick Randall, 'Understanding Labour's Ideological Trajectory' in John Callaghan (ed), *Interpreting the Labour Party: Approaches to Labour Politics and History* (Manchester University Press, 2003) 8-23.

⁷⁷ Ibid.

This research has, quite clearly, been organised into a distinctive theme to counter this issue.

Thirdly, Colin Hay argues that when studying the Labour Party, it is important to contextualise political conduct. Or, in other words, one should consider the environment in which political decisions or ideas are shaped and re-shaped. He suggests there are benefits to explicitly reflecting on the specific relationship between the conduct of a party leader, for example, and the context they find themselves in. Doing this prevents making claims about the Labour Party not being radically unconstrained by its environment. More specifically, it stops us from dismissing the pragmatic and contextual considerations that influenced key figures in the Labour Party to, for example, modernise or shift the party's political and ideological platform. As such, where ideological shifts or changes in positions have been identified in this research, there are attempts to acknowledge the surrounding circumstances—along with an assessment of how prominent they were in aiding said shifts.⁷⁸ What is more, Hay suggests there should be an awareness that the Labour Party is prone to politicised interpretation. For example, many of those who have written about the Labour Party have, at one time or another, been affiliated with or members of a specific faction within the party.⁷⁹ When this research uses the hermeneutic method, attempts have been made to recognise bias and verify a key figure's position—either by reference to other material they have produced or against secondary accounts.

Lastly, there are other notable pitfalls that this legal-historical research has avoided. First, there is a risk of selecting sources that might support a pre-determined thesis or position. To circumvent this, the research conducted has adopted an agnostic or sceptical standpoint—to avoid any premature predeterminations.⁸⁰ In practice, this has meant that any theory building or hypotheses made in this account only occurred during the research and archival process. There has also been an acute awareness of the authenticity of primary and archival material. Because of this, there have been consistent attempts to verify the time, place, author, and context of any document used.

⁷⁸ Colin Hay, 'How to study the Labour Party: contextual, analytical, and theoretical issues' in John Callaghan (ed), *Interpreting the Labour Party: Approaches to Labour Politics and History* (Manchester University Press, 2003) 182-196.

⁷⁹ *Ibid.*

⁸⁰ Philip Handler, 'Legal History' in Dawn Watkins and Mandy Burton, *Research Methods in Law* (Routledge, 2013) 85-99.

1.5. Structure of the Labour Party

As the Labour Party is a federated political party, it would be beneficial to briefly explain its key components that are referenced throughout this research. Firstly, the leader of the Labour Party is the figurehead and is largely responsible for the political and policy direction of the party. They are also the individual who is either vying to be, or is, the Prime Minister when the Labour Party is elected to form a government that commands a majority in the House of Commons. Secondly, the leader will appoint a Shadow Cabinet in opposition and Cabinet in government. These are Members of Parliament (MPs) who will shadow their opposite numbers in government or, if an election is won, serve as head of the various state departments. Third, the Parliamentary Labour Party (PLP) comprises all the other elected Labour Party MPs. While they do not serve in the Shadow Cabinet, Cabinet, or policymaking committees they often organise into different groups and factions. This serves as a forum to air views of like-minded MPs and pressure the leadership on policy issues. Lastly, the National Executive Committee (NEC) is responsible for the Labour Party's work outside of Parliament and is organised into several sub-committees in relation to policy and internal Labour Party matters, e.g., party disciplinary proceedings. Usually, the leader of the Labour Party will support their allies to be elected to the body. Finally, there are also individuals who work for the Labour Party and other bodies (trade unions, think tanks, or affiliated political organisations) that are associated with or contribute to the Labour Party's policy work.

1.6. Chapter Outlines

This thesis is structured chronologically and in three distinct parts. As outlined in Section 1.1, each part is an indicator of the Labour Party and its key figures particular view about the nature of society and sovereignty. As a result, this informed the theory and practice of rights across a specified period of time. Part I, The Pursuit of an Ethical Society and Commitment to Untrammelled Sovereignty, spans a 55-year period from 1900 to 1955 and contains Chapter 2 and 3. The former begins by explaining how key figures in the early Labour Party – Ramsay MacDonald, R.H Tawney, George Lansbury et al – coalesced around a set of foundational ideas that led to rights being rooted in an ethical society and

untrammelled sovereignty. This chapter will show how leading figures rejected a society that was framed around 19th century laissez-faire values and, instead, committed to constructing an ethical society through notions of organicism (organic society) and fraternity (fellowship or brotherhood). Consequently, this led to a preference for rights being attached to strict and non-correlative societal duties. This chapter then outlines how these theoretical positions were supported and translated into practice. More specifically, there will be an analysis of R.H Tawney's education policy, the early Labour Party's right to work campaign, and unemployment entitlements during the minority Labour governments of 1924 and 1929. The second part of this chapter recounts the early Labour Party's developing commitment to untrammelled sovereignty, which involved a reinterpretation of the Diceyan notion sovereignty in the British constitution. Following this, there will be an examination of how untrammelled sovereignty began to shape the approach to rights. More specifically, this chapter shows how leading figures in the early Labour Party rejected codified or written documents, judicial authority, and laid the groundwork for scepticism towards external or supranational authorities—especially those that had the ability to limit the elected majority in Parliament's domestic and legislative agenda. At the time, this scepticism was targeted towards the League of Nations.

Chapter 3, which spans a 10-year period from 1945 to 1955, continues to explain how key figures in Clement Attlee's government remained committed to constructing an ethical society and maintaining untrammelled sovereignty. This chapter, firstly, documents the widespread theoretical support for, what was now known as, civic participation (citizenship). To achieve this, leading figures still supported linking rights and strict and non-correlative societal duties. Next, there will be a detailed examination and novel account of how this societal aim and approach to rights fed into aspects of national insurance, national health, and aspects of voluntary work. In summary, parts of the post-war welfare state will be reframed through a rights and strict and non-correlative duties lens. This section will end by revisiting the ethical rhetoric that continued between the end of the post-war Labour government in 1951 and Attlee's retirement in 1955. Following this, building on the untrammelled sovereignty-based ideas formed in the early Labour Party, this chapter recounts the Attlee government's approach to rights within the context of ECHR drafting and negotiations stages. After documenting the Labour government's opposition to the pan-Conservative European

Movement during negotiations, this chapter will provide a key untrammelled sovereignty-based analysis as to why the Attlee government wanted to weaken Convention. These include: a rejection of supranational structures; resisting supranational oversight that risked shaping and limiting domestic social and economic policies; and concerns about codified property and education rights restricting domestic decision-making powers. This type of analysis will help to provide a more contextualised and rigorous account of how the Attlee government rooted their view of rights in untrammelled sovereignty.

Part II, *Abandoning an Ethical Society and Reorientating Untrammelled Sovereignty*, contains Chapter 4 and is set from 1956 to 1979. It will follow the Labour Party and its leading figures' first ideological transformation that saw major changes to ideas about the nature of society and sovereignty. This, ultimately, led to a shift in the theory and practice of rights. Addressing what has often been overlooked and underdeveloped in existing literature, Chapter 4 will begin by understanding why key figures of the early revisionist right—Hugh Gaitskell, Anthony Crosland, Douglas Jay et al—rejected ethical notions of society and the medium of rights and strict and non-correlative duties. More specifically, primary source material will reveal how said figures saw notions of social obligation as patronising and irreconcilable with their version of socialism. It will then be explained how a rejection of these older ethical ideas was replaced with a preference to enhance personal choice in society. This chapter then traces this development in Harold Wilson's Labour government. More specifically, how it informed a series of liberalising and permissive reforms in society. While many of these were tolerant and necessary, this chapter will reveal new details about leading figures in the Wilson government showing a degree of ethical remorse. In other words, there was significant regret about abandoning all societal emphasis on duties and obligations. Following this, there will be an analysis of how leading figures of the early revisionist right began to reframe untrammelled sovereignty towards liberal ends—by placing a greater emphasis on the elected majority in Parliament securing individual freedoms and liberty. This chapter then goes on to explain and contextualise how this position practically fed into the Wilson government. It does this by understanding: Harold Wilson's liberalism, the deliberate creation of a pro-judicial attitude, and the broader comfortability and willingness of the Wilson government to cede to different supranational bills of rights. Finally, the Wilson government's acceptance of individual petition and jurisdiction of the

ECtHR will be explained by documenting the views of each Department of State and its leading figures. There will also be comparison with the Attlee government's rejection of individual petition and jurisdiction of the ECtHR. This will help to highlight how the two distinctive approaches to untrammelled sovereignty influenced the position on Convention rights, individual petition, and the ECtHR.

Part III, *Market Citizens and Curtailing Untrammelled Sovereignty*, explains the final 20th century ideological transformation of the Labour Party that developed from 1980 and manifested in government after 1997—which led to key figures in New Labour supporting a new view of society and sovereignty. Chapter 5, firstly, documents the important shifts in attitudes in relation to society and citizenship that began under the leadership of Neil Kinnock. It reveals how key figures, and the wider Labour Party, began to accept Thatcherite ideas of responsible individualism and market entry. After documenting this up until John Smith's tenure as Labour Party leader, I will go on to show how this new societal view informed the New Labour government's eventual policy of rights and responsibilities. Instead of guaranteeing a greater range of accessible social rights and creating civic bonds between members of society, the rights-responsibilities nexus was inherently limited and paternalistic in nature. This section then understands how rights and responsibilities operated via social entitlements in the welfare state and national health. Following this, the desire to modernise the British constitution and decentralise power saw New Labour support a reduced untrammelled sovereignty. This version of sovereignty retained the legal right of the elected majority in Parliament to pursue its legislative agenda but reduced its political capacity to do so. This manifested in the construction of the HRA 1998. Like with the previous section, after documenting the shift towards such a measure—from Kinnock to Smith—an analytical framework will be deployed to assess how the HRA 1998 specifically reflected the belief in a reduced untrammelled sovereignty. This includes: the empowerment of the individual; the stranglehold of compatibility measures, fostering feelings of judicial supremacy; and adhering to supranational standards.

I end by restating the key arguments and conclusions made throughout this research drawing together the lessons learnt and summarising how the various approaches to society and sovereignty fundamentally informed the approach to rights across the 20th century.

PART I

The Pursuit of an Ethical Society and Commitment to Untrammelled Sovereignty

Chapter 2: The Early Labour Party and Foundational Ideas; 1900-1929

Parliament itself is a machine of government, and it has been worked hitherto by one section of the community. Labour has... not always run the machine... the fault is not of Parliament... which is the will of the people embodied in an institution.¹

- Ramsay MacDonald

2.1. Introduction

This chapter argues that, between 1900 and 1929, influenced by the ideological framework of ethical socialism, communitarianism, and a socialistic-political constitutionalism, key figures in the early Labour Party began to support the construction of an ethical society and committed themselves to untrammelled sovereignty. Importantly, the approach to rights was shaped by and rooted in both concepts.

The pursuit of an ethical society manifested in two distinct ways during this period. Firstly, an organic society (organicism) suggested that, like a biological organism, society is interdependent, while fraternity (fellowship or brotherhood) sought greater cooperation between citizens in the community. Despite these two concepts, predominately, being advanced in their own distinctive way, they shared the core aim of an ethical society. Namely, fostering a cohesive and other-regarding citizenry that included a reciprocal network of community or public facing duties. As will be shown, leading figures in the early Labour Party believed that socialism was not just a material but moral project. This meant equipping people with the mental attitudes that would bring about greater social cohesion and solidarity in society.² Developing alongside this was an interpretation of sovereignty, in the British constitution, as untrammelled sovereignty. This had two key components. Firstly, it saw the authority of the elected majority in Parliament, its legislators, and its political and policy agenda as deriving from the electorate themselves. Secondly, this expansive and popular notion of sovereignty also meant the elected majority in Parliament having meaningful, effective, and independent

¹ Peter Dorey, *The Labour Party and Constitutional Reform: A History of Constitutional Conservatism* (Macmillan, 2008) 370.

² Ramsay MacDonald, *Socialism and Society* (The Independent Labour Party, 1905) 121-128.

exercise of domestic decision-making. For key figures in the early Labour Party, securing a majority in Parliament meant the freedom to implement their electorally sanctioned social and economic agenda—which was, in of itself, an expression of the people’s will.

I begin this chapter by understanding how these prominent figures offered an alternative view to the dominant vision of society that was based on the disorganised and individualistic doctrine of *laissez-faire*. By coherently organising the written work of leading figures, this chapter reveals how the support for the ethical notions of organicism and fraternity heavily informed the narrative and policy around rights. More specifically, this chapter will show how the aim of fostering an ethical society removed the absolute nature of rights and, instead, reframed them as being linked to societal duties. After documenting these theoretical positions, this chapter will then assess how these ethical ideas about society, rights and duties were weaved into practical policies through three notable examples. First, an education policy designed by R.H. Tawney, second, the early Labour Party’s “right to work” campaign and, third, the minority Labour government’s unemployment policy in 1924 and 1929. Analysis of these three policies show that, in practice, rights were presented as being either in a strict correlation with duties, whereby the right offered was contingent on specific community-facing actions, or linked to non-correlative duties that were broader, less defined, and stemmed from an internal desire within citizens to meet their societal duties.

The second half of this chapter will explain the development of untrammelled sovereignty. This involves a detailed understanding of what has often been overlooked or underdeveloped in political, legal, and historical discourse. Namely, how key figures in the early Labour Party reinterpreted the widely accepted version of sovereignty that was set out by A.V. Dicey. Following this, the implications of untrammelled sovereignty will be understood. The locus of concern will be in relation to rights or the institutions that might intersect with rights. As such, I will show how leading figures, firstly, rejected codified rights as undemocratic, distrusted judicial authority, and held a deep scepticism about external interference with domestic decision-making.

These foundational ideas in relation to an ethical society, untrammelled sovereignty, and rights are traced through Ramsay MacDonald, George Lansbury, R.H. Tawney and, where relevant, other notable individuals or associated organisations. MacDonald was the most successful Labour Party leader during this chapter’s timeframe. Along with being the party’s chief strategist and intellectual thinker, he became the

Labour Party's first Prime Minister – leading the 1924 and 1929 Labour minority governments. Further, Lansbury's Christian socialism was instrumental in shaping ideas about fraternity. Lastly, like MacDonald, Tawney was another key intellectual contributor to the early Labour Party's political thought and policy documents. The contribution made by these leading figures to this chapter's subject matter cannot be understated.

Overall, this chapter will conclude having provided an account for the early development of an ethical society and untrammelled sovereignty and, fundamentally, the implications for rights. These ideas about the nature of society and sovereignty would go on to shape Clement Attlee's Labour government up until 1955—as the following chapter will show.

2.2. An Alternative and Ethical Society via Rights and Duties

Influenced by the ideologies of ethical socialism and communitarianism, key figures in the early Labour Party believed British society was atomised, individualistic, and dominated by the doctrine of laissez-faire.³ This was believed to have actively promoted a self-interested citizenry. In 1912, MacDonald claimed that the last century in England had been known as:

the century of individualism because during its two middle quarters, in particular, the pendulum swung far towards the extreme of individual liberty of the atomic or mechanical kind.⁴

Because of these conditions, MacDonald believed that it was impossible to achieve social organisation.⁵ Lansbury also commented on the society before him. He claimed he would yield to no one in his “hatred” of the individualistic social order he thought was built on

³ For an overview of how ethical socialism and communitarianism were ideological influences for key figures and others within the early Labour Party, see: Jon Cruddas, *A Century of Labour* (Polity, 2024) 28, 49; Mark Bevir, *The Making of British Socialism* (Princeton University Press, 2011) 217–316; Matt Carter, *T.H. Green and the Development of Ethical Socialism* (Imprint Academic, 2003) 2-3, 105-185; John Shepard, *George Lansbury: At the Heart of Old Labour* (Oxford University Press, 2002) 34; Michael Freedon, *Ideologies and Political Theory: A Conceptual Approach* (Oxford University Press, 1998) 418–464; James Meadowcroft, *Conceptualising the State: Innovation and Dispute in British Political Thought 1880–1914* (Oxford University Press, 1995) 167–210; Norman Dennis and AH Halsey, *English Ethical Socialism: Thomas More to R.H. Tawney* (Clarendon Press, 1988).

⁴ MacDonald (n 2) 16–20; Ramsay MacDonald, *The Socialist Movement* (William and Norgate, 1912) 26–28.

⁵ Ibid.

“fraud” and “humbug”.⁶ John Robert Clynes, a prominent figure in the early Labour Party and its brief leader from 1921 to 1922, similarly described society as one that was dominated by competitiveness.⁷

These observations were correct, as most aspects of late 19th and early 20th century centred around freedom of the individual. From culture, religion, and the role of the British Empire great emphasis was placed on non-interference, individual responsibility, and freedom of conscience. For example, Hazlitt, the essayist, hoped individuals would be free to act in accordance with their own imagination; he championed representative government as a way of allowing autonomous individuals to be the centre of harmonious communities.⁸ The dominance of Evangelicalism saw emphasis being placed on the individual relationship each person had with God—along with ideas of individual responsibility and rectitude.⁹ Moreover, British Empire was viewed as having secured “peace”, “good order”, and “personal freedom”.¹⁰ Lastly, 19th and early 20th century Whig and pre-new Liberal politics consistently supported a society and economy that were unregulated and self-correcting.¹¹ Tawney claimed that this type of laissez-faire had relied on a simple assumption: that individuals were isolated actors and calculated their social and economic means to insular ends. Consequently, any reciprocity or cooperation that did occur was only within the parameters of having something to gain personally. This type of self-serving cooperation, according to Tawney, made it easier for citizens to exploit and undercut one another.¹² MacDonald made similar observations and concluded that the economic model adopted and competitiveness within society amplified people’s base instincts instead of their moral ones. He used the example of the way in which individualism was embedded in factory laws and other statutes, claiming they were the imperfect realisation of the human ego.¹³

⁶ George Lansbury, *These Things Shall Be* (Scunthorpe Press Ltd, 1920) 9.

⁷ Robert Taylor, ‘John Robert Clynes and the Making of Labour Socialism, 1900–1918’ in Matthew Worley (ed), *The Foundations of the British Labour Party: Identities, Cultures and Perspectives, 1900–39* (Routledge, 2016) 16–17.

⁸ Mark Francis and John Morrow, *A History of English Political Thought in 19th Century* (Dutchworth, 1994) 28–29.

⁹ Kenneth Hylson-Smith, *Evangelicals in the Church of England, 1734–1984* (T. & T. Clark, 1988) 89–91.

¹⁰ A.V. Dicey, *Law and the Public Opinion in England* (first published in 1905, Routledge, 1981) 300–315.

¹¹ J.P. Parry, ‘Liberalism and Liberty’ in Peter Mander (ed), *Liberty and Authority in Victorian Britain* (Oxford University Press, 2006) 71–100.

¹² R.H. Tawney, *The Acquisitive Society* (G. Bell and Sons, 1921) 23–35, 33–44.

¹³ MacDonald (n 2) 28.

What's more, both MacDonald and Tawney also rejected the disproportionate emphasis and paramountcy given to natural (or absolute) rights, negative freedoms, and passive rights (like property) in the British constitution and, by extension, society. They understood the English constitution that had emerged after the Civil War and Glorious Revolution as having no conception of people being united by mutual obligations or encouraging structures that allowed people to work together towards the common weal. Instead, what remained were private rights and the state as the essential guarantor of those rights.¹⁴ Of course, across the 19th century, the British constitution was heavily shaped by a Whiggish view. This framed the British constitution as one that was fit for a quaint England full of robust individuals who enjoyed ancient common law liberties. This led to widespread support for limited government and incremental political ideas that solely aimed to enhance individual liberty.¹⁵

Of course, while key figures in the Labour Party had a desire to protect citizens' "freedom to" or civil and political liberties, it was felt the priority given to individual entitlements and spaces of freedom fed into the possessive individualism that was already present in society. More specifically, the chief complaint was that society had become a discourse for claims, counterclaims, and private rights. As a result, social disunity was further exacerbated as people were pitted against each other.¹⁶ Tawney and MacDonald, in a hint at what they would go on to propose, also believed that the rights and liberties entailed in the British constitution had been designed anterior to any independent service. This meant that they were placed in a privileged position and trumped other communal values and societal obligations. For example, Tawney lamented the right to property that yielded reward without any service performed. He argued this type of passive and absolute right served as a principle of division and enabled people to resist where they might be served better as forthcoming.¹⁷ In sum, such societal and constitutional arrangements had the net effect of reducing the bonds of cohesion and solidarity between groups of people and workers.

¹⁴ R.H. Tawney, *Radical Tradition* (London, 1964) 141, 164; MacDonald (n 2) 30–33.

¹⁵ H.T. Dickinson, 'The Eighteenth-Century Debate on the Sovereignty of Parliament' (1976) 26 *Transactions of the Royal Historical Society* 189; Sheldon Amos, *Fifty Years of the English Constitution, 1830–1880* (Longmans, Green & Co., 1880).

¹⁶ Tawney (n 12) 33–35.

¹⁷ *Ibid* 54–96.

With the outlined observations and criticisms in mind, from 1900 to 1929, leading figures in the early Labour Party began to make headway in advancing an alternative ethical society through the foundational ideas of organicism (organic society) and fraternity (fellowship or brotherhood). Both notions used rights and duties as a medium to achieve their aims. While the two concepts are closely aligned and somewhat overlap, with some like Tawney drawing on both, they had their own body of thought. Therefore, it is important to examine them in turn to better understand how key figures weaved rights and duties into them.

2.2.1. Organic Society (Organicism)

By the 1900s, evolutionary biology was being used to explain social issues by political theorists and academics. The organic society—which was said to be a product of the blind forces of biological laws—became a popular analogy for the social structure of society and the interdependence of human conduct. However, inherent in the discourse were Darwinian assumptions about the struggle for existence, natural selection, and survival of the fittest. As such, conservative theorists, like Herbert Spencer, used organicism to justify laissez-faire, reinforce individualism, and the competitive nature of society.¹⁸ However, others began to recast organicism within a more collective framework. It was argued that while evolution did progress through natural selection and survival of the fittest, it did so within a framework of interaction and cooperation. On this account, those who survived were the ones who had become integrative and learnt to work with others.¹⁹ With this reframing, it becomes clear to see why the likes of Tawney and MacDonald co-opted organicism as a template for a society based on cohesion and interdependence—where each person was intrinsic to the well-being of others.

¹⁸ Walter M. Simon, 'Herbert Spencer and the "Social Organicism"' (1960) 21 *Journal of Historical Ideas* 294.

¹⁹ On the trend away from individual to collective organicism, see: T.H. Green, *Lectures on the Principles of Political Obligation* (first published 1886, Longmans, 1941) 37-41, 67, 143, 144, 155-156, 159; D.G. Ritchie, 'Evolution and Democracy' in Stanton Coit, *Ethical Democracy* (G. Richards, 1900) 1-29; Sidney Webb, 'Towards Social Democracy: A Study of Social Evolution during the last three quarters of a Century' (*Fabian Society*, 1909); Ramsden Balforth, 'The Influence of Darwinian Theory on Ethics' (1911) 21 *International Journal of Ethics* 448; L.T. Hobhouse, *Liberalism* (first published 1911, Lulu Publishing, 2010); J.A. Thompson, 'Progressive Evolution' *New Statesman* (London, 3 July 1920) 360; Bernard Bosanquet, 'Socialism and Natural Selection' in David Boucher (ed), *British Idealists* (Cambridge University Press, 2012).

According to Peter Clark, MacDonald harnessed the “scientific spirit to socialism”.²⁰ While MacDonald himself claimed, “the reason why socialism and the scientific mind should be congenial to each other is not far to seek. The scientist loves order and is repelled by disorder”.²¹

Between Tawney and MacDonald’s political writings, we can summarise their understanding of an ethical society shaped by organicism in three key points. First, individualism became detached from the individual and would, instead, be repurposed to serve the interests of society. Secondly, there would be greater coordination among citizens in society. Finally, each person in society would work towards the common good.

According to Tawney, people in an organic society were able to become more deliberate and purposeful agents. He argued:

ideally conceived, society is an organicism on different grades and human activities form a hierarchy of function which differ in kind and significance, but each of which is of value on its own plane, provided that it is governed however remotely by the end which is common to all.²²

The end of all human action, for Tawney, was the common good or social purpose.²³ Similarly, MacDonald was also committed to a model of social evolution, not just as a vague analogy but as a principle that governed day-to-day processes of society.²⁴ He diagnosed society as having an incoherence to it, as if it were a “machine out of gear”. As such, he wanted society to be reorganised so that social functions could be performed by cooperating individuals.²⁵ With this in mind, MacDonald disassociated atomistic individualism from individuality within a communal framework. He claimed, “our life is of value” where “... it has contributed to the fullness of social life and the development of social organisation and efficiency”.²⁶ MacDonald used the concept of organicism to suggest that society’s respective parts could be reorganised into an ethical unit. One that

²⁰ Peter Clark, *The Men of 1924: Britain’s First Labour Government* (Haus Publishing, 2024) 106.

²¹ MacDonald, *The Socialist Movement* (n 4) 89.

²² R.H. Tawney, *Religion and Rise of Capitalism* (J Murray, 1928) 14–23, 34.

²³ Tawney (n 12) 9, 11–13, 97.

²⁴ MacDonald’s contemporaries described his position as being compatible with idealist organicism. Ernest Barker, for example, labelled MacDonald the apostle of biological socialism. See: Ernest Barker, *Political Thought in England: From Herbert Spencer to Present Day* (first published 1916, FB and C Ltd, 2016).

²⁵ MacDonald (n 2) 35, 37.

²⁶ *Ibid.*

moved towards a stage of structural organisation in which cooperation would displace the inefficiency of self-interest and competition.²⁷

At this point, we begin to see how Tawney and MacDonald incorporated rights and duties into their understanding of organicism and, importantly, as a medium to construct an ethical society. First, there was a rejection of the unconditional, absolute, or inalienable nature of rights. This was viewed as a deformity in society, one which created materialism and elevated possessive individualism over communal needs. The intention was to ensure no right would be placed in a privileged, untouchable, position over other public interests or needs. Secondly, after rejecting the unconditional nature of rights, attempts were made to theoretically remedy rights being anterior to, devoid of, and divorced from social purpose or function e.g., any form of productive contribution to society.²⁸ Tawney and MacDonald went on to place significant emphasis on the value of duties in creating a more cohesive and cooperative society. More specifically, they both explained their preference for rights to operate within a right–duty nexus. First, MacDonald stated the individual was not an end in himself, but the means to an end; they were there to serve a purpose for society. A right was not something inherent in a person but was located within and corresponding to a network of social obligations. MacDonald explained this in a novel way. The state, he claimed, should “never recognise the existence of a ‘right’—say to get drunk—if it knows that that ‘right’ disables its possessor from fulfilling his duties”.²⁹ For MacDonald, “the socialist state did not remove responsibilities from people... because it insisted on their participation...” and, as such, the state did not view the individual as a possessor of rights but the doer of duties: “a right is the opportunity of fulfilling a duty, and it should be recognised only in so far as it is necessary to the performance of duty”.³⁰ Secondly, Tawney argued that the rights extended to citizens had to be tested against social justification and contributions to society. Because of this, there had to be a strong correlation between rights and duties:

all rights, in short, are conditional and derivative because all power should be conditional and derivative. They are derived from the end purpose of the society

²⁷ Kevin Morgan, *Ramsay MacDonald: Life and Times* (Haus Publishing, 2006) 107–108.

²⁸ Tawney (n 12) 33.

²⁹ Ramsay MacDonald, *Socialism and Government* (London, 1910) 14, 22. Also see: R.H. Tawney, ‘A Note on Christianity and the Social Order’ in *The Attack* (Spokesman University Paperback, 1953) 181; Tawney (n 12) 54, 96.

³⁰ *Ibid*, MacDonald 54.

in which they exist... if society is to be healthy, men must regard themselves, not primarily, as owners of rights, but as trustees for the discharge of functions and the instruments of social purpose.³¹

In practice, these duties were usually regarded as anything that would serve or benefit the community or society, e.g., volunteering, working in public-facing services, or gaining employment so that one could contribute to the economic health of the nation. Tawney believed that his position on rights allowed individuals to meet their domestic duties and, more broadly, take a more active role in society or political and economic life.

It becomes clear that these early Labour Party figures began to correlate rights with duties as a way to achieve an organic society—or, in other words, a society that was interdependent and obligation driven.

2.2.2. Fraternity (Fellowship or Brotherhood)

Like organicism, fraternity emphasised interdependence. It was promoted as an alternative way to reorganise society more ethically and interdependently—as opposed to a laissez-faire society. However, it differs in that it focused less on the shape and structure of society and more on the internal realisation and ethic that causes people to be cooperative and carry out acts of service. Overall, it has been claimed that fraternity sought to morally integrate the community by fostering a sense of belonging and shared fate amongst people.³²

Fraternity was predominately advanced by individuals of the Christian socialist movement. Those who provided substantive thinking on the matter—which found footing among key early Labour Party figures and MPs—included Charles Gore, Henry Scott Holland, and William Temple. Broadly, these figures rejected the evangelical Christian focus on individualism. For Gore and Holland, this was a mistaken theory of religion. They suggested that the focus should, instead, be on the idealistic notions of self-sacrifice and cooperative community. Both advanced the idea of fellowship as something which stemmed from spiritually cooperating with God and deep within human nature. To realise this innate characteristic, they encouraged people to join in with their

³¹ Tawney (n 12) 54.

³² Eric Shaw, *Losing Labour's Soul* (Taylor and Francis, 2012) 76–77.

community.³³ Both Gore and Holland argued that people could not be indifferent to the fate of their fellows, with Holland claiming that people naturally desired to work together and “...every personal act is woven into the life of the community”.³⁴ Gore stressed that the great adventure was not “the solitary individual” but the “adventure of society... linked to one another in the bonds of fellowship”.³⁵ Temple also described fellowship in a similar way. He argued the nation was a community of communities in which fellowship was developed and sustained. People could not be separate or isolated from the company of others and, because of this, our interaction with neighbours did more than meet our own needs—it helped to bring about cooperation that served the health of society.³⁶

The ethic of fraternity led to a conceptual and practical preference for duties over rights among these figures. It was thought that the language around individual rights and absolute entitlements was of mine, thine, and conflict. Duty, on the other hand, was a language compatible with fellowship, cooperation, and service. Temple argued that the difference between an emphasis on rights as opposed to duties was about tempo. The tempo of a movement that rested on rights was aggressive, violent, and contentious; one based on duties was persuasive, public spirited, and harmonious.³⁷ Therefore, any society that strived for fellowship had to place equal or greater focus on duties as opposed to rights. A fundamental outcome of this reorientation towards duties, according to Temple, was the recasting of a person’s relationship with others and society as one of obligation and service—as opposed to individual claims. This meant the first question people should ask themselves is “what do I owe this person” as opposed to “what does she owe me”.³⁸ Considering this, Temple believed this maxim could be applied to work, leisure, economic systems, labour, and management. Gore also claimed that rights were meaningless without duties and were inextricably derived from them. More specifically, rights only

³³ For the Christian Socialist movement’s influence on the early Labour Party and an overview of Gore and Holland’s Christian socialist thought, see: Bob Holman, *Good old George: The Life of George Lansbury* (Lion, 1990) 72–74; Gary Armstrong and Tim Gray, *The Authentic Tawney: A New Interpretation of the Political Thought of R.H. Tawney* (Imprint Academic, 2011) 34–35; Anthony A.J. Williams, *Christian Socialism as Political Ideology: Formation of the British Christian Left 1877–1945* (Bloomsbury Publishing, 2020); and Anthony A.J. Williams, *The Christian Left* (Polity Press, 2022).

³⁴ Henry Holland, *The Study of Social Questions* (London, nd) 3.

³⁵ Charles Gore, *Christian Moral Principles* (first published in 1921, WIPF and Stock, 2008) 9; Charles Gore, *Lux Mudi: A Series of Studies in the Religion of the Incarnation* (John Murray, 1891) 235.

³⁶ Phillip Turner, *Christian Socialism: The Promise of an Almost Unforgotten Tradition* (Cascade Books, 2021) 102–103.

³⁷ William Temple, *Christianity and the State* (Macmillan, 1928) 83–84.

³⁸ Turner (n 36); William Temple, *Christianity and Social Order* (first published 1942, Penguin Books, 1956) 66–72.

stemmed from the extent to which people fulfilled the terms of stewardship entrusted to them by God and the duties owed to others.³⁹ Lastly, like Temple and Gore, Holland noted how certain entitlements, like the right to property, had been understood as individual possessions. This, he claimed, provoked the characteristics of individualism and thing-centredness in society.⁴⁰ Overall, it is clear that there was a widespread commitment to fraternity, social obligation, and service to one's neighbour. This led key figures of the Christian socialist movement to correlate rights with duties.

Christian MPs of the early Labour Party were influenced by this type of thought and saw fellowship, duties, and human nature (social and cooperative) in similar terms. Many of them aimed to improve social relations in ways that allowed for human flourishing and harmony. John Wheatley, who was responsible for one of the few successes in the 1924 Labour government (the allocation of more state funding to municipal government for house building via the Housing (Financial Provisions) Act 1924), claimed that socialism was something that emanated from the spirit of brotherhood. He believed this ethic was ever-present in the hearts of people but was suppressed by the struggle that came about in the competitive environment of capitalism.⁴¹ Keir Hardie also claimed that "the only way you can serve God is by serving mankind. There is no other way. It is taught in the Old Testament; it is taught in the New Testament."⁴² In addition, Margaret Bondfield, the first female Cabinet member in the 1929 Labour government, was a congregationalist whose main aim was to see the golden rule of "thou shall love thy neighbour as thyself" being applied to both the economy and society.⁴³ In a publication stressing the equality of men and women within her trade union, and the eligibility of women to be elected to official positions in said union,

³⁹ Charles Gore and Leonard Hobhouse, *Property, Its Duties And Rights: Historically, Philosophically And Religiously Regarded* (first published 1915, Kessinger Publishing LLC, 2010) 47, 88; Turner (n 36) 80–86.

⁴⁰ Henry Scott Holland, 'Property and Personality' in Charles Gore (ed), *Property: Its Duties and Rights* (Macmillan, 1915) 180–181.

⁴¹ Ian S. Wood, 'John Wheatly and Catholic Socialism' in A.R. Morton (ed), *After Socialism The Future of Radical Christianity* (CTPI, 1994) 20; John Hanan, *The Life of John Wheatley* (Spokesman Books: Nottingham, 1988) 11; Anthony A.J. Williams, *The Christian Left* (Polity Press, 2022) 26.

⁴² Gary Dorrien, *Social Democracy in the Making: Political and Religious Roots of European Socialism* (Yale University Press, 2019) 396.

⁴³ Williams, *Christian Socialism as Political Ideology: Formation of the British Christian Left 1877–1945* (n 33) 19.

Bondfield claimed that with equal rights came duties. While the context was very specific, support for the nexus of rights and duties remained the same.⁴⁴

Along with rights and duties being framed in organic terms, Tawney also explained duties within Christian themes of fellowship and subordination to the community. He claimed:

one knows from one's inner experience, that spiritual well-being consists in finding one's work and doing it. This involves subordination, and therefore subordination is the essence of a good society.⁴⁵

Importantly, for Tawney, the duties that are undertaken by citizens in society should originate from an internal or conscious recognition of their obligations.⁴⁶

Finally, Lansbury was the most well-known and leading early Labour Party Christian socialist. As a committed Anglican and devout advocate of the "brotherhood of man", he never lost hope that people could unlearn the "selfishness of capitalistic mammon worship" and live together as "children of the father".⁴⁷ Like most Christian socialists, Lansbury was of the view that fellowship was a prerequisite for any democratic society. At a meeting of the Christian Ideal of Brotherhood in 1911, he expressed his hope that Christian men and women join in with the Labour Party's aim of creating a more fraternal society. He suggested that if people thought more as Jesus Christ did and looked out for others, not just each for themselves, society would be a place of beauty and joy.⁴⁸ For Lansbury, achieving brotherhood was inextricably tied to socialist ideas of bringing people together in systems of cooperation.⁴⁹ Like his colleagues, the main aim was to arouse an effort within people that stemmed from a higher sense of their responsibility towards the well-being of others and the nation.⁵⁰ Consequently, Lansbury advanced social policies that were rooted in service and neighbourliness. This was made clear when crafting of social and redistributive legislation. As will be explained in section 2.3.2,

⁴⁴ Patricia Hollis, *Women in Public 1850–1900: Documents of the Victorian Women's Movement* (first published 1979, Routledge, 2013) 121.

⁴⁵ R.H. Tawney, *Commonplace Book (The Diaries 1912–1914)* (Cambridge University Press, 2006) 57; Tawney (n 12) 104, 111, 167, 191,196; Armstrong and Gray (n 33) 34–35.

⁴⁶ Ibid.

⁴⁷ LSE Digital Archive, Lansbury/7 213 'Interview with George Lansbury MP from the Christian Commonwealth Newspaper' 11 August 1915; George Lansbury, 'Back to the Galilean!' in G.N Barnes et al., *The Religion in the Labour Movement* (Holborn, 1919) 54.

⁴⁸ Holman (n 33) 77.

⁴⁹ Ibid 173.

⁵⁰ George Lansbury, *Your Party in Poverty* (B.W. Huebsch, 1912) 11, 23.

Lansbury wanted social entitlements to be designed so that working-class people were put in a position to undertake societal responsibilities.⁵¹ Because of this, he was often quoted saying that the early Labour Party's motto should be "no rights or privileges without duties".⁵²

Inspired by Christian socialism, there was a consistent undercurrent of thinking among these leading figures of the early Labour Party. More specifically, there was a simultaneous belief in evoking the fraternal instincts within people and, flowing from this, societal duties being undertaken in addition to receiving entitlements.⁵³

2.3. Rights and Duties in Practice

This section will analyse three early Labour Party policies that linked rights with duties. By the way in which each policy was designed and explained, it can be reasonably assumed they were underpinned by the broader notions of organicism and fellowship. More specifically, it becomes clear each policy had the aim of challenging individualistic notions of society, unconditional entitlements, and looked to create a more dutiful and other-regarding citizenry. This section will also show that there were some important traits associated with the rights and duties nexus in practice. First, the relationship between rights and duties varied from a strict to a looser, less prescriptive, correlation. Secondly, there was somewhat of an equal relationship between rights and duties. By this, I mean rights would not be hierarchically superior to duties, duties would not precede rights, and the duties involved were not punitive, coercive, nor unfairly aimed at stigmatised sections of society. Instead, the duties were ethical in nature, applied to everyone regardless of background, and almost always were community facing or sought to evoke an internal desire to assist the community or nation. Lastly, it becomes clear that the deployment of rights and duties was genuinely thought of as a means or medium to achieving a particular view of society. Overall, understanding rights and duties in practice

⁵¹ Jonathan Schneer, *George Lansbury: Lives of the Left* (Manchester University Press, 1990) 35; Holman (n 33) 175.

⁵² *Daily Herald* (London, 13 December 1919).

⁵³ Even in the technocratic quarters of the Fabian Society, there was some support for altruistic service to humanity being a vehicle for transformation and transference. Beatrice Webb claimed, "the impulse of self-subordination service was transferred, consciously and overtly, from God to man". See: Ben Jackson, *Equality and the British Left: A Study in Progressive Political Thought, 1900-1964* (Manchester University Press, 2007) 40-41.

is an important exercise. It shows how early Labour Party figures actively looked to move beyond the theoretical and advance tangible rights and duties-based solutions. As a disclaimer, this section does not assess the outcome of the policy proposals. Instead, the focus will be on the nature of the correlation between the rights and duties and the political-ideological justifications given for it.

2.3.1. R.H. Tawney's Education Policy

From his theoretical work, Tawney seemingly employed a strict relationship between rights and duties; a right could only be accessed with the simultaneous fulfilment of a duties. However, when translating this theoretical position into practice, Tawney is not as prescriptive in the correlating set of obligations that he suggests citizens are required to meet. Instead, citizens are given the discretion and scope to determine how they undertake societal responsibilities. In other words, they would fulfil what they believed their duties to be. This is most evident in the education policy Tawney crafted for the Independent Labour Party in 1924.

Tawney, firstly, claimed education should be available and accessible for all children. The result of this would foster a unique personality in each child and, by extension, perform the function of enhancing society's capacity to solve problems. Secondly, such an entitlement would allow children to grow up and carry out their function and duties to the best of their abilities.⁵⁴ Tawney approaches education as an entitlement that is widely accessible to all, with a consequent function and duty towards society at some undetermined time in the future. In other words, the extension of education rights correlated with the recipient of said rights determining their societal duties later in their life. But support for a rights and non-correlative duty relationship did not mean individuals could return to do as they pleased, without acknowledging the consequences of self-interested actions. Tawney claimed that an obligation to cooperate and contribute, albeit a looser one, still existed towards society.⁵⁵ This was what the right to education rested on.

Critics have suggested that due to the growing tide of authoritarianism across Europe in the 1930s, Tawney began to take a softer view on citizens being consumed with

⁵⁴ R.H. Tawney, *Education: The Socialist Policy* (The Independent Labour Party, 1924) 20–22.

⁵⁵ R.H. Tawney, 'We Mean Freedom' (1946) 8 *The Review of Politics* 223.

mandatory duties—his position was therefore adjusted.⁵⁶ While this holds some weight, it would also be tenable to suggest that Tawney’s real aim was not to achieve duties through coercive or paternalistic action. Instead, based on his organic or fraternal views, it was to foster an ethical desire within citizens to cooperate and take up their responsibilities. Even in his later work, where emphasis was placed on individual rights or citizens having a “fling”, i.e., the pursuit of their own activities, Tawney continued to stress the fulfilment of duties.⁵⁷ But he reminded us that these duties were to be internally decided or, in other words, one had to allow individuals to fulfil “what they [themselves] conceive to be their duty”.⁵⁸ Tawney’s hope seemed to be that intelligent decisions would be made by people on their accord. Crucially, the framing of rights and non-correlative duties would go on to be adopted by key figures within Clement Attlee’s Labour government—as the following chapter will show.

2.3.2. The Right to Work and Duties

Leading figures in the early Labour Party also supported the idea of strict, ethically framed, duties correlating to social entitlements. This was most evident when proposing and campaigning for the “right to work”.⁵⁹ At the 1905 Labour Party conference, two policies were established. The first being that everyone had the right to work and, secondly, it was the elected majority in Parliament that was responsible for the unemployed.⁶⁰ With these principles agreed and a degree of negotiation with the Parliamentary Committee of the Trade Unions Congress, MacDonald introduced the early Labour Party’s Unemployment Bill in 1907. It proposed the creation of a central unemployment committee to develop and coordinate local work. Each local authority was charged with the job of finding work for all of those registered as unemployed in its area. The substance of the entitlement to work was set out in Clause 3:

Where a workman has registered himself as unemployed, it shall be the duty of the local unemployment authority to provide work for him in connection with one or

⁵⁶ Armstrong and Gray (n 33) 157.

⁵⁷ Ibid, 159, 162, 180.

⁵⁸ Ibid, 159; R.H. Tawney, *The Attack and Other Papers* (Spokesman University Paperback, 1953) 84.

⁵⁹ For a full and detailed account of the Right to Work campaign, see: Kenneth D. Brown, *The Labour Party and Unemployment 1900-1914* (David & Charles Publishers, 1971) 68-130.

⁶⁰ British Library Collection of the early Labour Party, L.R.C. July 1905, Box I 33/29.

other of the schemes here-in-after provided or otherwise, or failing the provision of work, to provide maintenance should necessity exist for that person and for those depending on that person for the necessaries of life.⁶¹

MacDonald argued that this provision offered relief to an individual who had been unemployed for a long period, wanted to regain their self-respect, and protected them from a lazy and unsympathetic local authority.⁶² Others, like Lansbury, were also supportive of the scheme. He argued that the problem of unemployment could not be resolved by an unenforceable scheme. The Labour Party, he claimed, represented people who were subject to poverty because of a denial of their right to earn their daily bread. As such, “a condition” to any successful scheme of insurance or decasualisation must be:

the passing of some Act of Parliament conferring on those you squeeze out of employment the absolute inalienable right either to earn their living by some State organisation, or else maintenance at the hands of the State.⁶³

Moreover, Labour Party MPs, like James O’Grady, made similar statements. He wanted to “compel the State and the municipalities to recognise their obligations, to draft schemes and proposals, and to put the Act into operation”.⁶⁴

The entitlement of work or, where not available, the receipt of monetary maintenance was aimed at the “willing worker”. Or, in other words, citizens who were unable to find work but wanted to gain employment to contribute to society. Despite this, the provision was not unconditional and had strict duties attached to it. MacDonald explained the early Labour Party’s approach to the provision and, more broadly, unemployment entitlements in the following way:

If this help be given as a mere palliative or as charity, the evil conditions are only perpetuated. Outdoor relief for the sweated worker may help him a little, but it perpetuates sweating. So in dealing with the unemployed. Temporary relief is worse than useless, except in special cases. Unemployed schemes must, therefore, be educational; they must be in the form of training, so that surplus labour at one point of the market may be trained to be effective elsewhere, and also so that

⁶¹ Ramsay MacDonald, ‘New Unemployed Bill of the Labour Party’ in Peter Lamb (ed), *Contemporary thought on 19th Century Socialism Vol. 3 Part II* (Routledge, 2021) 142–155.

⁶² *Ibid.*

⁶³ HC Debate 10 February 1911 vol 21 col 586-659.

⁶⁴ *Ibid.*

labour of little use in busy factories may be made useful under less stressful conditions.⁶⁵

Furthermore, strict and separate duties were placed on those who claimed the entitlement but failed to work due to being “born loafers” or having a “habitual disinclination” to work. Clause 7 (3) of the Unemployment Bill suggested such individuals would, in addition to training and education requirements, be compelled to work for up to six months via court order.⁶⁶ Some critics argue that leading figures in the early Labour Party wanted to remind the electorate it would be respectable and financially responsible with public money.⁶⁷ This was even more imperative as Liberal politicians deliberately misrepresented the provision to the public. One, during a by-election at Dewsbury, claimed:

Any workman out of work for any cause, good, bad, or indifferent—for incompetency, for insobriety, for laziness—could come to the Dewsbury local authority and...if they said “We have no work to give you”, he could reply, “Then you must maintain me and my family”. I venture to say that such a bill would put a premium, not on the best, but on the worst, of our working classes.⁶⁸

Even David Lloyd George, Chancellor of the Exchequer, when supporting a young Winston Churchill at a Manchester by-election in 1907, claimed the measure was a bad one and could cost a substantial sum of money.⁶⁹ Therefore, the aim of the strict duties being attached to the right to work could be interpreted as a paternalistic way to discipline those who did not take up employment—especially as there was stress placed on specific sections of society, the chronically unemployed, to undertake compulsory work. But there are also good reasons to reach this conclusion beyond those already stated. Such paternalistic attitudes were commonplace within the broader British socialist movement. More specifically, some believed that the conditions or duties that accompanied social entitlements like unemployment support should be targeted at either the poor, lazy, or unemployed. For example, George Bernard Shaw, the prominent Fabian Society member, took duties and their reciprocity with rights in a less ethical direction. He argued:

⁶⁵ Macdonald (n 61) 146.

⁶⁶ Ibid, 149-150.

⁶⁷ William Walters, *Unemployment and Government: Genealogies of the Social* (Cambridge University Press, 2000) 36–37.

⁶⁸ Brown (n 59) 94.

⁶⁹ Ibid.

on the question of incentive... we must get rid of the notion that any choice can be tolerated in the obligation to work. Direct unhesitating compulsion should be a matter of course.”⁷⁰

Shaw also stated that “voluntary poverty is just as mischievous socially as involuntary poverty”.⁷¹ As such, he believed coercion was justifiable—as the work done would contribute to the share of the community’s wealth. Lastly, Shaw also believed any illiberal and punitive aspects of his approach was tempered by his belief in a reduction in length of the working day, i.e., “four hours of necessary duty” was his ideal goal.⁷² Moreover, the founders of the Fabian Society, Sidney and Beatrice Webb, feared the creation of a “right to benefit”. They preferred forms of unemployment entitlement to be conditional on good behaviour.⁷³

Within the early Labour Party itself, similar attitudes were held. For example, a small number of Labour Party MPs associated with the Wolverhampton Labour Movement spoke of the unemployed in a paternalistic and undignified way. They argued that those who were “tramping” should be sent to do compulsory work.⁷⁴ Moreover, despite being described as an ethical socialist, John Robert Clynes also couched his understanding of rights within a framework of paternalistic and coercive duties. Clynes had grave concerns about mass unemployment in Britain. As a result, he advocated for state intervention to curtail the effects of a free capitalistic market.⁷⁵ Robert Taylor has argued that Clynes was “unsentimental” about those who were unemployed and worklessness generally.⁷⁶ Indeed, Clynes believed that while the state had to recognise the right to work, there was a strong demand for responsibility amongst citizens. The test for citizens accepting this responsibility was whether they wanted to work and if they could do it. However, where there were any objections, these would be met by inquisitions by “proper and reasonable persons” to protect public money from being wasted or

⁷⁰ George Bernard Shaw, ‘Letters to the editor: equality of income’, *Nation* (London, 31 May 1913) 350.

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ Pat Thune, ‘Labour and Welfare’ in Duncan Tanner et al. (ed), *Labour’s First Century* (Cambridge University Press, 2000) 85.

⁷⁴ Jon Lawrence, *Speaking for the People Party, Language and Popular Politics in England, 1867-1914* (Cambridge University Press, 2002) 148–149.

⁷⁵ Taylor (n 7) 25–26.

⁷⁶ *Ibid.*

abused.⁷⁷ With the concern for public money and fiscal responsibility, Clynes argued that working people had to conform with the obligation placed upon them by society or meet punishment. Doubling down on his paternalistic approach, Clynes went on to say that any opportunities provided would be coupled with the firm expectation that duties to society will be discharged. Importantly, he argued that meeting these responsibilities should not be left to chance and reaffirmed his forceful, punitive approach to ensuring work was taken up.⁷⁸ Clynes supported the right to work campaign and bill. But it is clear that his understanding of the obligations, attached to the right, were not ethical in nature.

When looking at some of the rhetoric used by Lansbury and MacDonald, it would be tempting to reach a similar conclusion. Lansbury claimed that “a man unwilling to work should be made to work”, since everyone should “do their share of the work of the community”.⁷⁹ Despite MacDonald acknowledging that there were those who were “made loafers by evil social conditions”, he claimed some did not want to work and this had to be resolved through compulsory methods.⁸⁰ Similar points were raised by other early Labour Party MPs during House of Commons debates on unemployment.⁸¹

However, an alternative and more accurate reading would be to suggest MacDonald and Lansbury were less paternalistic and punitive in their presentation of the strict duties that correlated to the right to work—or social entitlements more broadly. Instead, they were wholly driven by their ethical beliefs of fostering a well-organised, cooperative, and duty-bound society. Firstly, using familiar sounding organic language, MacDonald went on to claim that if unemployment was addressed through the early Labour Party’s proposals—attaching strict education and training requirements to work entitlements—a “new form of social organisation” would begin.⁸² He suggested the duties inspired “all efforts to deal scientifically with the unemployed” and, more specifically, would allow “waste labour power” to be better organised for the nation.⁸³ Secondly, MacDonald’s claim that the right to work could not be given as a “mere palliative or as charity without such duties” reflected his organicist belief that rights could not be

⁷⁷ Ibid.

⁷⁸ British Archives Online, British Labour Party Papers, OTLC Annual Report 1906 9.

⁷⁹ Jackson (n 53) 46.

⁸⁰ Ramsay MacDonald *The New Unemployed Bill of the Labour Party* (Independent Labour Party, 1907) 3–4, 10–11.

⁸¹ HC Debate 9 July 1907 vol 177 col 1448; HC Debate 26 October 1908 vol 194 col 1661; HC Debate 10 February 1911 vol 21 col 590.

⁸² MacDonald (n 61) 144.

⁸³ Ibid.

anterior to societal duties or aims.⁸⁴ In extra-political writing, which coincided with the right to work campaign, MacDonald argued:

all that Socialism and a Socialist system of distribution can claim to do is to destroy social parasites and secure that everyone who gives service to society shall receive from Society and ample measure of opportunities to live and enjoy living.⁸⁵

As such, MacDonald genuinely believed that every citizen owed some kind of contribution to society. A similar point was made at the 1911 debate on Lloyd George's National Insurance Bill. Here, he welcomed the contributory principle instead of a "free gift". To the House of Commons, MacDonald claimed "the state was entitled to lay down certain conditions under which the unemployment benefits are going to be paid".⁸⁶ Thirdly, another reason to believe that MacDonald's rationale for duties rested on more ethical notions of an organic society and not paternalism, was due to his understanding that said duties would not be targeted at poorer people or traditionally stigmatised sections of society. Unlike those in the broader socialist movement, he hoped that those who were "well-supplied" with the "world of goods" would also be subject to "obligations to the community" via "work training".⁸⁷ This obligation to society was just as applicable and salient to the wealthiest in the community.

Lansbury played a pivotal role in the Right to Work campaign—being treasurer of the National Right to Work Council in 1905 and sharing public platforms with MacDonald on the issue.⁸⁸ Like MacDonald, Lansbury offered an ethical approach to correlative rights and duties in the context of unemployment and work—reflecting his broader desire to foster a fraternal, duty-driven society. For example, Lansbury suggested the early Labour Party did not discriminate between either the rich or poor's obligations to society within the context of unemployment entitlements. He claimed the party had "no sympathy either with the 'rich loafer or with the poor loafer' and that workers had carried on their backs . . . all those classes which live on rents, profits...".⁸⁹ More broadly, Lansbury believed that relief from unemployment should be extensive enough to be adequate for "respectable

⁸⁴ Thune (n 73).

⁸⁵ MacDonald (n 29) 204.

⁸⁶ HC Debate 29 May 1911 vol 26 col 725.

⁸⁷ Thune (n 73) 80–81.

⁸⁸ Brown (n 59) 62–64; Shepard (n 3) 61.

⁸⁹ HC Debate, 10 February 1911 vol 21 col 641.

survival”.⁹⁰ However, that relief should also be conditional on strict controls against malingering. As such, any right to relief must be balanced by obligations to the community to take up work when available. The community was, in turn, obliged to ensure that suitable conditions, work, or training were available and to provide them where there was not.⁹¹ Across his political life, Lansbury made clear that his understanding of rights that strictly correlated with duties were neither punitive nor coercive. While giving evidence to a parliamentary committee on unemployment, Lansbury claimed he acknowledged there were some in society who did not want to work—“drunkards”, “incapables”, and “loafers”—but he tempered this by claiming he did not want penal settlements for such individuals. He firmly believed that wickedness could not be driven out by wickedness, and you could not do good work with the devil’s tool.⁹² The implication being, the duty to contribute to society via taking up work was to be encouraged and internally aroused as opposed to enforced punitively. Moreover, in 1909, Lansbury explained how his suggested Poor Law reforms, the extension of social entitlements to relieve poverty, aimed to foster reciprocal duties among citizens. Tellingly, he claimed:

our proposals have for their object the awakening in each of us a recognition of our duties towards our neighbour; and not merely my duty towards my neighbour, but my neighbour’s duty towards me. In these days it is rather important that the latter should be kept in view.⁹³

This is a neat example of how Lansbury sought to shape social entitlements around ethical and Christian notions of fellowship and duties. Lansbury also made clear he rejected punitive restrictions or obligations on access to rights like education or health. This was set out in correspondence with Beatrice Webb, one of the founders of the Fabian Society, during the commission to reform the Poor Laws.⁹⁴ Lastly, in 1920, Lansbury was heavily involved in Poplar Borough Council’s policy to extend the minimum wage for municipal workers. In response to criticisms that extending this new right created a privileged class, Lansbury claimed this would not be extended as a gift but a right that would require the

⁹⁰ Ibid.

⁹¹ P.A. Ryan, ‘Poplarism 1894–1930’ in Pat Thune (ed), *The Origins British Social Policy* (Croom Helm, 1978) 56–83.

⁹² Jose Harris, *Unemployment and Politics: A Study in English Social Policy 1886–1914* (Oxford University Press, 1972) 139.

⁹³ LSE Digital Archives, LANSBURY /3 Correspondence and Papers 1907-1909, Correspondence and Papers 1909.

⁹⁴ Shepard (n 3) 69.

very best contractual work in return. He claimed the policy would not create a dependency culture and reaffirmed that there could be “no rights or privileges without duties”.⁹⁵ Instead, he believed the right of a minimum wage would create a better quality of work and contribution by the those who were on the receiving end of the minimum wage. In other words, there would be an internal desire among individuals to offer their services to the benefit of the community.⁹⁶ Overall, Lansbury’s conception of rights and duties rested on a more collaborative relationship and ethical framework—one that closely mirrored his theoretical belief in fellowship.

However, not all associated with the early Labour Party were enthusiastic for rights being attached to duties. Early Labour Party parliamentary candidates, Dennis Milner and Bertrand Russell, who were politically further to the left than MacDonald and Lansbury, proposed a scheme for an unconditional basic income or a “state bonus”.⁹⁷ In other words, they proposed a universal right to payments from the state without any reciprocal obligation. However, an unconditional basic income or right without duties remained on the edge of progressive thought in the early Labour Party. Indeed, Russell himself conceded the proposal advanced was tantamount to a “vagabond’s wage”.⁹⁸

Overall, it has been argued that the right to work campaign never gained much traction beyond its initial statement of principle. For example, Martin Crick suggests it was used mainly to mobilise public opinion and pressure the Liberal government on the issue of unemployment.⁹⁹ Despite its limited results, the right to work provides a unique insight into how key figures of the early Labour Party sought to construct a more ethical society via rights or unemployment entitlements being linked to strict duties. Of course, comments about “loafers” or “malingerers” can often be interpreted as contempt for the unemployed and prejudicial against certain sections of society. However, a more accurate reading, contextualised within their political thought of organicism and fraternity, suggests leading figures in the early Labour Party used the medium of rights and duties to achieve broader ethical and societal aims.

⁹⁵ Shepard (n 3) 192–193.

⁹⁶ Ibid.

⁹⁷ E. and Dennis Milner, *Scheme for a State Bonus: A Rational Method of Solving the Social Problem* (Darlington, 1918); B. Russell, *Roads to Freedom: Socialism, Anarchism and Syndicalism* (London, 1918) 118–120, 179; Dennis Milner, ‘A State Bonus for All?’ *Nation* (London, 25 May 1918) 195.

⁹⁸ Ibid.

⁹⁹ Martin Crick, *History of the Social-Democratic Federation* (Edinburgh University Press, 2019) 171–182.

2.3.3. Minority Labour Government of 1924 and 1929: Unemployment and the 'Genuinely Seeking Work' Clause

In theory, the 1924 and 1929 minority Labour governments maintained the policy that everyone was entitled to work. However, due to political battles, parliamentary arithmetic, and the general moderation in implementing previously supported policy, there was a greater emphasis on achievable material outcomes. With that said, it would be tempting to conclude that key figures in the minority Labour governments gave little attention to the moral recalibration of society, via the policy of rights and duties. However, what is available in parliamentary, political, and archival records allows for a tentative conclusion that correlative rights and duties loosely inspired the minority Labour government's unemployment policy.

In attempting to stem the rise in unemployment, the first minority MacDonald administration raised the value of unemployment benefits and removed the household means test for the long-term unemployed via the Unemployment Insurance Act of 1924. The means test had been introduced as a fiscal measure in 1922 by the Conservative government and allowed people to be refused benefits if they lived with relatives or were married persons whose partners were working, etc. The early Labour Party bitterly opposed rules that linked benefit rights to these types of strict paternalistic conditions. As such, the 1924 Act created a statutory right to benefit, to which all workers were entitled regardless of their personal circumstances. However, instead of making the entitlement universal, which was entirely open for them to do so, the Labour government directly correlated it with the claimant having to show they were "genuinely seeking work". Or, in other words, claimants had to produce evidence of their search for work. Seemingly, the intention was to place a form of responsibility on the citizen. Indeed, the administrative body set up to review claims, Local Employment Committees, could refuse such a benefit if they were dissatisfied by claimants' efforts to find a job. It should be acknowledged that some critics have argued that the clause was inserted as a price for parliamentary support, or as a way in which to stem the use of public finances.¹⁰⁰ However, the genuinely seeking work clause can be reframed within the nexus of correlated duties accompanying rights. There was a belief among some within the

¹⁰⁰ W.R. Garside, *British Unemployment 1919–1939* (Cambridge University Press, 2002) 43–45.

minority Labour government that such a measure or duty should exist to ensure society and those “genuinely” out of work were safeguarded from those who were “malingering” and unwilling to contribute to society via work. While advancing the legislation through the House of Lords, and on behalf of the Labour government, Lord Parmoor claimed this obligation to be a “real safeguard”.¹⁰¹ The practical effect of this clause was wholly negative, with the number of individuals who had their benefits disallowed and were put into hardship increasing dramatically.¹⁰² However, despite the policy failure, the principal point advanced is the attempt to correlate the right to unemployment entitlements with creating a sense of obligation to look for work—meeting the claimant’s duty towards society.

Upon re-entry into a minority administration in 1929, the early Labour Party faced another uphill battle regarding unemployment. In trying to give effect to its campaign promise to improve rates and conditions of unemployment entitlements, a new Unemployment Insurance Bill (No.2) 1930 was proposed by the MacDonald government.¹⁰³ However, among the Parliamentary Labour Party (PLP) and trade unions, there had been a backlash to the reinsertion of the “genuinely seeking work” clause—not all believed in social entitlements being attached to such obligations, and there was discontent about its contribution to high rates of benefit denial. Labour Party MP, James Maxton, argued the country had a duty to see that the unemployed had a right to “be maintained decently and in physical conditions”, while a younger Nye Bevan, the later creator of the National Health Service, rallied against the clause.¹⁰⁴ Meanwhile, the trade unions, who contributed to the policy of removing obligations attached to benefits, pressured the second MacDonald administration.¹⁰⁵ Margaret Bondfield, who was responsible for the measure—and, as outlined earlier, subscribed to notions of fellowship—insisted on the claimant having to show evidence of reasonable efforts being made to obtain work.¹⁰⁶ It was only after personal representations were made to

¹⁰¹ HL Debate 24 July 1924 vol 58 col 1006-24.

¹⁰² Nick Riddell, *Labour in Crisis: The Second Labour Government 1929–1931* (Manchester University Press, 1999) 79–81.

¹⁰³ The Labour Party, *General Election Manifesto: Labour's Appeal to the Nation* (The Labour Party, 1929).

¹⁰⁴ HC Debate 16 December 1929 vol 233 col 1083–1145.

¹⁰⁵ *Manchester Guardian* (Manchester, November 16 1929) 12.

¹⁰⁶ Riddell (n 102) 80–81.

MacDonald, by Labour MP Will Thorne and other trade union representatives, that the clause was dropped.¹⁰⁷

Whether the minority Labour government of 1929 wanted to keep the clause because of its belief in a society based on rights and duties, is difficult to conclude. At this point, the historical records do suggest that the political reality and economic struggles meant the advocates for the obligation were in a minority. Parliamentary arithmetic and external pressure forced the MacDonald government to amend the genuinely seeking work clause. The result of this was the right to an unemployment benefit only being denied where a claimant refused suitable employment. This created a more universal benefit without the obligation to prove work was being looked for. According to David Marquand, there is no evidence to suggest that MacDonald himself was opposed to this decision. Instead, he notes that MacDonald's documented papers at this time intensely focused on the difficulties he faced politically and the lack of majority support in Parliament.¹⁰⁸

2.4. The Beginnings of Untrammelled Sovereignty

Alongside the pursuit of an ethical society via rights and duties, there were important developments in relation to sovereignty that would go on to shape the approach to rights. Some critics have suggested that, historically, the Labour Party has provided little substantial thinking on constitutional matters. Instead, it simply accepted the existing British constitution and its accompanying principles.¹⁰⁹ This argument holds weight, to the extent that there was a rejection of radical constitutional ideas—direct action, revolutionary and other violent extra-parliamentary behaviour—in favour of orthodox arrangements and institutions.¹¹⁰ However, it fails to consider the underappreciated, but fundamental, departure key figures in the early Labour Party made from the prevailing

¹⁰⁷ National Archives, PRO 30/69/1176 MacDonald Papers, W. Thorne to Ramsay MacDonald 3 December 1929.

¹⁰⁸ David Marquand, *Ramsay MacDonald* (Richard Cohen Books, 1977) 525.

¹⁰⁹ Barry Jones and Michael Keating, *Labour and the British State* (Clarendon Press, 1985) 2–3; Tony Wright, *Citizens and Subjects: An Essay on British Politics* (Routledge, 1994) 71–72; Ronald Butt, *The Power of Parliament* (Constable, 1969) 113–114.

¹¹⁰ On the rejection of the orthodox constitution by broader socialist movements and some within the early Labour Party, see: Jasper Miles, 'Sovereignty and the State' in Kevin Hickson et al. (ed), *The Struggle for Labour's Soul: Understanding Labour's Political Thought Since 1945* (Routledge, 2018) 145–146, 150–151.

Diceyan view on sovereignty—as advanced by constitutional theorist Albert Venn Dicey. As explained in section 1.2.1, there are many political lenses through which political constitutionalism, its ideas, and tenets can be viewed. This research argues that the early Labour Party and its key figures were ideologically influenced by a socialistic-political constitutionalism. Importantly, this saw the central or common political constitutionalist feature of sovereignty, or parliamentary sovereignty, be reinterpreted as untrammelled sovereignty. Primary source material shows that leading figures understood untrammelled sovereignty to mean two things. Firstly, the *authority* of the elected majority in Parliament, its legislators, and its political and policy agenda derived from the citizenry themselves. Secondly, it also meant the elected majority in Parliament having meaningful, effective, and independent exercise of domestic decision-making. Before providing the legal-historical account that shows support for untrammelled sovereignty, two issues must be addressed. First, is there any academic support for the Labour Party placing their own interpretation on sovereignty and, secondly, is it constitutionally sound to propose a new concept of sovereignty?

While not going as far as this thesis and constructing a concept like untrammelled sovereignty, political historians have broadly given support to the idea that the Labour Party conflated the three accepted notions of sovereignty in the British constitution (popular, parliamentary, and national). As a reminder, popular sovereignty (sovereignty of the people) understands the authority of legislators and the laws that they construct as deriving from the citizenry. In other words, the ultimate source of government legitimacy is the electorate, and their will is expressed through Acts of Parliament. Secondly, parliamentary sovereignty is the traditional Diceyan concept of the Crown in Parliament having the right to make or unmake any law. As such, no person, court, or body is recognised by the law of England as having the right to override, derogate from, or nullify an Act of Parliament. Finally, national (or state) sovereignty refers to the capacity of British legislators to make decisions about domestic law and policies without being subject to external constraints or interference. This is often understood in the context of resisting the imposition of international or supranational laws and institutions. Critics like Jasper Miles claim the Labour Party has historically avoided the consequences of any anomalies between political and legal sovereignty. As a result, they simply asserted the

view that a strong Parliament was required to implement social and economic reform.¹¹¹ Similarly, Barry Jones and Michael Keating suggest that the Labour Party purposely maintained a dubious relationship between popular and parliamentary sovereignty because of its practical benefits. They then cite the example of Labour governments justifying their legislative programme by claiming the will of the people had been clearly expressed in favour of socialism.¹¹² Jose Harris also argues that the idea of “behind parliamentary sovereignty, lay the ‘sovereignty of the common people’” was strongly held within the Labour Party.¹¹³ Despite recognising this, there has been no attempt to categorise the Labour Party’s approach to sovereignty under one term or unified meaning.

It is also constitutionally sound to posit the idea that the Labour Party constructed its own understanding of sovereignty as untrammelled sovereignty. Contemporary discussions of sovereignty and modern-day constitutionalists acknowledge that, despite separate definitions, all three accepted types of sovereignty in the British constitution are either closely linked or imply one another. For example, Martin Loughlin and Stephen Tierney claim that sovereignty contains a set of relations which are both legal and political in nature. The aim is to “present a regulatory sphere that enables to create an autonomous political domain and then to be able to express that in legal terms”. The legal doctrine of parliamentary sovereignty, namely no legal limitations on Parliament, rests on the political dimension of channelling the electorate into institutions.¹¹⁴ Crucially, this tells us that there is the theoretical space to interpret sovereignty, in the British constitution, in a wholly new way.¹¹⁵

¹¹¹ Ibid Miles, 144-145.

¹¹² Jones Keating (n 109) 165.

¹¹³ Jose Harris, ‘Labour’s Political and Social Thought’, in Duncan Tanner et al. (ed), *Labour’s First Century* (Cambridge University Press, 2000) 15. Also see: Paul Ward, *Red Flag and Union Jack Englishness, Patriotism, and the British Left, 1881-1924* (Royal Historical Society, 1998) 76.

¹¹⁴ Martin Loughlin and Stephen Tierney, ‘The Shibboleth of Sovereignty’ (2018) 81 *Modern Law Review* 989. Others have also suggested that popular sovereignty can be equated to parliamentary sovereignty or that national sovereignty has no legal meaning separate from parliamentary or state sovereignty. See: Alison Young, *Sovereignty: Demise, Afterlife, or Partial Resurrection?* (2011) 9 *International Journal of Constitutional Law* 163, 163–171.

¹¹⁵ While not viewed through a political or ideological lens, other academics have supported the recasting or reinterpretation of sovereignty. See: Michael Gordon, *Parliamentary Sovereignty in the UK Constitution* (Bloomsbury, 2015).

2.4.1. The Prevailing View

The British constitution of the late 19th and early 20th century was heavily shaped by the work of Dicey; with his work gaining significant traction among the political class. For example, in a letter to Lord Rosebery, in December 1885, a Liberal politician stated:

If you have not read it already, order *The Law of the Constitution*, by A. V. Dicey. Mr G[ladstone] advised [the Marquis of] H[artington] to read it, and he has done so. It reveals the principle upon which Mr G's mind is working.¹¹⁶

Indeed, Gladstone, when introducing the first Home Rule Bill in the House of Commons, claimed “no work that I have read brings out in a more distinct and emphatic manner the peculiarity of the British Constitution”.¹¹⁷ Moreover, judges began to cite Dicey’s infamous *Introduction to the Study of the Law of the Constitution* (LOTC) and reviews of Dicey’s work concluded that few books have had comparable influence on how the British constitution is understood.¹¹⁸ This was but the beginning of Dicey’s LOTC substantively shaping constitutional debate and scholarship.

It is not the intention of this research to engage deeply with Dicey’s work, only to the extent that it provides evidence for key figures in the early Labour Party reinterpreting or departing from his version of sovereignty. Also, it is widely acknowledged that some of Dicey’s work was underdeveloped, contradictory, and shifted during his lifetime. What’s more, contemporary constitutionalists have interpreted Dicey’s work in different ways—with large amounts remaining open to question and reformulation.¹¹⁹ With these considerations in mind, I will propose three points of reference that will significantly narrow and help to analyse Dicey’s understanding of sovereignty and, subsequently, the early Labour Party’s reinterpretation. These include where authority lies in the state, what Parliament is, and how sovereignty through

¹¹⁶ James Kirby, ‘A.V Dicey and English Constitutionalism’ (2019) 45 *History of European Ideas* 33, 34.

¹¹⁷ HC Debate 8 April 1886 vol 304 col 1036–1048.

¹¹⁸ *Walker v. Baird* [1892] A.C. 491; *De Keyser’s Royal Hotel v. The King* [1919] 2 Ch. 197 (C.A.), 203, 205; *Johnson v. Pedlar* [1921] 2 A.C. 262 (H.L.), 264–265; Felix Frankfurter, ‘Foreword’ (1938) 47 *Yale Law Journal* 517.

¹¹⁹ For a complete historiography on Dicey’s work and differing contemporary analysis, see: Mark Walters, *A.V. Dicey and the Common Law Constitutional Tradition: A Legal Turn of Mind* (Cambridge University Press, 2020); Gordon (n 115).

Parliament is to be exercised. Importantly, running as a golden thread between the three reference points was Dicey's *sharp* distinction between legal and political.¹²⁰

Firstly, Dicey did not offer a detailed or complex theory of the state. But scattered across different publications was an embryonic view of the state that was closely connected to ideas of legality. More specifically, Dicey believed that when the personal authority of the King had been turned into the sovereignty of the King in Parliament—King, House of Lords, and elected representatives of the House of Commons—it, among other things, “preserved intact and undiminished the supreme authority of the State”.¹²¹ For Dicey, the ultimate authority of the state resided in Parliament and the laws it created:

the triumph of law was due to the acknowledged supremacy of the King in Parliament which itself was due to the mode in which the King, acting together with the two houses, manifestly represented the nation, and therefore was able to wield the whole moral authority of the state.¹²²

What's more, Dicey also claimed the “the moral basis of the constitution” was the:

...maintenance of the supremacy of the whole State, and the use of that supremacy for the purpose of securing to every citizen, whether rich or poor, the rights of liberty and of property conferred upon him by law.¹²³

Although, it should be recognised that Dicey did understand Parliament, *as a matter of fact*, to be controlled by the will of the electorate. In *LOTC*, he claimed: “the will of the electorate... is sure ultimately to prevail on all subjects to be determined by the British government” and “the electors can in the long run always enforce their will”.¹²⁴ While this made sense politically and logistically, for Dicey, Parliament—its legislation and laws—excluded any direct connection to the electorate. The will of the electorate was confined to deciding elections and not the issues of the day.¹²⁵ More specifically, no Act passed in law gained its authority from, or could be justified on the grounds of, electoral consent.

¹²⁰ Dicey's *LOTC* ran to eight editions from 1885 to 1915, with two posthumous editions released in 1959. For completeness this section draws on both the 1885 and 1915 editions. See: A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (Macmillan, 1885); A.V. Dicey, *Introduction to the study of the Law of the Constitution* (first edition 1885, Macmillan, 1915).

¹²¹ Ibid Dicey, *LOTC 1885*, 397; Ibid Dicey, *LOTC 1915*, 466.

¹²² Ibid Dicey, *LOTC 1885*, 285-286; Ibid Dicey, *LOTC 1915*, 307.

¹²³ A.V. Dicey, *England's Case against Home Rule* (John Murray, 1886) 289-290.

¹²⁴ Ibid Dicey *LOTC 1885* (n 120), 73, 67, 360; Ibid Dicey *LOTC 1915* (n 120), 72, 426.

¹²⁵ Ibid Dicey *LOTC 1885*, 59; Ibid, *Dicey LOTC 1915*, 57.

The locus of authority was not to be found in the electorate or by reference to the citizenry, but the King in the Parliament and the laws it made.

Secondly, Dicey subsequently chose to characterise the sovereignty that Parliament exercised as a legal concept that was the ordinary product of the law. Or, in Dicey's own words, parliamentary sovereignty is a principle of the "law of England".¹²⁶ As such, the body whose rules were enforced by the courts was understood to be the legal sovereign body. This legal sovereignty excluded all political notions by not being defined by its relationship with the electorate, but rather by the courts' recognition of its commands as law.¹²⁷ In this way, the law preceded sovereignty as opposed to being the product of it. Some of his contemporaries, like Sir Ivor Jennings—who was affiliated with and produced policy papers for the early the Labour Party, up until 1936—argued that Dicey's conception was not sovereignty or a supreme power. Instead, "it is a legal concept, a form of expression which lawyers use to express the relations between Parliament and the courts".¹²⁸

Third, Dicey's understanding of sovereignty as a legal concept, arguably, created internal limitations to its own exercise. Indeed, Dicey himself claimed "the internal limit to the exercise of sovereignty arises from the nature of sovereign power itself".¹²⁹ Of course, this might seem counter intuitive to the well-known, widely advanced, position espoused by Dicey that Parliament has the "right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament".¹³⁰ But critics, like Mark Walters—through extensive study of Dicey's published and unpublished manuscripts—have argued the nature of this unlimited legal sovereignty was, in fact, legally conditioned. This is because Parliament was a legal body defined by law, parliamentary sovereignty was a legal principle, and the exercise of sovereignty strictly pertaining to law-making among Parliament's constituent parts.¹³¹ A closer reading of Dicey's version of parliamentary sovereignty, arguably, show legal qualities that tempered its use and, importantly, its use

¹²⁶ Ibid Dicey *LOTC 1885*, 35; Ibid Dicey *LOTC 1915*, 37.

¹²⁷ Walters (119) 37-40, 180.

¹²⁸ William Ivor Jennings, *The Law and the Constitution* (University of London Press, 1933) 119. On Jennings's affiliation and work with the Labour Party, see: A. W Bradley, 'Sir William Ivor Jennings: A Centennial Paper' (2004) 67 *Modern Law Review* 722.

¹²⁹ Ibid Dicey *LOTC 1885* (n 120), 73-74; Ibid Dicey *LOTC 1915* (n 120), 77-78.

¹³⁰ Ibid Dicey *LOTC 1885*, 35; Ibid Dicey *LOTC 1915*, 36-37.

¹³¹ Walters (n 119).

for *political ends*. This resulted in, firstly, a general limitation to its own exercise and, secondly, inherent practical constraints, beyond the self-imposed limits of the people authorised to exercise sovereignty, that were legal in character. For example, Dicey's formulation of sovereignty placed great importance on judicial authority. He claimed once a bill passed into statute it immediately became subject to judicial interpretation. This on its own is relatively uncontroversial. However, Dicey did not stop there. He went on to argue judges would not be able to construe Acts in accordance with political intent. More specifically, Dicey claimed the judiciary would "take no notice of the resolutions of either House, of anything which may have passed in debate", or "changes which a Bill may have undergone between the moment of its first introduction to Parliament and of it receiving the Royal assent".¹³² For Dicey, this method, firstly, in his own words, ensured the "fixity" or paramountcy of the law and, secondly, implied a limitation to legislation being viewed in light of political intention and then being implemented.¹³³ Secondly, Dicey's version of parliamentary sovereignty prevented the House of Commons—the elected majority within—from, unilaterally, exercising sovereignty or executing and administering laws. More specifically, to temper the political authority of the House of Commons, Dicey sought to disperse sovereign power between all the components of Parliament.¹³⁴ At the time of Dicey writing *LOTC*, there were no Parliament Acts, which meant other constituent parts of Parliament, like the House of Lords, could play a significant role in moderating the political agenda of the elected majority in the House of Commons—as they did with the Liberal Party's "People's Budget" of 1909. Dicey claimed that only with the consent of all branches could legislation be passed. More specifically, "commands of Parliament" could be "uttered only through the combined action of its three-constituent parts".¹³⁵ In this way, an express implication of Dicey's theory was that the elected majority in Parliament was not meant to do anything except make negotiated laws alongside the other constituent parts of Parliament.

Of course, Dicey was not just a strict legal jurist. Due to Dicey's background and affiliation with Whig politics, academics like Jennings et al accused his constitutional

¹³² Ibid Dicey *LOTC 1885* (n 120), 407–408; Ibid Dicey *LOTC 1915* (n 120), 403–404.

¹³³ Ibid.

¹³⁴ Ibid Dicey, *LOTC 1885*, 408–410; Ibid Dicey, *LOTC 1915*, 404–405.

¹³⁵ Ibid Dicey, *LOTC 1915*, 407.

work of being politically driven.¹³⁶ More specifically, they believed it reflected a Whiggish ethos and political thought that had a static view of the British constitution, put law above government, and resisted prerogative power in favour of liberty.¹³⁷ This, it was suggested, led Dicey to strictly separate his constitutional concepts, like parliamentary sovereignty, away from political motives or forces.¹³⁸ But Dicey often liked to remind people that he was writing from a mid-Victorian perspective. For example, when responding to the interventionist ideas of new Liberals and the early Labour Party, he claimed the power of the state was being used to tamper with the social order. Tellingly, Dicey suggested the problem was that people failed to understand the essence of the constitution and, instead, were using parliamentary sovereignty as an instrument for “democratic despotism”.¹³⁹

Overall, Dicey’s version of sovereignty can be understood as something that excluded any authoritative connection with the electorate, diffused political power across all branches of Parliament, placed great weight on judicial authority, and looked to safeguard individual freedom.

2.4.2. Reinterpretation: Untrammelled Sovereignty

With Dicey’s position set out above, it now becomes easier to track how key figures in the early Labour Party reinterpreted sovereignty—especially against the three reference points of where authority lies in the state, what Parliament is, and how sovereignty through Parliament is to be exercised. Ultimately, this section will show how leading figures began to equate the sovereignty of the people with the authority of the elected majority in Parliament and, importantly, the elected majority in Parliament having total or unilateral control over political and domestic decision-making. To better understand

¹³⁶ Sir Ivor Jennings, ‘In Praise of Dicey’ (1935) XIII *Public Administration* 128; Sir Ivor Jennings, ‘The Institutional Theory’ in *Modern Theories of Law* (Oxford University Press, 1933) 70-71; W.A Robson, ‘Dicey’s Law of the Constitution: A Review’ (1939) 9 *Michigan Law Review* 38.

¹³⁷ In 1690, one Whig claimed: “Parliament is the Foundation and Basis for Government, and consequently of the Peace and Happiness of the Kingdom; as it creates the Law by which we are ruled and governed in Peace and Quietness; so it preserves the Law in Power and Authority”. For more on this and how Whigs viewed the British constitution, see: George Patyt, *Lex Parliamentaria: Or a Treatise of the Laws and Custom of the Parliaments of England [1690]* (Henry Lintot, 1748) 50-49; H. T. Dickinson, ‘The Eighteenth-Century Debate on the Sovereignty of Parliament’ (1976) 26 *Transactions of the Royal Historical Society* 189; Sheldon Amos, *Fifty Years of the English Constitution, 1830–1880* (Longmans, Green & Co., 1880).

¹³⁸ Jennings (n 128) 330–346.

¹³⁹ A.V. Dicey, *Law and the Public Opinion in England* (first published in 1905, Routledge, 1981).

this, one must consider MacDonald's work. MacDonald's reputation as an intellectual and theorist also extended to his ideas on sovereignty. Compared to his contemporaries in the early Labour Party, he provided the most sophisticated account. This went on to heavily shape the political and constitutional thought of others in the early Labour Party and beyond—as this section and the following chapter will show.

First, unlike Dicey, MacDonald was detailed in his explanation of where he believed the state's authority derived from. The state, for MacDonald, was understood as different political organs, performing different functions, and, importantly, an organic unity of all members of the community (or society)—that subsequently acted in a political capacity for said community.¹⁴⁰ Importantly, MacDonald goes on to identify the true source of authority in the state. He placed great importance on the idea of a “common” and “general” will—or, in other words, a unified social consciousness within the state.¹⁴¹ This unified social consciousness was, according to MacDonald, embodied in the institutional structures of the state. Consequently, acts that occur within said structures were equated to acts of the will of the whole community.¹⁴² Critics suggest the reason MacDonald theorised in this way was so that the state could act unitarily to express the will of the whole society.¹⁴³ From here, MacDonald went on to support sovereignty in popular terms. He claimed the elected majority in Parliament derived its power from, and was representative of, the unified will of electors and, therefore, the institution of Parliament was where “direct action” of the people could come into play. More specifically, with structures of representative democracy, the state could become the direct vehicle for popular will.¹⁴⁴ MacDonald then goes on to stress that all government rested on consent. Through representative institutions, “the opinion which restrained rulers” now becomes “the opinion which initiates legislation”.¹⁴⁵ People would now be able to exercise sovereign authority directly, as the state was no longer “external” to the community.¹⁴⁶

Secondly, the link between the consciousness of the people and political institutions, like Parliament, saw MacDonald put forward a different conception of

¹⁴⁰ MacDonald (n 2) 133.

¹⁴¹ Ibid, 77-78.

¹⁴² Ibid.

¹⁴³ Ibid Meadowcroft (n 3) 187.

¹⁴⁴ Ramsay MacDonald, *Parliament and Government* (National Labour Press, 1919) 69–70; MacDonald (n 2) xviii, 7–8; MacDonald, (n 29) 3–4, 10,12, 23-28, 37, 78.

¹⁴⁵ MacDonald (n 29) 23-28.

¹⁴⁶ MacDonald (n 2) 71.

Parliament and sovereignty to Dicey. With Parliament now embodying the people's will, it could proceed to positively reform the material and moral health of its citizens—which MacDonald believed to be its duty.¹⁴⁷ In other words, it allowed MacDonald to justify the House of Commons or the elected majority in Parliament to unilaterally use parliamentary machinery. A natural consequence of this was MacDonald's resistance towards efforts that restricted the popular will being achieved through Parliament and government. For example, he railed against a second house that could delay, block, or oblige majority in the House of Commons to introduce major innovations. Instead, he supported a single sovereign legislature.¹⁴⁸ MacDonald was firm in his rejection of constitutional checks, he claimed:

bills should not be discussed in two different Houses representatives of two different bodies of social impulse, but in one, representative of all the interests and all the impulses.¹⁴⁹

With MacDonald claiming all political authority was to be concentrated with the elected majority in Parliament, he went on to advance ideas that would have made Parliament more efficient and effective, e.g., longer parliamentary years and a more conventional working day to maximise efficiency.¹⁵⁰ Robert Taylor argues this was driven by a concern about the ends of parliamentary reform and not simply the means, “more bills and more businesslike MPs would deliver the socialist state in a way which the traditional package of electoral reform could not”.¹⁵¹ Indeed, MacDonald continuously made this point. He claimed where a socialist government “has the country behind it” it “will give us all the power that Lenin had to get by revolution, and such a majority can proceed to effect the transition from Capitalism to Socialism”.¹⁵² For MacDonald, “the approach to socialism is always by the parliamentary method. Step by step we shall go...”.¹⁵³

There were aspects of MacDonald's theory that would distinguish him from other and future leading figures in the Labour Party. Namely, it was his belief that the elected

¹⁴⁷ MacDonald (n 2) 12.

¹⁴⁸ MacDonald (n 2) 73.

¹⁴⁹ Ibid, 71.

¹⁵⁰ Ibid, 153; Ramsay MacDonald, *The Social Unrest: Its Cause Solution* (T.N Foulis, 1913) 108; Taylor (n 7) 155.

¹⁵¹ Ibid Taylor.

¹⁵² Dorey (n 1) 54, 155.

¹⁵³ MacDonald, *The Socialist Movement* (n 4) 112.

majority in Parliament also had to consider the views of the minority or other parties in the House of Commons. This was primarily motivated by MacDonald's commitment to the institutions of the state embodying the *entire* life of the whole community. Or, in other words, representative institutions had to reflect the will of the social whole.¹⁵⁴ For those in the later Attlee government, achieving a majority in Parliament did not mean having to take into account minority views in Parliament.

To summarise, for MacDonald, all authority resides in the community or the unified social consciousness. But this power would be impotent unless it was able to find institutional expression. MacDonald therefore makes Parliament—the House of Commons or elected majority within—the instrument for effecting the will of a state. Of course, the people cannot govern themselves, but they are able to delegate through elections and the business of government. Parliament therefore becomes the institution that directly channels the people and, importantly, derives a right to exercise sovereign power. In this way, MacDonald directly links popular notions of sovereignty to representative government. Finally, because of this, there is an insistence that social and economic good is pursued through legislative action.

While not entering into detail like MacDonald, similar ideas or themes can be traced across other leading figures of the early Labour Party. In 1920, when campaigning against a Liberal-Conservative coalition housing policy that weakened rent control, John Wheatley claimed "the voice of the people is the voice of Parliament and however much we may hate a law we must obey that law because it expresses the will of the people".¹⁵⁵ Tellingly, when suggesting that Acts of Parliament were a direct expression of popular will, Wheatley also argued there would be no mandate to pursue legislative initiatives if it did not have electoral consent. For example, in relation to the changes to rent control, Wheatley stated:

but what is our duty if a law is made – not only without popular sanction – but in direct violation of the conditions on which its members were sent to Parliament? Surely we owe no allegiance whether our respect to Members of Parliament as individual divested of their representative capacity? When they exceed their authority derived from the people they have no authority.¹⁵⁶

¹⁵⁴ MacDonald (n 29) 79-91.

¹⁵⁵ Ian Wood, *John Wheatley* (Manchester University Press, 1990) 84.

¹⁵⁶ *Ibid.*

Similarly, Clynes also advanced notions of untrammelled sovereignty. When dismissing radical constitutional methods of communism, Clynes supported the idea of popular consent. He argued:

we must advance by consent and gather force that will endure for the reason that people have signified their approval of our conceptions of national law, international relations and social needs.¹⁵⁷

What's more, Clynes argued that the work of the Labour Party was to get elected and be an institutional expression of a broader moral cause.¹⁵⁸ In the general election of 1910, Clynes put to voters that they should, via electing Labour Party MPs, "capture the legislative machine" so that Parliament could be an expression of the people.¹⁵⁹ Lastly, Tawney acknowledged that socialists had accepted the structures of democratic self-government and popular sovereignty, where "the people" would use the House of Commons.¹⁶⁰ Tawney also specifically rejected the Marxist view of Parliament being an agent of the capitalistic class and, ultimately, socialism not coming about through its existing structures. Instead, Tawney claimed, "the state [its institutions is an importance instrument" and "sensible and decent men will use it for ends which are decent and sensible".¹⁶¹ These comments, whether directly or indirectly, aligned with the Labour Party's primary concern of securing an elected majority in Parliament so that it could implement socialism.

Similarly, support for the elected majority in Parliament having the freedom to implement its legislative and policy agenda became a baseline of thinking for others in the early Labour Party. For example, Arthur Henderson, temporary leader during the Great War years, claimed the change the Labour Party sought to bring was:

in the attitude of Parliament towards questions of social reform, a speeding up of the legislative machine, a resolute independence on the part of the Labour Party in Parliament.¹⁶²

¹⁵⁷ Labour Party, OTLC Annual Report (Labour Party, 1903) 13.

¹⁵⁸ Ibid.

¹⁵⁹ Taylor (n 7) 28–30.

¹⁶⁰ Jonathan Clark, *Ideas and Politics in Modern Britain* (Macmillan, 1990) 35.

¹⁶¹ Anthony Wright, *R.H Tawney* (Manchester University Press, 1988) 113.

¹⁶² Arthur Henderson, *Aims Of Labour* (Third Printing, 1919) 72–74.

Henderson was firm in his belief that Parliament could be made to legislate for the good of the people rather than for the benefit of certain classes.¹⁶³ Lansbury, meanwhile, accepted Parliament's role in making the lives of people better and the representation it could provide for the working class. He often claimed that was why he continued to stay within the institution and stand as an MP.¹⁶⁴ This approach was reflected in the 1919 policy programme *Labour and the New Social Order*—which was committed to socialistic measures, like public ownership, specifically through the House of Commons.¹⁶⁵

Critics, like Ralph Miliband, have argued the Labour Party “fervently believed in the continued validity of parliamentary government as a means of achieving the new society they declared to be their aim”.¹⁶⁶ While others, like Richard Toye, suggest for those in the early Labour Party, Parliament was doubtless viewed as the tool for implementing the will of the electoral majority.¹⁶⁷ Similarly, Peter Dorey has claimed “...a majority of seats in the House of Commons was sufficient to effect important social and economic changes beneficial to ordinary British people” and there was a high support for “securing a parliamentary majority” which was “deemed the key to implementing Labour’s policies.”¹⁶⁸ Overall, untrammelled sovereignty, as understood, was seen as politically and constitutionally justified.

2.5. Untrammelled Sovereignty and Shaping the Approach to Rights

Like Dicey’s legal construction of sovereignty, the early Labour Party’s creation of untrammelled sovereignty had natural and express implications. For example, there was the creation of a distinct kind of anti-judicial constitutionalism, a rejection of written or codified documents, and a deep scepticism towards supranational or external oversight over the elected majority in Parliament. Taken as a whole, this began to shape the approach to rights or rights-based issues.

¹⁶³ Ibid.

¹⁶⁴ Schneer (n 51) 23–35.

¹⁶⁵ Labour Party, *Labour and the New Social Order* (Labour Party, 1919).

¹⁶⁶ Ralph Miliband, *Parliamentary Socialism: A Study in the Politics of Labour* (Allen and Unwin, 1961) 62.

¹⁶⁷ Richard Toye, ‘Perfectly Parliamentary’? The Labour Party and the House of Commons in the Inter-war Years’ (2014) 25 *Twentieth Century British History* 1, 6.

¹⁶⁸ Dorey (n 1) 4, 14.

2.5.1. An Anti-Judicial Constitutionalism

A belief in untrammelled sovereignty saw a distinct form of anti-judicial constitutionalism being created, with the aim of furthering the elected majority in Parliament's ability to legislate in a variety of social and economic areas. For key figures of the early Labour Party, the domestic judicial and legal system represented a regressive and anti-democratic impediment to socialistic policies and, as such, they could not be trusted to determine key issues. These views were formed for good reason.

Firstly, between 1900 and 1929, social causes or matters of public interest were often met with hostility and interpreted to be incompatible with laissez-faire values. For example, Sir Ivor Jennings studied housing legislation pertaining to slum clearance laws up until the 1930s. He found that judges would assume the complete liberty of the landowner to use their land as they wanted, subject to only the laws of nuisance. As such, any landowner would be free to reject any public-facing policy in relation to their housing.¹⁶⁹ Secondly, the hostility to social matters did not confine itself to legislative interpretation by the judiciary. Where issues pertaining to the working class arose before the courts, adequate protection was not forthcoming. The *Taffe Vale* case was an example of the judicial system supporting capital at the expense of workers' rights and trade unions. Domestic judges had disturbed settled law, which prevented trade unions from being sued by employers for strike action. Following this decision, trade unions were liable under the common law for employers' loss of profits that resulted from strike action.¹⁷⁰ In response, a statement from the early Labour Party commented that the case was "an attempt to restrain" trade union action so that "its power to protect the workman will be but a shadow".¹⁷¹ MacDonald personally criticised the decision by stating "trade unionism is being assaulted, not by what the law says of it, but by what judges think the law ought to say of it". He continued:

that being so, it becomes necessary for unions to place men in the House of Commons to challenge decisions which I have no doubt will follow this.¹⁷²

¹⁶⁹ Sir Ivor Jennings, 'Courts and Administrative Law—The Experience of English Housing Legislation' (1936) 49 *Harvard Law Review* 426.

¹⁷⁰ *Taff Vale Railway Co v Amalgamated Society of Railway Servants* [1901] AC 426.

¹⁷¹ Labour Representation Committee, 'Report of the Second Annual Conference' (*Labour Party*, 1902)

¹⁷² Marquand (n 108) 75.

Not only did MacDonald criticise the judiciary for their actions, but he explicitly put his faith in Parliament as the institution that could remedy such judgments and enact social change. Similarly, Clynes also took aim at a hostile judiciary over *Taffe Vale* and the *Osborne* judgment – which threatened the freedom of affiliated trade unions to finance the Labour Party and field or support parliamentary candidates.¹⁷³ In response, Clynes called for a reversal of such decisions through parliamentary action. More specifically, Clynes supported the Trades Dispute Act 1906 – which prevented unions from being sued for strike action—as a way to “liberate the various trade unions from the restraints and fears imposed upon them”.¹⁷⁴ In light of *Osborne*, Clynes reflected that it was vital the Labour Party was in Parliament. The judgment reinforced his opinion that it was “parliamentary action” that came closest to the “workshop and work of everyday men”.¹⁷⁵

Moreover, over the course of the 1920s and 1930s, domestic judges had increasingly used the public law principle of ultra vires obstructively and riddled judgments with loaded language and class assumptions in relation to social legislation. For example, Poplar Borough Council’s minimum wage was subject to legal challenge and restriction, the general strike of 1926 was ruled to be illegal by Mr Justice Astbury, and even tax statutes were construed as to protect civil liberties and helped the wealthy to avoid much of their tax burden.¹⁷⁶ Lansbury observed that, under a capitalist system, the legal system performed like a service. He stated:

organised labour should understand that in the courts of law all the scales are weighed against us because all the judges administer class-made laws which are expressly enacted not to do justice but to preserve the present social order.¹⁷⁷

Like his contemporaries in the early Labour Party, Lansbury fed into the developing anti-judicial constitutionalism with positions like this.

Overall, there was an acute distrust of the judicial system. Leading early Labour Party figures rejected the judiciary having any say over social, economic, or any other major policy issues. Instead, it was seen as better to have a strong elected majority in

¹⁷³ *Amalgamated Society of Railway Servants v Osborne* [1910] AC 87.

¹⁷⁴ Labour Party, OCTL Annual Report (Labour Party, 1910) 7–9.

¹⁷⁵ *Ibid.*

¹⁷⁶ *Roberts v Hopwood* [1925] AC 578; *National Sailors and Fireman’s Union of GB v Reed* [1926] Ch 536; *IRC v Duke of Westminster* [1936] AC 1.

¹⁷⁷ *Schneer* (n 51) 57.

Parliament that could enact social and economic change for the benefit of working people. Importantly, the impression given by these key early Labour Party figures was that the judiciary should not stray beyond what was intended by the elected majority in Parliament. By this I mean there was a desire to restrict the judiciary to a formal plain and uphold legislation and decisions taken within the democratic process.

2.5.2. A Rejection of Codified Documents

The commitment to untrammelled sovereignty also meant a total rejection of codified documents. Firstly, MacDonald made a series of conceptual criticisms of codification when commenting on the United States and French constitutions—both of which include bills or declarations of rights.¹⁷⁸ For MacDonald, these documents were undemocratic as they excluded all notions of popular sovereignty. More specifically, he suggested any theories around sovereignty of the people would be subject to limitations within the context of these types of documents. He argued that the founding fathers of the United States constitution went just as far to limit democracy as to proclaim it by creating a written set of entitlements.¹⁷⁹ While the:

French Revolution did not include democracy. Rousseau's theoretical sovereignty of the people was to be made subject to important limitations, and it was to control practical policy only at odd moments of sentimental fervour.¹⁸⁰

The suggestion is that codified constitutions were more democratically restrictive than enabling. Crucially, they did not represent the will of the electorate. Secondly, MacDonald went on to argue that these codified documents had “laws of their own being” and they “fulfilled themselves”.¹⁸¹ By this, MacDonald believed they had a distinctive set of rules that were separate from the rest. He suggested they turned “into the very things their authors disclaimed... Man acts; natural law fulfils his action.”¹⁸² This can be interpreted to mean MacDonald viewed such documents as possessive and inalienable entitlements that protect individualistic acts. Finally, MacDonald suggests that these codified

¹⁷⁸ MacDonald, *The Socialist Movement* (n 4) 25-26.

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Ibid.

constitutional arrangements would fail to look after the well-being of the whole community. Instead, he argued in support of popular sovereignty – or, in other words, the “the will of the community directly expressed by majority rule”.¹⁸³ This conceptual analysis was concluded by restating that it was political sovereignty alone that made institutions and acts the most democratic.¹⁸⁴

MacDonald also made some practical arguments against codification. He criticised written documents or bills for being at the mercy of an enormous amount of “committee men, bureaucrats, and special judiciaries”.¹⁸⁵ This, he thought, would complicate the law and lead to problems in relation to judicial interpretation. Overall, he believed that a written or codified document would divide society and fail to ensure that the will of Parliament was kept aligned with the will of the masses.¹⁸⁶ In other words, MacDonald believed his understanding of popular sovereignty would be undermined by such arrangements. Similarly, Tawney made practical arguments against codified documents. He claimed that the American “crystallisation of principles”, via the United States constitution, led to a rigidity of an “iron jacket”.¹⁸⁷ Such arrangements, according to Tawney, ensured that the idea of freedom would be used by a “business aristocracy” to blind social movements—democratic laws could not be made when confined by written rules.¹⁸⁸

Lastly, similar views were taken by academics who were associated and had relationships with key figures in the early Labour Party. This included Harold Laski, future Chairman of the Labour Party, and Jennings.¹⁸⁹ Both agreed that, firstly, the interpretation and protection of codified documents would lead to a usurpation by judicial authorities; whereby they performed a function which did not belong to them. For example, reference was made to social legislation in the United States—which looked to deal with matters of working hours, a minimum wage, and workmen compensation—being stifled by the Supreme Court due to incompatibility with the 4th and 5th Amendment. Both Laski and Jennings supported the resolution of policy disputes between those elected and the

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Ramsay MacDonald, *Parliament and Democracy* (L. Parsons, 1920) 23, 28-29.

¹⁸⁶ Ibid.

¹⁸⁷ Tawney (n 12) 22.

¹⁸⁸ Ibid.

¹⁸⁹ On the ties between these academics and the Labour Party, see: Matt Beech and Kevin Hickson, ‘Harold Laski’ in *Labour’s Thinkers: The Intellectual Roots of Labour from Tawney to Gordon Brown* (Bloomsbury Collections, 2007) 58–76; Bradley (n 134)

electors.¹⁹⁰ Further, they claimed it was inevitable that any codified entitlement would have to be subject to some limitations, whether public interest or national emergencies. As such, the absolutism of codified documents was unrealistic.¹⁹¹

Overall, there was a clear undercurrent of thinking, within and around key figures of the early Labour Party, in relation to the rejection of codified documents.

2.5.3. Non-Interference by External Actors

The support for the elected majority in Parliament, as an expression of the people's will and having the freedom to pursue its aims, also began to set the preliminary boundaries for how acceptable it was for domestic affairs to be impacted and curtailed by the international and supranational realm. Critics have already recognised that the Labour Party believed their socialistic ideas, which stemmed from decades of customs and traditions and designed alongside legitimate domestic actors (e.g., trade unions), should not be subject to external influence.¹⁹² This, coupled with a commitment to untrammelled sovereignty, saw a strong desire to avoid commanding voices over areas of domestic policy.

But before explaining how the commitment to non-interference by external bodies developed, it important to note, as Rhianon Vickers and Stephen Howe have argued, there were several leading figures in the early Labour Party who always had the desire to cooperate with other sovereign states within some kind of international or supranational system.¹⁹³ Indeed, some even supported the pooling of sovereignty and alternative international institutions beyond Parliament. Henderson, for example, was a genuine internationalist, who "invested his faith" in international bodies, like the League of Nations (the League). The League, the first supranational body of its kind, was a complicated institution and tasked with handling political problems including security, intellectual cooperation, and humanitarian work. Henderson, similarly, saw it as an

¹⁹⁰ Harold Laski, *A Grammar of Politics* (George Allen & Unwin, 1925) 134-138; Jennings (n 117) 255-270.

¹⁹¹ Ibid.

¹⁹² Alan Campbell, 'The Post-War Compromise: Mapping Out Industrial Politics 1925 - 64' in Nina Fisherman et al (ed), *British Trade Unions and Industrial Politics: the Post War Compromise 1945- 64* (Ashgate, 1999) 70.

¹⁹³ Rhianon Vickers, *The Labour Party and the World: The Evolution of Labour's Foreign Policy 1900-51 Vol.1* (Manchester University Press, 2004) 87; Stephen Howe, 'Labour and International Affairs' in Duncan Tanner et al (ed), *Labour's First Century* (Cambridge University Press, 2000) 119-123.

“alternative to unfettered national sovereignty” and an “extension of the concept implicit in the Socialist International”. Meanwhile, Lansbury has been recorded as being an “uncompromising internationalist”.¹⁹⁴

Despite some advancing these utopian ideas of international harmony and pooling of sovereignty, a different strand of thinking also developed. Some in the early Labour Party began to show that its commitment to cooperation beyond its borders would not be at the expense of its national barriers and autonomous decision-making. In 1907, Keir Hardie emphasised the priority of domestic policy, suggesting to the PLP that foreign affairs and cooperation were incidental to the real work of the party.¹⁹⁵ MacDonald, who wanted to use British institutions to enact social reform, also consistently put the interests of the nation state first. Writing in favour of this, MacDonald argued it was vital the nation retained its authority to coordinate various functions and have the capacity to adjust accordingly where those functions changed in nature. He claimed that even where the government delegated some of its functions to other bodies, domestic industrial organisations or otherwise, it had to maintain the final word. If this did not happen, different bodies would act according to their own interests.¹⁹⁶ Crucially, the impression given by MacDonald on this issue was that the elected majority in Parliament had to be sovereign over all domestic affairs. The pursuit of socialism, for some, had become synonymous with the national rather than international.

Recognising that domestic objectives and policy could be impacted by the international sphere, the minority Labour government of 1924 resisted external obligations that affected industrial work and employment rates. Against the international principle of disarmament, to which the minority Labour government had pledged itself, MacDonald decided to continue with the building of five replacement Navy cruisers. He justified this on grounds of domestic policy, claiming the continuation of building would prevent mass unemployment in the navel yards.¹⁹⁷ In the same year, clearly influenced by such events, MacDonald explained in an interview with the *Spectator* magazine that:

¹⁹⁴ F.M. Leventhal, *Arthur Henderson* (Manchester University Press, 1989) 178, 219; Shepard (n 3) 67–68.

¹⁹⁵ Labour Party, *Parliamentary Labour Party Conference Report 1907* (Labour Party, 1907) 38.

¹⁹⁶ Ramsay, MacDonald, *Parliament and Democracy* (National Press Limited, 1920) 31–35.

¹⁹⁷ Vickers (n 193).

in domestic affairs, we and our own wills alone are concerned; in foreign affairs, the convenience and policy, the opinion and wills of foreign Governments have to be taken into account.¹⁹⁸

The desire to retain control over national affairs was also evident in the supranational sphere and, more specifically, in the context of the League. While the early Labour Party was not in government during the League's negotiation and formation, there were internal discussions and debates about a supranational peace organisation. In 1917, Sidney Webb, of the Fabian Society, drafted for the early Labour Party a memorandum which called for a supranational authority that included an international high court, legislature that drew from member states, and a collective security pact.¹⁹⁹ However, MacDonald criticised the report and the League of Nations—labelling such ideas as an “American notion”.²⁰⁰ This can be interpreted to mean a resistance to pooling of resources across a set of integrated or federated states. Instead, he claimed this was extraneous to the important task facing working-class parties, of how to secure popular control over the conduct of democracies—or, in other words, how to achieve power domestically.²⁰¹ This showed MacDonald's somewhat ambivalence and scepticism towards the League and its potential to impose external standards on domestic issues. Indeed, GDH Cole, the socialist intellectual, observed “we have Mr Ramsay MacDonald and his like practically claiming the doctrine of state sovereignty as a justification of state socialism”.²⁰²

Overall, the principal point made is that as key figures in the early Labour Party became more committed to untrammelled sovereignty, they became equally committed to the maintenance of the nation state and national control of policy. Of course, this was not an entirely dominant view among the entire early Labour Party—but it was consequential. Also, while this position remained untested within the context of international or supranational rights during the period covered in this chapter, it was nonetheless a natural implication of being committed to untrammelled sovereignty. One that would go on to influence future key figures of the Labour Party and, importantly, the

¹⁹⁸ John Shepherd, ‘A Gentleman at the Foreign Office: Influences shaping Ramsay MacDonald's Internationalism in 1924’ in Paul Corthorn and Jonathan Davis (ed), *The British Labour Party and the Wider World* (I.B. Tauris, 2008) 25–48.

¹⁹⁹ P. Pugh, *Educate Agitate, Organise: 100 Years of Fabian Socialism* (Methven, 1984) 137–138.

²⁰⁰ R.M. Douglas, *The Labour Party, Nationalism and Internationalism 1939–1951* (Routledge, 2004) 22.

²⁰¹ *Ibid.*

²⁰² David Goodway (ed), *Towards a Libertarian Socialism: Reflections on the British Labour Party and European Working-Class Movement* (AK Press, 2021) 72.

Clement Attlee's government. More specifically, there was a broad disinterest and distrust, not about international cooperation, but about supranational organisations or arrangements that had the capacity to impede socialistic aims at home.

2.6. Conclusion

In this chapter I have successfully traced a range of foundational ideas in relation to the nature of society and untrammelled sovereignty; in addition to how this shaped the early approach to rights or rights-based contexts. Through collating a range of primary source material, supplemented by secondary accounts, it has shown how the influence of a broader ideological framework—ethical socialism, communitarianism, and socialistic-political constitutionalism—led to the pursuit of an ethical society and commitment to untrammelled sovereignty. With theoretical support for ideas like organicism and fraternity, leading figures of the early Labour Party advanced notions of rights and duties to, firstly, combat an individualistic society and, secondly, create a more dutiful citizenry. In practice, they correlated rights with strict *and* non-correlative societal duties. The former saw unemployment entitlements strictly linked to specified obligations and the latter, like the right to education, having non-correlative duties attached from it. There was also a simultaneous development of untrammelled sovereignty. With leading figures like MacDonald providing the theoretical grounding, the early Labour Party were able to depart from the traditional Diceyan view of sovereignty. As a result, they created an anti-judicial constitutionalism, rejected codified documents, and supported non-interference with the elected majority in Parliament by external actors. Taken as a whole, this chapter has neatly sketched out the early vision for the nature of society, sovereignty, and the approach to rights that Clement Attlee's Labour government would go on to adopt and develop in its own way.

Chapter 3: The Attlee Government, Civic Participation via Rights and Duties, and Resisting the European Convention on Human Rights; 1945-1955

It has been said that one of the greatest dangers of civilisation today is that man's conquest in the realms of science have outstripped his moral progress. It is the greatest task which lies ahead of us all in the Labour and Socialist movement to see to it that the citizen's sense of obligation to the community keeps pace which the changes effected in the structure of society. We need to stress duties as well as rights.¹

- Clement Attlee

3.1. Introduction

From 1945 to 1955, leading figures in the post-war Labour Party and government continued to support and develop ideas about the nature of society and sovereignty—as advanced by the early Labour Party. More broadly, this period saw the continued influence of an ideological framework of ethical socialism, communitarianism, and a socialistic-political constitutionalism.

Unlike the early Labour Party and Ramsay MacDonald's minority administrations, the post-war Labour Party formed a government with a large majority in Parliament and had six years of sustained governing. As such, the Prime Minister, Clement Attlee, members of the Cabinet (including, but not limited to, Hugh Dalton, Herbert Morrison, James Chuter Ede, Ernest Bevin, Aneurin Bevan, and William Jowitt, etc), and others had the political room to pursue their desired legislative and policy agenda. Consequently, there remained an active interest in creating an ethical society and a steadfast commitment to untrammelled sovereignty. The former saw aspects of organicism and fraternity being reframed as civic participation (citizenship). This meant support for fostering an ethical disposition or internal realisation within citizens that led to an active consciousness of their duties towards the common good, community, and nation. The latter meant a continued belief in the elected majority in Parliament being an expression

¹ Clement Attlee, 'Speech to the 47th Annual Labour Party Conference in Scarborough' (Labour Party, 19 May 1948)

of the people and, in addition, having the freedom to realise domestic legislative and policy initiatives uninhibited. These ideas continued to shape the approach to rights.

The chapter will be structured by, firstly, showing how civic participation via rights and duties was articulated and supported theoretically by key figures within and by those associated with the Labour Party and government. Following this, aspects of the post-war welfare state will be reframed through a civic participation via rights and duties lens. For key figures in the post-war Labour government, the new social rights that were created and extended to citizens could not be anterior to civic duties. This section will provide a new account of how rights and strict and non-correlative duties featured in the design of national insurance, the national health service (NHS), and the support for volunteerism. Regardless of the extent of its success, I will show how the Attlee government doubtless saw rights and strict and non-correlative societal duties as a way to foster citizenship and create a more ethical society.

The second half of this chapter will explain how key figures in the Attlee government continued to understand sovereignty as untrammelled sovereignty. As a reminder, this meant, firstly, the *authority* of the elected majority in Parliament, its legislators, and its political and policy agenda deriving from the electorate. Secondly, the elected majority in Parliament having meaningful, effective, and independent exercise of domestic decision and policymaking. Like those in the early Labour Party, this had specific implications for codified documents, judicial authority, and external oversight. This manifested mostly clearly when the Attlee government was faced with proposals for an ECHR and its associated mechanism (ECtHR and individual petition). This chapter will document the Attlee administration's specific resistance to the initial Conservative and European Movement (EM) inspired ECHR draft, during key drafting and negotiation stages from 1949 to 1950. This section provides novel details about how the Attlee government wanted to preserve control over domestic decision-making and was cognisant of the sovereignty-reducing nature of the proposals. Following this, the post-war Labour government's resistance to the ECHR is categorised into the following untrammelled sovereignty-based reasons: a rejection of supranational structures; resisting supranational judicial oversight that risked shaping and limiting domestic social and economic policies; and concerns about codified property and education rights restricting domestic decision-making powers.

This chapter will then conclude, having shown how key figures in the Attlee government and wider Labour Party continued to support, from 1945 to 1955, rights being rooted in an ethical society and untrammelled sovereignty.

3.2. Continuing the Pursuit of an Ethical Society: Civic Participation via Rights and Duties

Critics have claimed that after the unsuccessful periods of minority Labour governments and MacDonald's defection to the National government in 1931, the Labour Party made a concerted effort to intellectually redefine themselves. More specifically, they looked to move away from the types of ethical socialist notions espoused by MacDonald and towards the mechanics of social and economic distribution.² It is true that key figures in the Labour Party explicitly endorsed moving into a new direction. For example, Attlee dissociated the Labour Party from its tenure under MacDonald. He wrote the party was firmly entering into a "spirit of a new era".³ Similarly, other Cabinet members, like the two Chancellor of the Exchequers, Dalton and Stafford Cripps, presided over a total redefinition of Labour Party policy. This saw a heavy emphasis on materialism in the form of economic planning and welfare state reforms.⁴ Some critics have suggested that any ethical rhetoric around duties or the community that did exist, ultimately, failed to materialise. Instead, they suggest that the Attlee government's legislative agenda was passive and made no attempt to make the public take more of an active role in society.⁵ However, these arguments have misread and failed to acknowledge the continuing and genuine ideological influence of ethical socialism and communitarianism that led to an emphasis on civic participation via rights and duties by the Attlee administration. The material aims (full employment, public ownership, welfare reforms, etc.) were only half of what was on offer in 1945. Others have rightly recognised that, for many in the post-

² Martin Francis, 'Economics and Ethics: The Nature of Labour's Socialism, 1945-1951' (1995) 6 *Twentieth Century British History* 220.

³ Clement Attlee, *The Labour Party in Perspective* (Victor Gollancz, 1937) 113-114; Danny Nicol, *Progressive Eras, Periods of Reaction, and Constitutional Change* (Oxford University Press, 2019) 445.

⁴ The Labour Party, *Labour's New Immediate Programme* (Labour Party, 1937); The Labour Party, *Labour's Home Policy* (Labour Party, 1940).

⁵ Steven Fielding, 'Don't Know and Don't Care: Popular Political attitudes in Labour Britain 1945-51', in Nick Tiratsoo (ed), *The Attlee Years* (Printer Pub Ltd, 1993) 16-25; Steven Fielding, 'Labourism in the 1940s' (1992) 3 *Twentieth Century British History* 138; Geoffrey Foote, *The Labour Party's Political Thought: A History* (Macmillan, 1997) 144-150.

war Labour government, there was still a strong desire to bring about a new society based on participatory citizenship, service and responsibility. For example, Jose Harris has argued from the 1940s onwards, there was still a broad interest in fostering a community of active participants and rights and duties.⁶ Also, in his recent and widely acclaimed biography on Attlee, John Bew claims that the ethos of the 1945 Labour government's legislation included progressive patriotism built on rights and duties, a malleable civil code rather than legal writ, and an emphasis on commonwealth over individual self-interest.⁷ Indeed, there is ample reason to believe that ethical socialist and communitarian inspired ideas—changing the moral disposition of the citizenry through civic participation and rights and duties—played a larger role in both rhetoric and government policy during the Attlee years.

3.2.1. Clement Attlee's Civic Patriotism

The leader of the Labour Party and Prime Minister, Clement Attlee, was an ardent believer in citizenship. This was heavily influenced by his ideological commitment to ethical socialism, romantic critiques of capitalism and visions of society, and his self-claimed belief in “the ethics of Christianity”.⁸ Because of this, Attlee believed that the dehumanising nature of capitalism, and its resulting economic and social individualism, could be replaced by higher principles of solidarity and fellowship. Before entering Parliament, Attlee wrote extensively about this and civic participation in a 1921 publication titled *The Social Worker*—which Bew claims to be the “forgotten script of the 20th century Labour Party”.⁹

First, Attlee described the problem he saw before him. He claimed that a society and political economy based on non-interference and individual liberty damaged the health of the nation. These arrangements severely undermined citizenship and commonwealth. More specifically, the emphasis on the individual meant there was little

⁶ Jose Harris, *Political Thought and the Welfare State 1870–1940: An Intellectual Framework for British Social Policy* (Oxford University Press, 1992) 133–134.

⁷ John Bew, *Clement Attlee: A Biography of Attlee* (Oxford University Press, 2017) xxxii.

⁸ On the nature of Attlee's socialism and background, see: Ibid Bew, 476; Leo McKinstry, *Attlee and Churchill: Allies in War, Adversaries in Peace* (Atlantic Books, 2019); Ben Jackson, ‘Citizen and Subject: Clement Attlee's Socialism’ (2019) 86 *History Workshop Journal Oxford University Press* 291; Kenneth Harris, *Attlee* (Weidenfeld and Nicolson, 1982) 564.

⁹ Bew (n 7) 120.

recognition of duties among the citizenry.¹⁰ Secondly, Attlee did not believe that social cohesion and solidarity—the likes of which he believed were fostered by the Great War (World War I)—could only be achieved during times of national emergency. He conceded that, at the time of him writing, except for voting now and again, active citizenship had been passive.¹¹ But Attlee was confident that a new age of citizenship and duties was possible under the ethically inspired socialism he was advocating. More specifically, he aimed for the transformation of a person into a citizen and the reorganisation of the community towards service. While this would not curtail expressions of personality, he stressed people would not have the right to do what they wanted without regard for others.¹² Lastly, Attlee rejected the criticisms levelled at ethical socialists and ideals of citizenship by those further to the left than him. He suggested it was a mistake and too limiting for, among others, Marxists to argue that economics were the main engine for social change. Other ideas such as fellowship and duties owed to the community by citizens also had a significant role to play.¹³ Overall, Attlee was clear eyed in wanting to change the status quo of individual interests coming before the community.

Based on these observations, Attlee went on to suggest some policy prescriptions. Importantly, he believed any structural reorganisation of society and new era of citizenship meant a society that was built on a series of rights and duties.¹⁴ Attlee does not enter theoretical discussions about the nature of rights, but he does advance notions of extending social entitlements to society. He claimed every person was to have the “fullest opportunity for the development of every human soul”, while freedom would require freedom from poverty and the conditions which allow for a reasonably secure and happy life (good homes, sufficient food, work, etc.).¹⁵ But Attlee claimed these social rights were to be bound to duties. More specifically, Attlee argued for “express” (strict) and “implied” (non-correlative) duties. While not detailing the exact nature of these strict and non-correlative duties, he claimed that they would vary in form and be implemented in different ways.¹⁶ Overall, Attlee believed it was this type of ethic and tempo that society

¹⁰ Clement Attlee, *The Social Worker* (G. Bell & Sons, 1920) 21–28.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*; Attlee (n 3) 137; Clement Attlee, ‘The Election Broadcast 5th June 1945’ in *Purpose and Policy—Attlee Speeches May 1945–November 1946* (Hutchinson & Co, 1947) 3–12.

¹⁶ Attlee (n 10).

should be regulated by. It is true to say, these types of arguments closely followed the ones made by the likes of Lansbury and MacDonald—as set out in Chapter 2 Section 2.3. This ideological position carried over into Attlee’s time as Prime Minister, where he consistently appealed to ideas of citizenship as the foundations of all efforts of the Labour government. He often made statements that stressed “socialism is a way of life—not just an economic theory” and it demanded a “higher standard of civic virtue than capitalism”.¹⁷

3.2.2. Cabinet Members

Among leading figures in the Labour government’s Cabinet, there was similar support for civic participation and rights being linked to duties. Herbert Morrison, Leader of the House of Commons, agreed with Attlee when reflecting on the contribution of citizens being vital to the development of a true socialist society. While the Labour administration supported public ownership, planning, and full employment, Morrison suggested what truly underpinned the programme for government was ensuring that people could add to the common effort. He frequently called on citizens to take up their responsibilities in addition to receiving social entitlements.¹⁸ Moreover, Arthur Greenwood, the deputy leader of the Labour Party, argued that civic participation via voting was insufficient to produce an electorate imbued with a sense of duty. But he also believed that people had been unable to equip themselves to undertake societal obligations. To enable social duties, Greenwood argued for the creation of the right social and economic conditions. While he does not reference rights being linked to duties explicitly, he acknowledges the relationship between extending social and economic entitlements and the ability to foster dutiful citizens.¹⁹ Lastly, Stafford Cripps, Chancellor of the Exchequer following Hugh Dalton’s resignation in 1947, who was associated with a technocratic approach to socialism, and Aneurin Bevan, Secretary of State for Health, who was not known for his ethical socialism, also explored ideas of citizen participation. Cripps, for example, saw economic planning as a system in which all sides of industry worked together to achieve a common end.²⁰ Meanwhile, Bevan claimed that he expected the working class to show

¹⁷ Attlee (n 1).

¹⁸ Herbert Morrison, *The Peaceful Revolution* (George Allen and Unwin, 1949) 3, 44–47.

¹⁹ Arthur Greenwood, *Why We Fight: Labour’s Case* (Routledge, 1940) 219.

²⁰ Jim Tomlinson, ‘Planning: Debate and Policy in the 1940s’ (1992) 3 *Twentieth Century British History* 154.

an advanced political maturity. In the context of rebuilding Britain after World War II, Bevan spoke of the responsibility to accept necessary wage constraints or reduced consumption. He claimed the voter now had a choice, “he either steps back to the shadows of history...or into the light of full social maturity”. Bevan seemingly had ambitions and expectations about the responsibilities citizens would undertake to progress towards a socialist society.²¹ Overall, among Cabinet members, there was an undercurrent of thinking that saw either specific support for rights and duties or wider belief in fostering an obligation-driven citizenry.

3.2.3. Associated Individuals and Groups

Individuals and groups who were associated with and worked within the post-war Labour Party and government looked frame policy around the ethic of citizenship and rights and duties. Tawney, for example, was still affiliated and continued to advance concepts of rights and non-correlative duties. As set out in Chapter 2 Section 2.3.1, for Tawney, while rights still implied duties to the community, the individual had the discretion to determine their responsibilities to the community.²² Among the associated Fabian Society, who were traditionally concerned with technocratic ideas, researchers had a growing interest in the mindset of citizens, new ways of invigorating the interactions between state and citizen, and the positive role of voluntary cooperation. Policy papers, for example, looked at the challenge of ensuring that children were nourished physically and psychologically.²³ In addition, individuals who stood to be Labour Party MPs in 1945 also advanced strong moral visions for citizens and society. In 1940, Richard Acland published work which outlined his hope that people may see the light and abandon a life centred on pure selfishness and take up policies and practices based on sincere altruism.²⁴

Lastly, Michael Young—architect of the Labour Party’s 1945 manifesto, *Let Us Face the Future*, and Secretary of the Policy Committee of the Labour Party Research Department under Attlee’s leadership—looked to use social science to renew the

²¹ Aneurin Bevan, *Why Not Trust the Tories* (Victor Gollancz Limited, 1944) 82.

²² R.H. Tawney, ‘We Mean Freedom’ (1946) 8 *The Review of Politics* 223.

²³ The Fabian Society, ‘A World on the Future to British Socialism’ (1942) 256 *Fabian Tract* 20.

²⁴ Richard Acland, *Unser Kampf* (our struggle) (Middlesex, 1940) vii.

“emotionally inspired aims of socialism”.²⁵ Despite acknowledging the difficulties, Young believed it was possible to translate humanistic, ethically-emotionally inspired, political thought into practice. Young would consistently produce policy documents for the Labour Party that pertained to child psychology, industrial psychology, sociology, and anthropology. Tying these documents together was the emphasis on human factors. More specifically, the belief that people worked best and were happiest when their workplaces, communities, and political institutions were an engaging forum to develop personal relationships and provided a sense of belonging. Young was specifically intrigued by the sense of citizenship and community that was fostered during a World War II adult education movement, known as the Army Bureau of Current Affairs. This group provided information and weekly discussion groups for soldiers on topics of policy and politics, with the aim of educating soldiers and fostering social cohesion in the army.²⁶ Young was convinced the war had provided a model for community and sociability which could be recreated in peacetime. In assessing Young’s contribution to the Attlee government, historian Martin Francis concludes he was able to link his idealistic social vision to policy. More specifically, “his conception of socialism owed much to William Morris, emphasising as it did the primacy of human dignity and the importance of communal solidarity”.²⁷ Overall, Michael Young’s direct involvement in crafting Labour Party policy suggests aspects of the Attlee government’s agenda had been ideologically influenced by ethical socialism and, specifically, ideas of citizenship and active participation.

3.3. Translating Rights and Duties into Practice

The main purpose of this subsection is to reframe aspects of national insurance, national health, and the voluntary sector around a rights and strict and non-correlative duties lens. As with the previous chapter’s examination of rights and duties in practice, there is no value judgement or assessment made about the policies outcome.

²⁵ Lise Butler, *Michael Young, Social Science, and the British Left, 1945-1970* (Oxford University Press, 2020) 4.

²⁶ *Ibid* 53–55, 63.

²⁷ Martin Francis, *Ideas and Policies under Labour, 1945–51: Building a New Britain* (Manchester University Press, 1997) 27.

3.3.1. National Insurance

The post-war Labour government's National Insurance Act 1946—which included the following social entitlements: unemployment, sickness, dependants' allowance, maternity, retirement pension, and specific funeral costs—was underpinned by the ethical socialist and communitarian concept of civic participation via rights and strict duties. To better understand this, a brief analysis of William Beveridge's Social Support and Allied Services Report (the Beveridge Report) is required.²⁸

The Beveridge Report proposed a national insurance system that would give everyone the same level of benefit “as of right”. Citizens would be able to claim the rights irrespective of means, when either ill, unemployed, disabled, or retired. Crucially, these were not universal entitlements and would be contingent on strict flat-rate contributions. Weekly contributions would be made by individuals from their earnings to a state insurance fund. As such, social insurance was to be granted based on a citizen's service and contribution. Beveridge argued that a pooled system of social insurance meant that people stood together with their fellows and shared risk.²⁹ Another example of strict duties was the mandatory work and training requirement after six months of receiving unemployment entitlements. Beveridge believed that people would rather be at work contributing to society, “the first view is that benefit in return for contributions, rather than free allowances from the State, is what the people of Britain desire...”³⁰ For Beveridge, providing benefits indefinitely risked people becoming demoralised and settling into idleness. It was only the chronically ill or disabled who escaped said duties, via a needs-related assessment.³¹ Throughout the Beveridge Report there was an attempt to balance rights with duties. Beveridge's purpose was to promote both freedom and responsibility for one's own action—it was believed that the benefit as of right should not stifle incentive, opportunity, and responsibility.³² Beveridge commented that the plan was not about giving someone everything without anything. It was to secure income

²⁸ William Beveridge was an expert on unemployment and social policy, with some regarding his ideological position to sit somewhere between socialist collectivism and liberal individualism. See: Jose Harris, *William Beveridge: A Biography* (Clarendon, 1977); Nicholas Timmins, *The Five Giants* (William Collins, 2017).

²⁹ Stationary Office, *Social Support and Allied Services Report* (Cmd 6404, 1942) Ch. 1.

³⁰ *Ibid* 11.

³¹ *Ibid*.

³² Kenneth Veitch, 'Unemployment and the Obligatory Dimension of Social Rights' in Toomas Kotkas (ed) *Social Rights in the Welfare State: Origins and Transformations* (Routledge, 2017) 58–75.

maintenance on the condition of service and contribution. While there would be no paternalistic means test or punitive punishments, the duty to contribute was based on fostering initiative and responsibility amongst the citizenry.³³

Of course, it is important to contextualise the Beveridge Report within the broader war effort and as a reflection of the shared responsibility that was thought necessary to rebuild Britain.³⁴ Therefore, it was unsurprising that the Labour Party was supportive of the arrangements. Delegates at the 1942 Labour Party conference passed a resolution that fully supported the Beveridge Report. Moreover, sections of the Labour Party's left-wing pressured leading figures who held positions in the War Coalition government, like Attlee etc, to implement its policies as soon as possible.³⁵ Meanwhile, in 1943, Greenwood claimed that there was widespread support across all factions of the Parliamentary Labour Party for the Beveridge Report.³⁶

However, there are several reasons to believe support for the Beveridge Report, structure of national insurance and, importantly, the strict duties attached to the national insurance-related rights stemmed from a commitment to citizenship via rights and duties. Firstly, Jim Griffith, Minister for National Insurance, was the Beveridge Report's most active supporter. He also had sole responsibility for passing the National Insurance Act 1946. The Act introduced a scheme not so dissimilar from the Beveridge Report, on flat-rate contributions in return for a flat-rate benefit in a time of need. Griffith claimed the time had come to create a comprehensive scheme of social services, one scheme administered by one minister, one contribution and one benefit.³⁷ In Griffith's memoirs, he explicitly recalled agreeing with Beveridge's underpinning principle of reciprocity; that benefits should be paid "as of right" based on contributions and without means testing. Importantly, Griffith linked the structure of national insurance to the post-war Labour government's wider ethical aims about society. He claimed that it was not enough to construct a society that does no more than guarantee material well-being; it must also

³³ Ibid.

³⁴ Derek Fraser, *The Beveridge Report: Blueprint for the Welfare State* (Routledge, 2023).

³⁵ Labour Party, *Report from 1942 Annual Labour Party Conference, 41st Labour Party Conference* (The Labour Party, 1942); Labour Party, *Report from 1943 Annual Labour Party Conference, 42nd Labour Party Conference* (Labour Party, 1943) 136–40; Harold L. Smith, *War and Social Change British Society in the Second World War* (Manchester University Press, 1986) 262.

³⁶ HC Debate, 16 February 1943 vol 386 col 1565–1613.

³⁷ James Griffith, 'Speech at the 1942 Labour Party Conference' (Labour Party, 1942). Griffith claimed that contributions were the "best kind of scheme suited to the British character, and which would be most acceptable to the British temperament..." See: HC Debate 30 May 1946 vol 423 col 1374-466.

be a society that provides citizens with the ability to live out their lives in freedom and fellowship.³⁸

Secondly, in an unusual request, Attlee asked Griffith whether he could personally move a clause in the National Insurance Bill that included the provision of a death grant.³⁹ Jon Cruddas argues that Attlee's concern for the dehumanising aspects of capitalism and workhouses saw him personally involve himself in the matter.⁴⁰ Indeed, Attlee was entirely supportive of Griffith's efforts to steer the legislation through Parliament. This can be attributed, in part, to Attlee believing the proposal reflected an ethical policy that chimed with his own beliefs around social entitlements and citizenship.⁴¹

Further evidence of the Labour government's National Insurance Act 1946 being underpinned by a desire to foster a more cooperative society, via rights and duties, came from Morrison's political writings while serving in government.⁴² First, he highlighted that it was correct for the state to supply social rights so that a minimum standard of life could be achieved. In this way, Morrison reflected the broad belief within the Labour government that there should be widespread availability and access to social entitlements. However, for Morrison, these social rights also meant social duties. He claimed that where extra entitlements, goods, and services were available, the citizen also had to play their part in the community through "extra effort".⁴³ Morrison explained this "extra effort" or, in other words, the duties that accompanied the national insurance scheme, in the following way. First, he acknowledged a strict duty came in the form of monetary contributions or "partly in cash" and, secondly, by citizens' personal effort and productivity in society. By this, Morrison meant citizens being employed and working towards bettering the national economic health – because the national insurance-based entitlements depended on general taxation and, in turn, the entitlements own security was based on national solvency.⁴⁴ Moreover, Morrison used the example of access to unemployment entitlements under the Act being directly linked to the strict requirement of finding work. He understood this as a social duty on citizens to adapt themselves or acquire new skills rather than expecting the "world to stand still in order to save them the

³⁸ James Griffith, *Pages from a Memory* (J.M. Dent & Sons Ltd, 1969) 82–89, 207.

³⁹ Bew (n 7) 403.

⁴⁰ Jon Cruddas, *A Century of Labour* (Polity, 2024) 101.

⁴¹ *Ibid.*

⁴² Morrison (n 18) 26–28.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

trouble”.⁴⁵ Lastly, Morrison claimed citizens could not simply use the services and receive the rights extended to them passively; they also had to help advance the services and rights by cooperating with their administration.⁴⁶ By this, Morrison meant citizens had to engage with or fulfil their social duties.

Not all in the Labour Party welcomed the right and strict duties nexus.⁴⁷ Barbara Castle was particularly concerned about the strict duties attached to unemployment benefits—especially their overall impact on the accessibility of the right. For example, a person was eligible for support and weekly payments for 180 days after the first three days of unemployment. However, for those who regained a job while claiming their benefits and lost it again shortly after, they would only be eligible again for support after 13 weeks had elapsed. Castle argued that, while she supported some degree of requirements, the proposed legislation went too far and that people should have an “absolute right” without conditions.⁴⁸ Similarly, Sidney Silverman went to great lengths to remind the government that the original aim of such a scheme was to:

...guarantee and ensure in the case of everyone who qualified by reason of some social misfortune, the maintenance of a reasonable minimum of subsistence, as of right, that is to say, without any test of means....⁴⁹

In sum, both Castle and Silverman argued that the right being accessed should only be contingent on the existence of the conditions which would give rise to claiming said right i.e., sickness or unemployment etc.⁵⁰ Despite these complaints, the strict duty remained intact.

When assessing the National Insurance Act 1946, W.A. Robson, the public and administrative law academic, concluded that the new national insurance-based

⁴⁵ Ibid.

⁴⁶ Ibid, 126.

⁴⁷ The first complaint about this was raised by J.J. Tinker, the Labour Party MP for Leigh, at the 1942 Labour Party conference. He wanted the Labour Party to move away from its historical commitment to contributions and asked whether the Beveridge Report could be reframed as universal entitlements so that a new society could emerge. He rejected the argument that a universal scheme would be “something for nothing” and contrasted the Beveridge Report to the non-contributory pensions of Lord Chancellors and judges. Tinker provocatively asked whether those judges would “blush” when they claimed their unconditional state pension. See: *The Labour Party, Report of the Annual Conference of the Labour Party Vol. 41–44 JJ Tinker Motion to the Labour Party Conference 1942* (Labour Party, 1942).

⁴⁸ HC Debate 30 May 1946. vol 423 col 1374-466.

⁴⁹ Ibid.

⁵⁰ Ibid.

entitlements were structured around obligations and duties. He argued that the right of access to basic levels of money and a fulfilled life were contingent on obligations being met and discharged.⁵¹ Robson's understanding of social legislation and obligations to the community were tied up in his broader discussion of administrative law. He believed the growth of the administrative state and range of social entitlements—created by the Attlee government and included national insurance—was accompanied by a new set of social relations and solidarity in the community. More specifically, he claimed that the new system and social entitlements on offer placed equal stress on the duties owed by a citizen to the public and on the subordination of private interests to the common weal.⁵²

Overall, it becomes clear that national insurance was designed with civic participation and rights and strict duties in mind. This was driven by the post-war Labour government's desire to foster a more cohesive and cooperative society.

3.3.2. National Health Service

There are varying opinions about whether citizenship and rights and duties existed within the NHS when it was created. Some critics suggest the right to healthcare had few responsibilities attached to it. Instead, healthcare was given to citizens as a passive right rather than a way to stimulate active participation.⁵³ The blueprint for the NHS, as set out in the Beveridge Report, framed the right to healthcare in universal and comprehensive terms. More specifically, health services were to be based on a citizen's right to receive the treatment or care they needed.⁵⁴ To Bevan, lead architect of the NHS, the universalism of healthcare was paramount. When reflecting on the universal principle penetrating and elevating the psyche of a nation, he claimed:

society becomes more wholesome... and spiritually healthier, if it knows that its citizens have at the back of their consciousness the knowledge that not only

⁵¹ W.A. Robson, 'The National Insurance Act, 1946' 10 (1947) *The Modern Law Review* 171.

⁵² W.A. Robson, *Justice and Administrative Law* (first published 1928, Stevens and Sons Ltd, 1947) 428–429.

⁵³ Martin Powell, 'Neo-Republican Citizenship and the British National Health Service Since 1979' in Frank Huisman (ed), *Health and Citizenship* (Routledge, 2014).

⁵⁴ Stationary Office (n 29) 158–159. Moreover, the War Cabinet approved the universalism that was to be embedded in the healthcare system in February 1943. See: National Archives, PRO CAB/66/34, War Cabinet Memoranda.

themselves, but all their fellows have access when ill, to the best that medical skills can provide.⁵⁵

Bevan also explicitly opposed a contributory system, like social security, for the right to healthcare. He suggested this would cause endless anomalies and an “administrative jungle” would be created if health was linked to contributions.⁵⁶ For example, where a patient said they could not access treatment, an investigation would take place in relation to their means, with all the personal humiliation that this involves. He also claimed that the essence of a satisfactory health system is that the rich and poor are all treated alike.⁵⁷ Lastly, the think tank Michael Young was associated with, Political and Economic Planning, welcomed the proposal for the NHS and said the victory of universal healthcare was so apparent and that there was a changing attitude towards seeing these social services as universal entitlements.⁵⁸ Overall, this suggests at the heart of the NHS was a passive model of citizenship—where people simply claim their entitlement.

While there was a large degree of universalism embedded within the right to healthcare, it can also be argued that there were more nuanced layers of civic participation via rights and non-correlative duties implied within the NHS model. John Ryle, a prominent physician who was active during the period of the Attlee government, argued that, by their very nature, all the provisions on offer in the Beveridge Report, which included healthcare and adopted by the Labour government, had implications for active citizenship, rights and duties:

...the [Beveridge] report claims the right of every citizen to certain things...but it proclaims in equal force that every citizen has duties as well as rights. By this scheme all will contribute to the health services for all. The healthy will contribute to the unfortunates incapacitated by disease or injury...we shall be much more actively a part of a great family, pulling together for the common good. We shall not be beholden to the state (except for the organisation and administration of it all) for we shall be the state, state insurance and state security will in fact mean our insurance and our security...let us think of this great plan as our plan.⁵⁹

⁵⁵ Aneurin Bevan, *In Place of Fear* (William, Heinemann Limited, 1952) 75.

⁵⁶ *Ibid* 75–80.

⁵⁷ *Ibid*.

⁵⁸ Political and Economic Planning, *Medical Care for Citizens* (PEP, 1944) 2–6.

⁵⁹ Ryle Papers 66/2, Wellcome Unit at Oxford University; Stationary Office (n 29) 6–7, 170.

On closer inspection, attempts were made to stimulate civic participation via non-correlative duties. More specifically, by giving the opportunity for citizens to, firstly, engage with the administration of public health services via local authorities and, secondly, the opportunity to volunteer within the NHS.

First, the NHS White Paper linked the right to healthcare to wider duties undertaken by people and organisations. It stated:

if people are to have the right to look for a particular service for all their medical needs it must be somebodies' duty to see that they do not look in vain. The right to the services involves a corresponding duty to see that the service is provided.⁶⁰

The document also suggested that there would have to be some form of organisation, so that citizens would be able to carry out their responsibilities.⁶¹ Discussions were also held in the Ministry of Health that looked at how to stimulate duties and citizenship within an NHS model. A note by the War Coalition government's Deputy Secretary at the Ministry of Health argued that whatever administration was adopted for healthcare post-war, the machinery should secure or stimulate a wide and popular interest in citizens engaging or running those services. It was:

...more important that the general body of people should be interested in the services and should themselves be made responsible for the manner in which they are governed and in which these services are provided.⁶²

In a similar spirit, the Attlee government attempted to administer the right to healthcare through centralised bodies and local municipalities—with the latter thought to be the location to create community responsibility.⁶³ For example, despite most health services being centralised, intense lobbying from Morrison led to the National Health Services Act 1946 permitting local authorities to implement a range of public health programmes. This was important, as it required recruiting citizens from the community to help deploy such schemes.⁶⁴ There was a strand of thinking within the Labour Party that believed the

⁶⁰ Ministry of Health, *A National Health Service* (Cmd 6502, 1944) 12.

⁶¹ *Ibid.*

⁶² National Archives, PRO MH77/25 Wrigley, 'Hospital Policy and Regionalisation' 25 September 1941.

⁶³ Abigail Louisa Beach, 'The Labour Party and the Idea of Citizenship c.1931–1951' (DPhil thesis, University College London 1996) 126.

⁶⁴ Marvin Rintala, *Creating the National Health Service* (Taylor Francis, 2004) 46–48.

model of a voluntary hospital was one way in which to stimulate local responsibility.⁶⁵ While the Attlee government rejected such arrangements, there was still some effort put into finding a role for citizens and societal duties within the universal NHS.

What's more, despite Bevan broadly finding charitable provisions distasteful, he was not entirely against the value of conscious citizenship and service to the community.⁶⁶ While there was an overall decline in voluntary services in the NHS, Bevan permitted a small and limited role for volunteers in medical research, auxiliary nursing hospitals and blood transfusions.⁶⁷ The NHS also utilised over 10,000 volunteers on regional hospital boards and hospital management committees. Voluntary services were also deployed in hospitals where local authority control remained, especially in midwifery, home nursing, and ambulance and transportation services.⁶⁸ In 1947, Bevan told Parliament that the Labour government was committed to "extending the field of voluntary work enormously"; while Morrison claimed just because some entitlements were to be universal, this should not exclude cooperation with voluntary efforts.⁶⁹

Overall, sceptics might question whether the use of local municipalities for public health measures and modest forms of voluntary work showed a commitment to civic participation via rights and non-correlative duties within the NHS. But when contextualised within the broader theoretical and practical commitment to civic participation via rights and duties, we arrive at a different view from healthcare entitlements having little to no regard for duties. This subsection has shown legitimate efforts to create an active citizenry through the NHS. While this was a complex task, it is nonetheless one which the Labour government set out to achieve.

⁶⁵ Beach (n 63).

⁶⁶National Archives, PRO CAB 129/3 CP (45) 205, Memo by Minister of Health 'The Future of Hospital Services' 5 October 1945; National Archives, PRO PREM 8/288 CP (45) Memo by Minister of Health, October 1945.

⁶⁷ NCCO Archive, 'GT. Trevelgon, 'Voluntary Services and the State: A Study of the needs of Hospital Services 1952', NCSS Annual Reports 1951–52; Geoffrey Finlayson, *Citizen, State, and Social Welfare in Britain 1830–1990* (Clarendon Press, 1994) 282.

⁶⁸ Eyre Carter, 'The Partnership between Statutory and Voluntary Services in post-war Britain' (1949) 23 *Social Services Review* 158.

⁶⁹ Joseph Forde, *Before and Beyond the Big Society: John Milbank and the Church of England's Approach to Welfare* (James Clarke & Company, 2022) 125-126.

3.3.3. Volunteerism

Leading figures in the Labour government also believed that the general extension of rights to citizens could not be divorced from broader non-correlative duties. More specifically, active steps were taken to create a healthy voluntary sector. The aim was to stimulate popular participation and create a more other-regarding ethic among the citizenry. To achieve this, the Attlee government purposely supported and expanded the opportunities for citizens to engage in voluntary work. For example, voluntary services—recreation and food delivery—were included in the provision of elderly care under the National Insurance Act 1946,⁷⁰ support was given to the Citizens Advice Bureau (CAB), who were now able to focus on non-material needs that centred on active community engagement,⁷¹ and grants were distributed to voluntary organisations that provided employment for disabled persons.⁷² Lord Pakenham, the Labour Party peer, welcomed the voluntary sectors developing partnership with the Attlee government. In the House of Lords, he claimed:

the voluntary spirit is the very life blood of democracy... we are convinced that voluntary associations have rendered, are rendering and must be encouraged to render great and indispensable service to the community...⁷³

Further, "...whilst laissez faire had gone, the voluntary principle still remained" and:

in view of the government, democracy without voluntary exertion and voluntary idealism loses its goal. All forms of democratic government are dependent on that same spirit. We are certain voluntary social service organisations have a part to play as essential in the future as in the past.⁷⁴

⁷⁰ Margaret E. Brasnett, *Voluntary Social Action. A History of The National Council of Social Service 1919-69* (National Council of Social Services, 1969) 59-92.

⁷¹ The Labour government appreciated how each CAB branch had been rooted within communities. Francis Williams, Attlee's public relations advisor affirmed this at the CAB conference in October 1946. See: National Archives, NCVO, NCSS, Annual Reports 1946.

⁷² National Archives, PRO CAB 124/1136, Memo from Treasury to Lord Presidents Committee, 'Voluntary Action Proposals for Government Action' 1949.

⁷³ HL Debate 22 June 1949 vol 163 col 119-120; National Archives, PRO CAB 124/131 Papers of the Lord Presidents Committee.

⁷⁴ *Ibid.*

Importantly, the framing of voluntary work as a non-correlative duty can be seen clearly in both Attlee and Morrison's speeches and political writings. As previously explained, Attlee believed duties manifested in different ways; included in this was voluntarism. His experience of working at Stepney's Toynbee Hall informed his view on the benefits of such work. At the launch of a national association for a boys club, he stated "a boys club is a good school of citizenship, which is self-discipline, and you can also develop the spirit of service". Tellingly, Attlee went on to say that, while the state services were developing under the Labour government "one must be constantly multiplying the opportunities for social intercourse, for the development of the right kind of leadership and of community consciousness".⁷⁵ Lastly, Attlee argued that his government was wholly committed to Britain's voluntarist tradition. He stressed that it was not enough for the state to extend entitlements without citizens taking up their obligations:

the country will never become a people of an omnipotent state... I believe that we shall always have alongside the great range of public services, the voluntary services which humanise our national life and bring it down from the general to the particular. We need to stretch out to new horizons.⁷⁶

Morrison also believed that the new social entitlements were not granted passively by the post-war Labour government. There was a corresponding obligation on citizens to contribute to society. This led him to argue in favour of volunteering at community associations, centres, distribution of welfare foods, assisting the elderly, and in hospital services.⁷⁷ The belief in volunteerism stemmed from Morrison's experience of citizens entering the voluntary sector and cooperating with statutory services. Prior to becoming an MP, while working in local government, he presided over partnerships that assisted in the delivery of education services and support for local children. Morrison argued that there was value in these experiences, noting that such a collaboration was a good citizenship. He gave the example of youth services as a way in which volunteers can take a "busy and honourable part in the great social changes of our time".⁷⁸ What's more, Morrison's commitment to fostering citizenship via volunteerism was documented in

⁷⁵ Clement Attlee, 'Speech at the launch of the National Association of Boys Club 30 November 1945' in *Policy and Purpose: Selected Speeches by CR Attlee* (Hutchinson, 1947) 87-90. Harris (n 8) 17-21, 26-30.

⁷⁶ *Ibid* Attlee.

⁷⁷ Morrison (n 18) 125, 130.

⁷⁸ *Ibid*, 126, 130.

ministerial correspondence with Cripps. In it, he registered his concern about the potential of the Labour government taking over services which were undertaken by voluntary actions. More specifically, he asked Cripps whether it was in fact a good idea to instruct officials to carry out the work that was being done by some voluntary agencies.⁷⁹

Importantly, neither Morrison nor Attlee advanced the non-correlative duty of voluntary work in a coercive manner. Their overall aim was to arouse an internal realisation and desire among people to engage in such activities. This manifested in the Labour government trying to create as many opportunities as possible for citizens to engage in voluntary work.

3.4. Rhetoric at the End

Even in the dying days of the post-war Labour government, key figures would continuously make the argument for a network of mutual rights and duties. Speaking to a crowd during the 1951 general election campaign, Attlee claimed that the society the Labour Party was continuing to fight for was:

bound together by rights and obligations, rights bringing obligations, obligations fulfilled bringing rights; a society free from gross inequalities and yet not regimented nor uniform.⁸⁰

Meanwhile, Morrison reflected that considering the government had passed its social reforms, it was now the task of citizens to match the legislation which embodied said rights with a “new spirit and new effort”.⁸¹ He argued the Labour administration had swept away the ethos of the “Charity and Poor Law State” and had now established the Social Security State. However, the latter could not be guaranteed unless it was also the “Social Responsibility State”.⁸² At the 1950 Labour Party conference, Morrison stated “it is no good having public ownership of material things alone... a man cannot be a socialist without a social outlook”.⁸³ The Labour Party, he said, was not just a vote winning

⁷⁹ National Archives, PRO CAB 124, 1136 Lord Presidents Committee, letter from Herbert Morrison to Stafford Cripps 15 January 1949.

⁸⁰ Clement Attlee, ‘General Election Campaign Speech in Scarborough’ (Labour Party, 1951); Clement Attlee ‘Labour Party Conference Speech’ (Labour Party, 1950).

⁸¹ Morrison (n 18) 44–46.

⁸² Ibid.

⁸³ The Labour Party, *Reports to the Fifty Annual Conference* (Labour Party, 1950) 116.

machine, but it stood for “something great and glorious that stands for a new way of life”.⁸⁴ He told members that by working together they would transform not only themselves but society, while also acquiring “fellowship” and a more “vital kind of citizenship”. For Morrison, this was the true reality of socialism.⁸⁵

Even after electoral defeat in the 1951, Labour Party policy documents still stuck to the core idea of civic participation via rights and duties. For example, one document set out that no one who benefited from full employment, welfare, and education can contract out of the social obligations which support the reforms.⁸⁶ Following his retirement as leader of the Labour Party, Attlee’s rhetoric become even more ethical. For example, he continuously warned against the dangers of embellishing in individualism. In an article for *Reynolds News*, he reflected on society as he saw it at the time. He claimed that young people had more material gains and wealth than they had previously. As such, a new message was required that brought to their attention the dangers of personal interests and greater leisure that had been afforded to them. True socialism, Attlee claimed, was a way of life. He recommended that the Labour Party and socialists should begin to remind and refocus the public’s attention on the need to balance rights with obligations or duties.⁸⁷

Finally, in response to election defeat and ideological battles with the revisionist right in the Labour Party, the Socialist Union was formed.⁸⁸ This small group of ethical socialists, which included figures like Michael Young et al, took an Attlean view on society. They argued for a “strong sense of fellowship which marked the early days of the Labour movement”.⁸⁹ More specifically, on the subject of rights and duties, their publication *Twentieth Century Socialism: A New Statement of Principles* argued that the new improved conditions (lower unemployment, better funded services, and widespread benefits) were not external to cooperative ways of living together. It made the familiar arguments that people would have to take note of their responsibilities in society. This meant the need for neighbourliness and “care for the other man's interests in everyday life” and this could

⁸⁴ Steven Fielding, *The Labour Governments 1964-70, Volume 1 Labour and Cultural Change* (Manchester University Press, 2003) 39.

⁸⁵ Ibid.

⁸⁶ Labour Party Papers (National Museum of Labour History, Manchester), LPR DR 491, 8 June 1955.

⁸⁷ Lord Clement Attlee, ‘Labour Hands the Helm to Youth’ *Reynolds News* (London, 18 December 1955).

⁸⁸ Revisionism will be the subject of analysis in Chapter 4.

⁸⁹ Lawrence Black, ‘Social Democracy as a Way of Life: Fellowship and the Socialist Union, 1951-9’ (1999) 10 *Twentieth Century British History* 499, 507.

“...not simply be legislated for...”⁹⁰ Attlee personally commented that the publication “expressed in far better language than I command the views which I hold and the faith in which I believe”.⁹¹ Others like Morrison, Griffith, and the Labour Party’s General Secretary, Morgan Phillips also gave the Socialist Union’s formation their blessing.⁹² While rhetorically strong, the publication offered little by way of new solutions. Also, after retirement of Attlee et al in 1955, there was little impetus for the continuation of ethical notions and pursuits among emerging key figures in the Labour Party.

3.5. The Attlee Government and Untrammelled Sovereignty

Like the early Labour Party, leading figures in the Attlee government were also influenced by a socialistic-political constitutionalism. Importantly, this saw them continue to understand sovereignty as untrammelled sovereignty. The Labour government’s commitment to untrammelled sovereignty was expressed in several distinct ways. First, as alluded to above, key figures in the Labour government equated the sovereignty of the people with the authority of the government, or elected majority in Parliament, to implement its political and policy programmes. In the House of Commons, Hugh Dalton, Chancellor of the Exchequer from 1945 to 1947, asserted:

I hold in my hand a document entitled “Let Us Face the Future, A Declaration of Labour Policy for the Consideration of the Nation”. The nation considered it and having done so elected this House of Commons. We have an unchallengeable popular mandate to carry out all that is contained in this document.⁹³

Similarly, prior to being elected, Attlee claimed:

...when it [the Labour Party] has obtained a mandate, it will utilise the ordinary machinery of the legislature and the administration in order to carry out its programme into effect and having obtained a mandate it shall have the right like any other Party to carry through its programme.⁹⁴

⁹⁰ Socialist Union, *A New Statement and Twentieth Century Socialism* (Lincoln-Prager, 1952) 32–35.

⁹¹ Labour Party Papers (National Museum of Labour History, Manchester), ‘Letter from Attlee to Hinden’ 21 April 1952; Black (n 89) 509.

⁹² Labour Party Papers (National Museum of Labour History), ‘General Secretary’s Papers 1945-1964, box 11’; Labour Party Papers (National Museum of Labour History), ‘Griffiths to Phillips GS/SU/1 16 November 1950’; Labour Party Papers (National Museum of Labour History), ‘Letter from Hinden to Phillips GS/SU/5i 10 May 1951’.

⁹³ HC Deb 29 October 1945 vol 415 col 43 167.

⁹⁴ Peter Dorey, *The Labour Party and Constitutional Reform: A History of Constitutional Conservatism* (Macmillan, 2008) 53.

In addition, Herbert Morrison, Leader of the House of Commons, told the Labour Party conference in 1945 that there was great importance in the doctrine of the “manifesto” and mandate received by the electorate.⁹⁵ Richard Tuck has argued that the manifesto, in British politics, has been seen as a “special document whose provisions have been approved by the electorate”. As such, the contents of the manifesto gained constitutional significance; it allowed the government to enact its policy and legislative agenda due to the consent given by the people.⁹⁶ The 1945 manifesto, *Let Us Face the Future*, claimed “we give clear notice that we will not tolerate obstruction of the people’s will by the House of Lords”. This resulted in the Salsbury Convention—which ensured the elected majority in Parliament’s legislative agenda could pass the House of Lords without delay or barriers.⁹⁷ Policy documents, like *Labour and the Nation*, promised to channel the authority given to the Labour Party by the citizenry through the ordinary machinery of government i.e., Parliament.⁹⁸

For leading figures in the Attlee government, untrammelled sovereignty was seen as politically and morally justified. Importantly, we see continued emphasis being placed on the will of the electorate, consent, and the elected majority in Parliament pursuing its agenda. While these ideas directly mirrored MacDonald’s, key figures during this time differed in that they believed a simple majority reflected the electorate’s will. More specifically, unlike MacDonald, little emphasis was placed on considering the views of other parties in Parliament—to reflect the social whole.

3.5.1. Implications for Rights

This commitment to untrammelled sovereignty continued to shape the Labour Party and government’s broad approach to rights or aspects of the British constitution that would intersect with rights.

Firstly, the Attlee government continued to support a distinct kind of anti-judicial constitutionalism. Robert Knox argues the aim of this was to consolidate any further parliamentary sovereignty, so that the government could legislate into a variety of social

⁹⁵ S. Beer, *Modern British Politics* (Faber & Faber, 1982) 179–183.

⁹⁶ Richard Tuck, ‘Against (Many Kinds of) Representation’ in Richard Johnson and Yuan Zi Zhu (ed), *Sceptical Perspectives on the Changing Constitution of the United Kingdom* (Hart, 2023) 16, 364.

⁹⁷ Labour Party, *1945 Labour Party General Election Manifesto: Let Us Face the Future: A Declaration of Labour Policy for the Consideration of the Nation* (Labour Party 1945).

⁹⁸The Labour Party, *Labour and the Nation* (Labour Party, n.d) 13–14.

and economic areas without restrictions.⁹⁹ This resulted, firstly, in reforms to parliamentary procedures to hasten the passing of legislation and, secondly, restraining judicial intervention to the formal plane. For example, Attlee, Cripps, and Morrison took an interest in restructuring the machinery of parliament and government to pass a larger volume of legislation.¹⁰⁰ Cripps claimed the changes were necessary if the existing political machinery was to keep up with the tempo of socialism.¹⁰¹ There were also moves to limit the voice of judges in the then Appellate Committee of the House of Lords and Privy Council. For example, the Lord Chancellor, William Jowitt, who sat regularly on judicial panels, did not allow for much judicial creativity in either common law or statutory interpretation—the infamous voices of Lord Denning, Reid, Radcliffe, and Devlin were muted during the post-war Labour government. Jowitt believed the role of the judge was only to apply objective rules determined by strict ratio and to interpret statutes according to their plain meaning. Where the law produced a result that did not accord with the requirements of the day Jowitt argued it was for the legislator to rectify this. Judicial bodies were an inappropriate forum, and lawyers were ill-equipped to consider the social and political considerations of the day.¹⁰² Indeed, key figures of the Attlee government were still scarred by memories of *Taff Vale* and other judgments which were hostile to social and working-class interests and, ultimately, privilege, a capitalist economy—as set out in Chapter 2 Section 2.5.1.

Secondly, the commitment to untrammelled sovereignty continued to mean a rejection of codified documents or anything that resembled a written constitution. Codification was still thought to undermine the notion of legislative power. Mark Evans suggests there was a triumphalism about the unwritten constitution by the Labour Party, especially its efficacy. Indeed, Morrison often stated his love and admiration for

⁹⁹ Robert Knox, 'Neoliberalism, Labour Law and New Labour's Turn to Constitutionalism' in Michael Gordon and Adam Tucker (ed), *The New Labour Constitution Twenty Years On* (Hart Publishing, 2022) 305–334.

¹⁰⁰ Labour Party, *NEC Report into Parliamentary Problems and Procedures* (Labour Party, 1934).

¹⁰¹ Mark Evans, *Constitution-Making and the Labour Party* (Palgrave, 2003) 23.

¹⁰² While acknowledging it was difficult for judges not to enter discussions around policy, Jowitt stuck to his position of non-interference. This was evident in cases he presided over concerning penal law, health, and taxation policy. See, for example: *Joyce v DPP* [1946] A.C. 37366 and *Candler v Crane Christmas Company* [1951] 2 KB 164. Also see Jowitt's comments in Australia when asked about the *Candler v Crane Christmas Company* decision. Here, Jowitt restated his belief that it was for legislators to change the law if necessary. See: Robert Stevens, *Law and Politics: The House of Lords as a Judicial Body 1800–1976* (Weidenfeld & Nicolson 1978) 338–339.

parliament and the flexible nature of the constitution.¹⁰³ Likewise, Attlee understood that safeguards did not necessarily have to be placed in a codified document. He argued that their introduction might reduce the efficiency of the flexible constitution. In a letter to Churchill regarding the constitutions of the British colonies, in 1942, Attlee remarked “have we not found in dealing with the dominions the more we avoid precise definitions the better?”¹⁰⁴ For Attlee, flexibility was preferable, rather than hard and fast rules. Lastly, Cripps claimed the absence of a codified or entrenched constitution was Britain’s “greatest asset”; as it enabled “the constitution to adapt itself momentarily to the desires and wishes of the people”.¹⁰⁵ While Aneurin Bevan, the Secretary of State for Health, claimed:

The absence of a written constitution gives British politics a flexibility enjoyed by few nations...This gives it a revolutionary quality, and enables us to entertain the hope of bringing about social transformations, without the agony and prolonged crises experienced by less fortunate nations.¹⁰⁶

Overall, for key figures in the Attlee government, any form of written document risked recasting the British constitution away from the autonomous power of an elected majority in Parliament.

Lastly, like those in the early Labour Party, leading figures in the post-war Labour government opposed supranational integration or domestic interference by non-external actors. For example, responding to suggestions that sovereignty should be pooled among Western European states, Dalton claimed:

we are not going to throw away the solid gains brought to us by a whole generation of political agitation, and by the votes of our people and by three years of solid work in Parliament, in the Trade Unions and in the Government, upon any doctrinal altar of a federal Western Europe.¹⁰⁷

When extolling the virtues of Parliament, Attlee recognised the need for Britain to regulate its own affairs:

¹⁰³ Herbert Morrison, *Our Parliament and How It Works* (Labour Party, 1953) 10–13, 27–29.

¹⁰⁴ National Archives, PRO CAB 104/80 ‘Letter from C.R Attlee to W.S Churchill’ 22 July 1942.

¹⁰⁵ Richard Stafford Cripps, ‘Can Socialism Come by Constitutional Methods?’ in E. Wise, C.R. Attlee, et al. (ed), *Problems of A Socialist Government* (Victor Gollancz, 1933) 49.

¹⁰⁶ Bevan (n 55) 100.

¹⁰⁷ Hugh Dalton, *High Tide and After: Memoirs 1945–60* (Frederick Muller Ltd, 1962) 40.

just as, in forming the new social order at home, the ruling principle is not to enforce uniformity but to give individual freedom, so in dealing with external affairs a Socialist Government will recognise the right of each nation to regulate its own affairs according to what it considers desirable, provided that in so doing, it does not conflict with the general interests of the human race... Equally, in the larger sphere of foreign affairs a Socialist Government will work for the utmost freedom for every nation within the larger unity.¹⁰⁸

While Attlee was open to inter-state cooperation, this was a firm defence of the right of the nation state to have control over its own policies and laws. Similarly, the Labour Party's National Executive Committee (NEC), in 1950, set out:

no Socialist party could accept a system by which important fields of national policy were surrendered to a European authority, since such an authority would have a permanent anti-Socialist majority.¹⁰⁹

At the 1947 Labour Party conference, a motion passed that stated:

...we must safeguard our freedom to play a full part as an independent member in the Commonwealth and the Atlantic community... we cannot surrender to any supra-national authority the right to determine British policy on such vital matters as full employment and fair shares.¹¹⁰

As will be shown, the commitment to these untrammelled sovereignty-based ideas *heavily* informed the Labour government's approach to the ECHR.

3.6. Resisting the European Convention on Human Rights

The ECHR is a post-war supranational rights instrument that was signed on 4 November 1950. The states that are parties to the Convention are bound by supranational laws to secure to everyone within its jurisdiction the rights and freedoms set out in Article 1.¹¹¹ Unlike many international treaties, the Convention contains a supranational enforcement

¹⁰⁸ Clement Attlee and Francis Williams, *The Labour Party in Perspective* (Victor Gollancz, 1949) 113–119.

¹⁰⁹ Aurelie Dianara Andry, *Social Europe, the Road Not Taken: The Left and European Integration in the Long 1970s* (Oxford University Press, 2023) 55.

¹¹⁰ Kenneth E. Miller, *Socialism and Foreign Policy* (Springer, 1967) 258.

¹¹¹ European Convention on Human Rights, Article 1.

mechanism. Under Article 19, the European Court of Human Rights (ECtHR or the Court) ensures compliance with Convention rights where claims have been made that a state has infringed said rights. A claim can be brought before the Court both by other state parties and individuals within the state who argue that they have been victims of a violation.¹¹² Where the Court is satisfied that there has been a violation, it has the power to afford “just satisfaction to the injured party”.¹¹³ In practice, this means the Court has the ability to order states to pay compensation to victims and ensure that state parties agree to abide by the judgment handed down. Of greater significance, is the great potential for an adverse judgment requiring member states to amend or repeal infringing domestic legislation to stay compliant with the ECHR.

The Convention and Court, as described, was an affront to the Labour Party and government for two key reasons. Firstly, the Attlee government saw the Convention system as being incompatible with their pursuit of an ethical society via civic participation and rights and duties. Indeed, the supranational document was largely viewed as reverting back to a time where citizens would treat rights as possessions and something to enforce against, either one another or the state and its public interest programmes. As discussed, the Attlee government, through the policy of rights and duties, tried to extinguish this type of societal arrangement. Coinciding with negotiations of the ECHR, the Labour Party produced a policy pamphlet called *Labour and the New Society*. The publication claimed:

the Labour Party declares that the true purpose of society is to promote and protect the dignity and well-being of the individual... we proclaim rights of man because we believe that people will increasingly recognise their responsibilities to each other if their rights as individuals are honoured.¹¹⁴

While the Labour Party and government were not against safeguarding civil and political rights, they were vehemently against entitlements which could be treated as individualistic possessions and detached from duties. The ECHR was clearly at odds with this broader ideological thinking about a cooperative society. As will be shown, the Convention intended to elevate the status of individual rights over and above other

¹¹² European Convention on Human Rights, Article 33.

¹¹³ European Convention on Human Rights, Article 41.

¹¹⁴ The Labour Party, *Labour Party National Executive Committee: Labour and the New Society* (The Labour Party, 1950).

interests. Secondly, with key figures in the Labour government being influenced by a socialistic-political constitutionalism and, consequently, rooting their understanding of rights in untrammelled sovereignty there was an inevitable resistance towards the Convention. More specifically, a supranational bill of rights that was codified, enhanced judicial authority, and increased external oversight over the elected majority in Parliament.¹¹⁵

Critics have either focused on how the Conservative movement approached and shaped the ECHR or have provided a detailed chronology of ECHR negotiations. The commentary available in relation to the Attlee government's reaction and position towards the Convention is instructive but, ultimately, underdeveloped. For example, Marco Duranti reveals the "cold mood" in relation to the Convention, Anthony Lester documents the concern about the ECHR preventing policy decisions (detention without trial in emergency situations, judges from sentencing in certain ways, the Home Secretary from banning demonstrations which might be communist or fascist in nature, and the operation of a government that was committed to a planned economy), and Elizabeth Wicks suggests the prime motivator for engaging with the ECHR was the fear of communism.¹¹⁶ Finally, A.W.B. Simpson's account of the Convention differs to the rest. It begins with historical overview of the protection of rights and the emphasis of liberty in the common law. Following this, he specifically highlights why Britain, whose legal culture was hostile to any formal bills of rights, played a major role in the negotiations of the ECHR.¹¹⁷ Despite these accounts being instructive and touching on relevant matters, there are clear gaps in relation to the issues that this research is concerned with, namely the Attlee government's resistance to the ECHR being driven by a specific socialistic-political

¹¹⁵ An early indication of the Attlee government's commitment to rooting rights in untrammelled sovereignty came in relation to the negotiation of the Universal Declaration of Human Rights, and the displeasure shown at proposals for an enforceable instrument. See: TPUDHR, Special Joint Committee on Human Rights and Fundamental Freedoms, 'Minutes of Proceedings and Evidence' June 5 1947; National Archives, CAB 134/422 IOC (HR)49 2; Geoffrey Marston, 'The United Kingdom's Part in the Preparation of the European Convention on Human Rights, 1950' (1993) 42 ICLQ 796; Marco Duranti, *The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention* (Oxford University Press, 2017) 227.

¹¹⁶ Ibid, Duranti; Marco Duranti, 'Curbing Labour's Totalitarian Temptation: European Human Rights Law and British Postwar Politics' (2012) 3 *Humanity* 36; Anthony Lester, 'Fundamental Rights: the United Kingdom isolated?' (1976) 25 *University of Pennsylvania Law Review* 337; Elizabeth Wicks: 'The United Kingdom Government's Perceptions of the European Convention on Human Rights at the Time of Entry' [2000] PL 438.

¹¹⁷ A.W.B. Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (OUP 2004).

constitutional commitment to untrammelled sovereignty. This section will provide a nuanced account of the Labour government and party's reaction towards preliminary drafts of the Convention during the drafting and negotiation process between 1949 and 1950. More specifically, unlike the all-encompassing accounts about the ECHR drafting and negotiation stages, this section focuses on the ideas and discussions held within the Labour government that fed into the untrammelled sovereignty-based reasons for resistance.

Briefly, at the time, the Council of Europe, the institution responsible for the creation of the Convention, was divided into two bodies: (1) the Committee of Ministers, which was made up of representatives of foreign ministers of government member states and was the ultimate decision-making body; and (2) the Consultative (Parliamentary) Assembly, which consisted of representatives of all political parties from all member states. There was no real authority in this body, and it was mainly tasked with an advisory and lobbying role to the Committee of Ministers. Within the Consultative Assembly, there were various committees that worked on several policy areas.

3.6.1. The European Movement's Draft

Key figures in the Labour government and civil servants were initially slow to react to the early movement and preliminary discussions about a European supranational rights instrument.¹¹⁸ The general malaise reflected the Labour government's disinterest in such matters—their focus was predominantly on domestic policy and legislative aims. However, in early 1949, the Labour government and the Foreign Office caught wind of the Legal and Administrative Committee's (LAC)—of the Consultative Assembly—iteration of a proposed Convention that was to be given to the Council of Europe's Committee of Ministers (made up of representatives of foreign ministers of government member states and was the ultimate decision-making body) for consideration and implementation. This version was heavily influenced by an earlier draft that stemmed from the pan-European,

¹¹⁸ Prior to negotiations, the Labour Party's NEC warned against underestimating Winston Churchill, British conservatives, and the broader conservative groups influencing the European space. It was recommended that the Labour government not lose ground by trying to encourage cooperation between the nations of Europe. See: Labour Party Papers (Natural Museum of History, Manchester), Labour Party NEC Meeting, Attitude to Churchill's 'United Europe Movement in Great Britain' in Labour Archive, International Department Box 1947/1948; National Archives, FO 371/728 10 (UNE 3028/16/96/1948).

pro-federalist, conservative group called the European Movement (EM), with British Conservative politician David Maxwell-Fyfe and barrister Jonathan Harcourt taking lead roles in its creation.

The LAC's revised draft shared many of the features as the EM's draft. Firstly, it proposed a set of liberal rights around 19th century notions of *laissez-faire*, individual freedom, political liberty, and the rule of law—which aimed to preserve the “moral values” and “democratic principles” that were of “common heritage” in Europe.¹¹⁹ Reporting to the Consultative Assembly, the German Conservative Christian Democrat, Pierce Henri Teitgen, argued that the proposed Convention would promote a list of rights as fundamental freedoms without which personal independence, democratic government, and a dignified life could not be achieved.¹²⁰

Secondly, the revised draft adopted the EM's proposal for the rights to be declared as general statements, as opposed to a detailed set of obligations. Among other things, it was thought that a general statement of rights would allow a future ECtHR to develop a body of European jurisprudence where rights would not be static and defined, but evolved over time.¹²¹ While the EM and LAC believed a simple proclamation of rights would be unproblematic, the Attlee government, as will be set out in more detail further on, rejected this and pressed for specific definitions of the proposed rights—with the aim of minimising state obligations and protecting untrammelled sovereignty. British Foreign Office officials recognised that any potential treaty would create obligations and believed it vital to know what the exact scope of them were—the more defined they were, the easier to observe. The Foreign Secretary, Ernest Bevin, pushed the Consultative Assembly to specifically define the rights before moving on to other issues such as enforcement.¹²² Bevin and Foreign Office officials would go on to reject any statement of rights being subject to future change or different interpretations.

Third, the LAC's iteration also included early versions of an ECtHR and individual petition. Maxwell-Fyfe explained the EM's proposed Court in the following way:

¹¹⁹ TP Vol 1, 'Preamble of the European Movement Convention Draft'.

¹²⁰ TP Vol 1, 268–274.

¹²¹ TP Vol 1, 280; Sandys Papers 9/29, Churchill College, 'In A Convention on the Right lines, French text'; Duranti (n 115) 370.

¹²² TP Vol 1, 'First Session Committee of Minister 8–13 August 1949' 12, 22–24; TP Vol 3, 254–256; TP Vol 4, 'Mr Hoare on behalf of the British delegation at Conference of Senior Officials 8–17 June 1950', 106, 178.

primarily enforcement would be by the municipal courts of individual states. To this end the charter would contain undertakings by each state to adopt as part of municipal law the fundamental rights set out in the charter, and to give jurisdiction to its municipal courts to adjudicate upon the compatibility of the legislative, administrative, or other acts with those fundamental rights.¹²³

Further, the recommendation that citizens or groups in member states should have a right of individual petition to the new adjudication body was completely novel at the time. The proposals were justified as simply a way to preserve human rights and prevent regression into dictatorships. Only the gravest violations would be referred on to this specially designed court, with a view to obtaining an advisory opinion or judgment.¹²⁴ But the deeper rationale was revealed by Teitgen, when he claimed the Court would have such great moral standing that any judgment handed down would heavily influence countries across Europe.¹²⁵ The implication of this being an ECtHR would act as a supranational guardian, with the relevant enforcement powers, that kept European countries in line with shared moral standards.

Lastly, though the exact details were not entirely clear in the original EM draft, the LAC's version clearly highlighted the restrictive nature of an ECHR on national governments. It included provisions that would allow the proposed supranational Court to determine all serious cases that infringe rights arising out of executive action, and legislative or judicial acts. This meant a future ECtHR would be able to sanction states, provide reparations to individuals and, strikingly, "demand the repeal, cancellation, or amendment of the offending act".¹²⁶ Any state that failed to comply with a judgment of a ECtHR could be referred to the Council of Europe for appropriate action. For Teitgen's LAC, these operational features did not pose any threat to or dismantle the sovereignty of the state. It was justifiable for a Court to set aside government legislation or administrative measures where they were contrary to the proposed rights – to ensure Europe was the land of freedom. As such, Teitgen argued that such powers meant only limiting state sovereignty in line with the established law.¹²⁷

¹²³ Duranti (n 115) 370.

¹²⁴ TP Vol 1, 'Article 7(a) EM Convention Draft'; TP Vol 1, 'Article 10 (a) to (f) 'Draft list of Articles and Enforcement Mechanism', 298–302.

¹²⁵ TP Vol 1, 280.

¹²⁶ TP Vol 1, 'Article 14, European Movement Convention Draft'.

¹²⁷ TP Vol 1, 38–40, 50, 276.

3.6.2. The Labour Government's Reaction

When key figures of the Labour government's Cabinet gained sight of the EM-inspired Convention, they were aghast. Their overall view was that the proposal would create a rigid bill of rights, invite judicial activism, and inhibit the autonomy of government. Despite walking a diplomatic tightrope and not wanting to be obstructionist, Bevin was so unimpressed that he and Foreign Office officials told the Permanent Commission in Brussels that the proposals were mistaken. More specifically, while the Labour government believed human rights were important, the proposed draft produced had not prioritised the correct issues. It was thought the matters should be addressed in the following order: (1) substance (the way in which the rights were set out, i.e., general or explicit); (2) execution (how systems were able to recognise these rights); and (3) matters of enforcement (establishment of an ECtHR and individual petition).¹²⁸ Bevin also thought that the LAC draft had been influenced too heavily by private enterprise Conservatives, like Maxwell-Fyfe, who were actively encouraging actions to limit the Attlee government.¹²⁹

Moreover, the Labour government heavily relied on the legal advice of W.E Beckett at the Foreign Office—which included heavy criticism of the ECtHR, individual petition, and the idea of jurisprudential development of the proposed Convention rights. Firstly, he suggested that acceptance of an enforcement mechanisms like the ECtHR was tantamount to giving “unprecedented powers to an international court” and that “Parliament would never agree to entrust it”.¹³⁰ Secondly, there were also fears any supranational Court might be hostage to individuals and groups whose claims would, at best, be vexatious and frivolous or at worst embarrass the Labour government.¹³¹ Lastly, Beckett also advised the Labour government that the jurisprudence that the proposed Court could develop would result in the government surrendering large amounts of legislative power and gave a blank cheque to curtail various area of government policy. As such, he advised the Labour government not to take the unprecedented risk of entrusting such power to a

¹²⁸ National Archives, CAB 134/424 (IOC(HR)497).

¹²⁹ National Archives, FO 371/78936 (UNE 1073/173 11/96/1949); National Archives, FO 371/73096 (Z537814416/721).

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

supranational court.¹³² As a result, Bevin stressed to the relevant diplomatic channels about the difficulty the proposals would cause the British system and government. He specifically emphasised that the non-existence of an ECtHR should be a point of principle from which no state should depart.¹³³

With these internal discussions and concerns in mind, the Labour government's delegation made their position vehemently known at the Consultative Assembly from 8 to 19 August 1949.¹³⁴ Firstly, Bevin suggested the pro-Federalist groups had been given a larger than necessary platform, while Denis Healey, who was concerned with international affairs in the Labour government, stated that "the Assembly tended to behave as the instrument of the European movement ...".¹³⁵ Secondly, Labour Member of Parliament (MP) Will Nally argued the whole exercise of drafting an international rights instrument was a waste of time, firstly, because real protection against totalitarianism came in the form of economic welfare, and, secondly, the proposals put forward had no real meaning underpinning them.¹³⁶ Moreover, Lynn Ungoed-Thomas, a pro-European-integration Labour Party MP, took issue with the legal mechanisms for protection and argued for political or diplomatic enforcement. He claimed:

the question... is how far we can take [the ECHR] outside the political field and make it the subject of law. That is not an easy proposition. The difficulty with the law is that there must be definition, which must be certain and sufficiently detailed to be subject to application by judges who act in accordance with relevant law and not as politicians who act in accordance with a political discretion. That is the problem. Let us not imagine it is an easy one to solve.¹³⁷

In addition, he claimed there were dangers to guard against and care must be taken so that there was no "latitude for misrepresentation".¹³⁸ Ungoed-Thomas further argued that he was not prepared to go as far as the United States (U.S) Constitution, as this would

¹³² National Archives, FO 731/78936/UNE/073; National Archives, CAB 134/424IOC (HR) 7 of 25 March 1949, Annex B.

¹³³ Ibid.

¹³⁴ The British delegation had 12 Labour Party MPs (this included Herbert Morrison, Hugh Dalton, William Whitley, Ronald Mackay, Lynn Ungoed-Thomas), six Conservative MPs (including Winston Churchill, Harold Macmillan, David Maxwell-Fyfe, David Eccles and Robert Boothby), and one Liberal MP (Lord Layton).

¹³⁵ Dalton Papers 9/7, Report of 19 August 1949.

¹³⁶ TP Vol 1, 78–82.

¹³⁷ Ibid.

¹³⁸ Ibid.

invite action from both the extreme left and right. More specifically, there was a risk of the proposed Convention becoming a reactionary instrument and turning back the clock of much social reform—as the Supreme Court did with President Franklin Roosevelt’s New Deal.¹³⁹ Finally, a young Jim Callaghan, future Labour Prime Minister, claimed it was easy to set out these rights in principle but far harder to implement in practice. He told the Consultative Assembly that there were practical issues that had to be worked out and any further suggestions should be negotiated at government and Committee of Ministers level. Callaghan went on to abstain on the draft produced by the LAC, whilst all the Labour MPs voted against it.¹⁴⁰ Reflecting on the proceedings, Dalton wrote to Attlee stating the excellent work of Labour MPs in debunking the Convention draft.¹⁴¹

For the Labour government, ECHR negotiations were a distraction from their domestic social and economic agenda. As such, impatience with the negotiation process became apparent at a Cabinet meeting in August 1950 – where key figures continued to rail against the proposals. For example, Stafford Cripps, despite being sympathetic to greater European cooperation, argued that no one committed to a planned economy could really accept the jurisdiction of the proposed court.¹⁴² He specifically drew attention to the primacy given to property rights and the restrictions on entering private property. This, he said, was inconsistent with the powers of economic control and only those who believed in a free economy and minimal state intervention would accept a document of this kind. Similarly, Herbert Morrison argued that the proposed ECHR and Court would allow British Conservative politicians to obstruct and stop the Labour government planning the economy.¹⁴³ But Bevin, who was sensitive to the diplomatic pressures of accepting a Convention, did not believe all the rights included, like privacy, would interfere with domestic and economic planning. He told his Cabinet colleagues that he and the government would be embarrassed if there was total opposition to the Convention on these grounds. Cripps endorsed Bevin’s view, but the rest of Cabinet did

¹³⁹ TP Vol 2, 188–191 TP Vol 1, 116–118.

¹⁴⁰ TP Vol 2, 247–249.

¹⁴¹ Dalton Papers 9/7, ‘Letter to Clement Attlee’ 10 September 1949.

¹⁴² Stafford Cripps was willing to go to the Hague and speak on cultural and spiritual subjects—which, he suggested, could be the basis for European unity. However, pressure from within the Labour Party led him to withdraw his support for this. For more on Cripps’ openness towards European integration, see: Peter Clarke, *The Cripps Version: The Life of Sir Stafford Cripps* (Allan Lane, 2002) 355–357.

¹⁴³ National Archives, M(50) 52 195, ‘Conclusions of a Cabinet Meeting 1 August 1950 Cab Minute Note 4 191’; Duranti, *Curbing Labour’s Totalitarian Temptation* (n 116) 376.

not and hostility towards the draft Convention continued.¹⁴⁴ In a letter to Dalton, Jowitt continued to show his displeasure at the proposed supranational instrument. He argued it was obvious that those who were responsible for the rejected draft started from the point of a *laissez-faire* economy.¹⁴⁵

With impatience building in the Labour government, Bevin cunningly insisted that Maxwell-Fyfe and other EM Conservatives be excluded from the preparation of the final ECHR text. With negotiations moving to government-only appointed experts and officials, representatives of the Labour government were tasked with redeveloping the Convention that could be used as the basis for further discussion.¹⁴⁶ According to one British representative at Brussels, Sir Oscar Dowson, despite a more conciliatory tone being adopted, the Labour government was adamant a new draft “proceeded on the right lines”.¹⁴⁷

The new negotiators kept in mind the Labour government’s request for the rights to be defined in a “sufficiently precise” and “detailed manner as possible” – to ensure all obligations were clear, unambiguous, and prevented a low threshold for infringement.¹⁴⁸ In a vital win for the Labour government, the final substantive text of rights contained concise details of each right (life, liberty, freedom from slavery and servitude, expression, and association) and the grounds on which they could be legitimately restricted. Secondly, British officials also inscribed into the final text of the ECHR numerous limitations on the exercise of such rights. Third, British negotiators successfully excluded matters of constitutional or political character from the new draft.¹⁴⁹ They also resisted mandatory individual petition, claiming this to be too unique and highlighting there was no equivalent international enforcement mechanism like it (this will be discussed in more detail in Chapter 4 Section 4.5, where resistance will be juxtaposed against acceptance of individual petition by Harold Wilson’s Labour government).

Overall, despite its misgivings, the Labour government and Britain signed up to the renegotiated ECHR. They were successful in limiting the effect of the ECHR to a very narrow and precise set of obligations—none of which, so it was believed, could intrude

¹⁴⁴ Duranti (n 115) 428.

¹⁴⁵ Simpson (n 117) 740.

¹⁴⁶ TP Vol 2, 302–304.

¹⁴⁷ TP Vol 4, 8–10.

¹⁴⁸ *Ibid*, 10.

¹⁴⁹ TP Vol 4, 22–24; TP Vol 3, 182.

upon domestic social and economic policy. The Labour government also went on to specifically resist and denounce the Convention's individual petition mechanism and proposals for jurisdiction of the ECtHR. As Richard Toye has argued, acceptance was seen as a way to "control" and "ward off more ambitious projects".¹⁵⁰

3.7. Analysing the Labour Government's Untrammelled Sovereignty-based Resistance to the European Convention on Human Rights

3.7.1. Rejecting Supranational Structures

The Labour government had a keen interest in forging cooperation and political closeness with their European neighbours.¹⁵¹ Bevin, for example, wanted to bring together Western states, calling for the creation of a "spiritual union" based on a shared set of values.¹⁵² However, this commitment was practically thin, with critics arguing that the Attlee government, outside of participating in the European Economic Cooperation (which came about due to the Marshall Plan and the Western Military Alliance known as the Western Union), were hesitant of supporting supranational organisations and instruments.¹⁵³ Bevin had clashed with Churchill following the latter's "United States of Europe" speech and privately claimed that he did not favour taking the country into "a binding federation with other states of Western Europe".¹⁵⁴ This stemmed from not only a Eurosceptic tradition within the Labour Party, but a commitment to untrammelled sovereignty. Critics have acknowledged this and argued the real concern for the Labour government was, not so much a federation of states, but the notion of conceding any measure of sovereignty to continental bodies.¹⁵⁵

The draft Convention backed by Conservatives within the EM, like Maxwell-Fyfe, and Tietgen's LAC was viewed by the Labour government as having the potential to restructure the British constitution. More specifically, by creating a supranational

¹⁵⁰ Richard Toye, *Age of Hope: Labour, 1945, And the Birth of Modern Britain* (Bloomsbury, 2024) 193.

¹⁵¹ For more on Britain's post-war view about European integration, see: M. Dedman, *The Origins and Development of EU 1945-95: A History of European Integration* (Routledge 1996) 16.

¹⁵² HC Debate 22 January 1948 vol 446 col 383-517.

¹⁵³ Duranti (115) 224.

¹⁵⁴ Toye (n 150) 191.

¹⁵⁵ R.M. Douglas, *The Labour Party, Nationalism and Internationalism 1939-1951* (Routledge 2001) 240.

hierarchy it would have relegated the core constitutional doctrine of parliamentary sovereignty—or untrammelled sovereignty as understood – below that of Convention rights. Of course, figures like Maxwell-Fyfe did not explicitly advocate for the restructuring of the British constitution and curtailment of parliamentary sovereignty. But the proposals put forward—hidden in the form of international law—were tantamount to the establishment of a new hierarchical order and supranational oversight of the British government’s policy, legislative agenda, and even Parliament itself. The consequence of which would have been a disproportionate emphasis on compatibility towards supranational standards during the legislative and decision-making process. Consequently, the autonomous decision-making power of an elected majority in Parliament would be curtailed.

This concern can be traced across several key figures of the Labour government and party. Firstly, despite Bevin favouring cooperative arrangements between European states, he was increasingly sceptical of a Federalist-driven integration and was also no believer in a “United States of Europe”.¹⁵⁶ For Bevin, the Western European bloc was ripe for cooperation between sovereign states, either through international convention or consensus achieved through high inter-state negotiations. This, he thought, would not result in a loss of sovereignty. Reflecting on Bevin’s position in 1972, Ernest Davis, Parliamentary Under-Secretary at the Foreign Office from 1950 to 1951, suggested that:

Bevin was fearful that the Council of Europe would become a supranational authority involving surrender of a measure of national sovereignty... particularly on the economic front.¹⁵⁷

Similarly, Morrison considered European integration as a waste of time and saw it as a threat to British sovereignty.¹⁵⁸

Secondly, despite supporting international cooperation in the form of the Commonwealth, Attlee described European integration as a “time wasting detour” on the road to world government.¹⁵⁹ Importantly, this position informed his view on the nature

¹⁵⁶ National Archives, FO 371/67578 6. For instructive texts on Bevin’s broader foreign policy and attitude towards European integration, see: A. Bullock, *Ernest Bevin, Foreign Sec 1945–1951* (New York, 1983); G. Warrar, *The Foreign Policy of the British Labour Government 1945–51* (Leicester, 1984).

¹⁵⁷ *Daily Telegraph* (London, 23 January 1972).

¹⁵⁸ Bernard Donoghue, *Herbert Morrison: Portrait of a Politician* (Weidenfeld and Nicolson, 1973) 482.

¹⁵⁹ Harris (n 8) 315.

of a potential ECHR. Attlee specifically believed that the issue of rights should not be for export or to be imposed on others. While supporting an expansion of political, personal, and economic liberties, Attlee qualified this by stating the Labour Party could not lay down the law to the rest of the world. Instead, the Labour Party could only say:

here is our way of life and the best way we can advocate those principles is by striving more and more to live our principles of freedom and social justice and set an example to the rest of the world.¹⁶⁰

Dalton was the least supportive of supranational institutions and European integration. He argued that pooling sovereignty into a common assembly was dangerous, unpredictable, and created “conclaves of chatterboxes”. He believed it was far better to have representatives of sovereign governments discuss practical issues instead. Importantly, Dalton argued the British labour movement had fought for social rights and full employment for decades, and that the British government should avoid giving domestic powers away to, what he called, “reactionaries in Western Europe”.¹⁶¹ Overall, the success of socialism in Britain and Europe was wholly dependent on the success of individual parties in individual nations—the implication being that Dalton did not believe socialism could be achieved in a supranational or integrated forum. Similarly, Healey argued the Labour Party could never accept any commitments which limited its own or other freedom to pursue democratic socialism and to apply the controls required to achieve it.¹⁶²

Finally, in 1951, and prior to his revisionist turn, the young Labour MP Anthony Crosland wrote scathingly about European integration and the Council of Europe – reaffirming the commitment to untrammelled sovereignty. He claimed there was “no chance of any British government merging its sovereignty in a supranational Council of Europe”. He went on to say that, since the war, Britain had experienced full employment and social peace. Therefore:

it is not surprising that she fears to jeopardise the social and economic stability by surrendering sovereignty to a federal government... in which the majority would

¹⁶⁰ Simpson (n 117) 160.

¹⁶¹ Matthew Broad and Suvi Kansikas, *European Integration Beyond Brussels* (Springer International, 2020) 136. Dalton was generally considered to be extreme in his attitudes towards Europe. Healey accused him of “some of the more savagery anti-European remarks”. See: Douglas (n 155) 264.

¹⁶² Dennis Healey, *European Unity: A Statement by NEC of British Labour Party* (Labour Party, 1950).

be held by countries not similarly successful and with internal policies different from our own.¹⁶³

He also argued the Council of Europe had only acted as a psychological need amongst people who had no faith in the nation state, and this was not the case in Britain or the Labour Party. Crosland's view reflected a widespread position, on both the left and right, within the Labour Party. More specifically, that the great sacrifices made by Britain would be given up by any large-scale surrender of sovereignty to a European political community.¹⁶⁴

These attitudes among the Labour government and party led to a reluctance to engage positively with supranational structures or instruments. Crucially, there was no appetite for external interference in domestic affairs.¹⁶⁵

3.7.2. Refusing Supranational Judicial Oversight

Critics have documented a range of reasons for why the Labour government felt individual petition—the ability for citizens and groups to directly appeal to a supranational court—and the creation of an ECtHR to be inappropriate. These arguments range from the disruption to governing colonies' authority, the risk of vexatious claims, and the Labour government adhering to a form of conservative normativism e.g., preference for common law protections and a belief that the legislature was to safeguard freedoms.¹⁶⁶ While there is merit to these arguments, on closer inspection they were much less weighty than untrammelled sovereignty-based concerns that stemmed from a distinct anti-supranational judicial sentiment.

Briefly, the Labour government was already sceptical and distrustful of domestic courts; it was keen on preventing legal challenges before traditional courts in respect of its new social rights and broader legislative agenda. The Labour government created new administrative processes which removed traditional judicial control in relation to social rights and allowed disputes to be resolved by people with a conscious effort at furthering,

¹⁶³ Anthony Crosland, 'Prospects for the Council of Europe' (1951) 22 *Political Quarterly* 142.

¹⁶⁴ *Ibid.*

¹⁶⁵ TP Vol 3, 188–192.

¹⁶⁶ James Young, 'The Politics of the Human Rights Act' (1999) 26 *Journal of Law and Society* 27.

not inhibiting, social policy.¹⁶⁷ Griffith extolled the virtues of these administrative tribunals to determine disputes. He claimed that, compared to ordinary courts of law, the adjudicator in such tribunals would bring human experience and understanding. Importantly, they would work alongside the grain of the legislation to ensure its intended effects were felt.¹⁶⁸ The anti-judicial sentiment towards traditional courts was translated onto the supranational plane. More specifically, the Labour government was concerned that an ECtHR would impose standards at the expense of domestic policy and legislative aims. This concern was only further exacerbated by Maxwell-Fyfe's inflammatory comments about a future Convention and ECtHR preventing totalitarianism and mass nationalisation programmes that, he thought, diminished free enterprise across Britain and Europe.¹⁶⁹

Resisting and refusing the establishment of a mandatory ECtHR that protected civil and political rights was not easy for the Labour government. Particularly as prior to being elected, a concerted effort was made to convince the electorate they would never abandon such freedoms whilst carrying out extensive social and economic reforms. Also, Churchill's consistent boasting about an ECtHR acting as the "judgement of the civilised world" made the Labour government's resistance more difficult.¹⁷⁰ However, despite this external pressure and assurances being given to British negotiators that the proposed ECtHR would not infringe on domestic decision-making, the Labour government was steadfast and forward thinking in its rejection of such a body. There were valid reasons for this.

Firstly, the government believed politically motivated cases would be brought before a supranational court. In a House of Commons debate, the government's Under-Secretary of State for the Foreign Office claimed that, within the Consultative Assembly, there were groups who would use such mechanisms and instruments to attack their own government. He argued:

¹⁶⁷ Robson (n 53) 346–348; Jeffery Jowell, 'Administrative Law' in Vernon Bogdanor (ed), *The British Constitution in the 20th Century* (Oxford University Press, 2003) 383.

¹⁶⁸ Griffith (n 38) 82–89.

¹⁶⁹ David Maxwell-Fyfe: 'Article' *The Star* (London, 30 May 1949); Duranti (n 116) 243–253, 293.

¹⁷⁰ TP Vol 1, 34, 134.

many of the members who went to Strasbourg from all countries they represented seem to have been drawn together not so much ideological ties or by common ideals but because they were friends in political adversary.¹⁷¹

Secondly, the Labour government was suspicious that the true purpose of an ECtHR was to export European values and standards into domestic policy and legislation making. Despite this being rejected by Teitgen at LAC's drafting stage, the true purpose of an ECtHR was revealed by Teitgen himself at an earlier state of drafting.¹⁷² He claimed that future jurisprudence and growing case law of a court would not only be used to prevent totalitarianism but develop an ideological consensus and export a new European norm (this was an early description of what became the 'living instrument' doctrine). Teitgen argued that developed case law and jurisprudence would be informed by European values. More specifically:

to develop this jurisprudence the court would, day after day, examine the law which it administers following the practices and customs of the countries which it represents. And then, a long time after, codification may be achieved. This will define and crystalise the results acquired by judicial experience.¹⁷³

This type of judicial activism and dialogue was seen as important for those who advocated an ECtHR, as it would cement European human rights principles into the social and cultural fabric of member states.¹⁷⁴ But the Labour government was acutely aware that the EM and LAC's draft included provisions for rights to be read into a future Convention.¹⁷⁵ Bevin thought that general statements and ideas of a living instrument were a mistake. He believed this would be used as a tool to hamper government policy. As a result, the Labour government argued for static and narrow proposals—so that there was a clear, defined, set of purposes.¹⁷⁶

The intention for a proposed dynamic Convention and ECtHR that extrapolated or developed Convention rights were at odds with the Labour government's ideological

¹⁷¹ HC Debate 13 November 1950 vol 480 col 1392-3.

¹⁷² Teitgen claimed he understood that a "sovereign state may refuse to abate its sovereignty". On the other hand, he could not see how a Western European country would prevent the court from providing the necessary safeguards in respect of equity, impartiality, and conscience. See: TP Vol 5, 292-296; TP Vol 1, 34, 276.

¹⁷³ TP Vol 1, 275-276.

¹⁷⁴ TP Vol 1, 124, 276; TP Vol 2, 176.

¹⁷⁵ TP Vol 1, 280.

¹⁷⁶ TP Vol 2, 50-52; National Archives, UN UNE 3567/173/11 96/1949.

position in relation to untrammelled sovereignty and non-interference with domestic social and economic policy. Attlee was advised directly that negotiators should expressly exclude any form of court from the outcome—with which Attlee and other members of the Labour government agreed.¹⁷⁷ Indeed, where there was a continual push by member states and the Consultative Assembly to include a mandatory supranational court, the Labour government found it so objectionable that it came close to boycotting negotiations.¹⁷⁸

3.7.3. Codification Concerns

Lastly, the inclusion of certain codified rights—property and education—were of great concern to the Labour government. As such, they sought to purposely excluded social and economic rights, despite individuals like Maxwell-Fyfe lobbying for their re-inclusion. This was driven by the belief that a supranational forum was not appropriate for these types of guarantees, and their inclusion would mean dangerous unforeseeable implications for domestic policy.

On the specific issue of property, it was thought the primacy given to private interests was inconsistent with powers of protecting workers' interests, the acquisition of land for public interest purposes, and economic control. For the Attlee government, its programme of nationalisation was motivated by, among other things, improving the conditions for workers in society.¹⁷⁹ The potential of the right to property to intrude on such plans was too much of a risk for the post-war Labour government. A Labour government representative at the Consultative Assembly described the entitlement to property as a “reactionary attempt” to defend a system in which “a tiny handful of people own the means by which millions of others lived”.¹⁸⁰ While Labour's Alice Bacon MP was more emphatic. She claimed that the British government would not tolerate a provision that prevented the state passing necessary laws that ensured property was used for the public interest.¹⁸¹ Lastly, there were also general concerns about the impact of a

¹⁷⁷ National Archives, FO 371/73096.

¹⁷⁸ National Archives, US/731/176 in FO 371/88764.

¹⁷⁹ Duncan Tanner et al. (ed), *Labour's First Century* (Cambridge University Press, 2000) 57.

¹⁸⁰ TP Vol 7, 4–46.

¹⁸¹ Ibid.

supranational court enforcing the right to property.¹⁸² The Attlee government's Town and Country Planning Act 1947 nationalised the right to develop and set compensation for land acquisition based on values at the time the legislation entered into force. The intention was to prevent fluctuations in market value, resist the influence of speculation, and allow the public—not private property owners—to gain maximum benefit from planning and development. While there were difficulties with this system, the Labour government did not accept that private property owners had a moral or legal expectation to full market value compensation. As such, there were concerns about the Convention's right to property and inevitable judicial interpretation interfering in such matters and risking compensation being adjusted according to market value.¹⁸³

Moreover, on the inclusion of the right to education, the Labour government specifically resisted on the basis that any positive obligation imposed would have implications for planning and expenditure on domestic education.¹⁸⁴

Overall, key figures in the Attlee government wanted to have free rein to design and tailor policies on the domestic front—or, in other words, they were staunchly committed to untrammelled sovereignty. During negotiations, assurances were sought by the Labour government that certain rights in the Convention would not place any limits on nationalisation, taxation, or general social policy.¹⁸⁵ The Labour government was steadfast in its position on education and property rights—despite individuals like Maxwell-Fyfe lobbying for their re-inclusion in weaker forms. There was a stern belief that the international sphere was not the appropriate forum for these types of guarantees and their inclusion would mean dangerous, unforeseeable implications.

3.8. Conclusion

This chapter has explained how leading individuals in the Attlee government remained influenced by an ideological framework of ethical socialism, communitarianism, and

¹⁸² Ibid.

¹⁸³ Sanjit Nagi, "A Future Constitutional Battleground? Expropriation, Compensation, and the Right to Peaceful Enjoyment of Property under the European Convention on Human Rights", *U.K. Const. L. Blog* (15 April 2024) <available at <https://ukconstitutionallaw.org>> accessed 4 July 2024.

¹⁸⁴ TP Vol 7, 4–46.

¹⁸⁵ TP Vol 6, 134-138.

socialistic-political constitutionalism. This led to a continued rooting of rights in ideas about an ethical society and untrammelled sovereignty.

This crucial episode saw, firstly, the continued desire to cultivate the conditions in which to foster the bonds of solidarity amongst citizens. The Labour government put into place policies of rights and strict and non-correlative duties—in the areas of social security, national health, and volunteerism—that aimed to create degrees of civic participation in society. Like those in the early Labour Party, the Attlee government rejected individualistic motives and the paramountcy of individual freedoms in society. As such, there were concrete attempt to extinguish this type of thought. This was a genuine aim for the post-war Labour government.

Secondly, this chapter has also shown the clear, simultaneous, commitment to untrammelled sovereignty. This manifested most clearly in the firm resistance to the ECHR. This was viewed as having the potential to curtail domestic legislative and policy initiatives. It was politically and diplomatically difficult for the Labour government to resist and weaken the ECHR during negotiation and drafting process.¹⁸⁶ Indeed, they had been involved in the creation of the Council of Europe and, from a foreign policy perspective, they wanted to be constructive and cooperate with European allies. Moreover, by resisting such a proposal they opened themselves up to attack from Churchill and the Conservative Party. Despite this, they were even-tempered and resolute in their ideological position of limiting the effects of any supranational instrument on untrammelled sovereignty. The policy of the Labour government became to secure agreement on a revised Convention that was compatible with its perception of untrammelled sovereignty.

Part One of this research concludes by successfully showing a consistent thread of thought that influenced key figures in the Labour Party. Through extensive examination of archival material, written work, and political thought it is doubtless the Labour Party, for 55 years, rooted its approach to rights in wider ideas about the nature of society and sovereignty—namely an ethical society and untrammelled sovereignty.

¹⁸⁶ National Archives, FO 371/178937 (UNE 3796).

PART II

Abandoning an Ethical Society and Reorientating Untrammelled Sovereignty

Chapter 4: The Early Revisionist Right, Wilson Government, Personal Choice, and Accepting Supranational Review via Individual Petition and Jurisdiction of the European Court of Human Rights; 1956-1970

Society's decisions impinge heavily on people's private lives as well as on their social or economic welfare; and they now impinge, in my view, in too restrictive and puritanical a manner. I should like to see action taken both to widen opportunities for enjoyment and relaxation, and to diminish existing restrictions on personal freedom.¹

- Anthony Crosland

4.1. Introduction

After the Labour Party's general election defeats in 1951 and 1955, the retirement of Clement Attlee, and the implementation of most of the Labour government's post-war legislative objectives, most critics agree that the party was exhausted and low on intellectual ideas.² This created the space for re-thinking the nature and aims of the Labour Party's socialism. Filling this vacuum and providing an intellectual reassessment, from 1956 to 1962, were key figures from the early revisionist right of the Labour Party. This included, among others, the new leader Hugh Gaitskell and intellectual Anthony Crosland. Importantly, these leading figures were influenced by an ideological framework of revisionism and a liberally reorientated socialistic-political constitutionalism. This informed new ideas about the nature of society and sovereignty. These included, firstly, a rejection of ethical notions of society (organicism, fellowship, and civic participation) and, secondly, a liberal untrammelled sovereignty. The former saw key figures in the Labour Party call for a new approach to the citizenry; one that recognised what the real motivations for citizens in society. This included self-interest and enhanced freedom of choice. While the latter saw a continued belief in untrammelled sovereignty, it would now be tilted towards the elected majority in Parliament using its domestic decision-making power to positively extend liberty to individuals. Consequently, these early revisionist right ideas found footing in Harold Wilson's Labour government's rhetorical and practical

¹ Anthony Crosland, *The Future of Socialism* (first published in 1956, Constable & Robinson, 2006) 402.

² Jeremy Nuttall, *Psychological Socialism: The Labour Party and Qualities of Mind and Character; 1931 to the present* (Manchester University Press, 2006) 68–70; Patrick Diamond, *The Crossland Legacy: The Future of British Social Democracy* (Policy Press, 2016) 18.

policy from 1964 to 1970. With this reformed view about society and sovereignty, there were new implications for the theory and practice of rights.

This chapter will, firstly, understand why the early revisionist right rejected the “cooperative aspiration” and, instead, favoured incorporation of an ethic of self-interest and freedom of choice into their view of society. This will be followed by explaining how these ideas informed Harold Wilson’s government’s raft of permissive policies. This section will then conclude by showing how some key figures in the Labour government reacted negatively towards the new societal ethic. More specifically, it will be shown how there was a degree of “ethical remorse” about the and lack of responsibility being fostered amongst citizens.

In the second half of this chapter, I will explain how a liberally oriented socialistic-political constitutionalism changed the tenet of untrammelled sovereignty. While understanding it in the same terms as key figures in the Attlee government, the liberal tilting of untrammelled sovereignty meant that a fundamental aim for the elected majority in Parliament was lifting restraints on individual freedom by positively extending it through individual rights-based measures. This shift will be evidenced through the ideological position of Harold Wilson, the creation of a pro-judicial attitude, and a broad comfortability and willingness to cede to different supranational bills of rights. This chapter will then explain how the same liberal untrammelled sovereignty led the Wilson government to accept the ECHR’s individual petition mechanism and jurisdiction of the ECtHR. To draw a sharper distinction between the Wilson’s government’s approach to rights being rooted in a liberal untrammelled sovereignty, this will be juxtaposed against the Attlee government’s rejection of such supranational mechanisms.

Finally, this chapter will briefly outline the inter-party tensions in relation to the bubbling proposals for a domestic bill of rights. Importantly, under Jim Callaghan as Prime Minister, the Labour Party and government reverted to a more traditional view of rights being rooted in a pre-1955 version of untrammelled sovereignty.

4.2. Rejecting Societal Duties for Personal Choice

Critics have disagreed about the extent to which there was an abandonment of ethical objectives by the early revisionist right and the later Wilson government. Jeremy Nuttall

argues that while the compass of ethical socialism and its aims shrank during the revisionist years, a reformed ethical vision persisted. By this, Nuttall means leading figures during this time tended to link qualities of the mind, like caring for others, with their objective of equality. In other words, the creation of a just and egalitarian society was thought to subconsciously produce a more other-regarding and obligation-driven society.³ On the other hand, Jose Harris has argued that the old culture of puritanism was derided. As such, little attention was given to issues of morality by leading figures in the Labour Party at the time.⁴ It is true little thought was given to stimulating an active and other-regarding citizenry. However, it would be more accurate to suggest greater emphasis was placed on reshaping society around self-interest and personal choice.

4.2.1. The Early Revisionist Right and the “Cooperative Aspiration”

From the outset, it should be noted that the Labour Party was in opposition from 1956 to 1964. The position developed by the early revisionist right on the nature of society is mainly derived from theoretical musings, as opposed to practical policy. Nevertheless, leading figures like Gaitskell and Crosland purposely looked to move on from the ethic of rights and duties. First, they doubted the relevance of ethically socialist notions about society and questioned whether the electorate, in the 1950s, would accept such views. More specifically, it was thought that culture and rhetoric of social obligations and mutual respect could not be reconciled with, what critics have described as, a period of “affluence”. This included higher standards of living, rising Gross Domestic Product, a period of social mobility (where manual workers became white collar and middle class), greater home ownership, and higher consumer consumption.⁵ Indeed, studies conducted at the time suggested that the increase in prosperity led to a decline in the collectivist morals, which were traditionally at the heart of the Labour Party’s appeal.⁶ Against this

³ Nuttall (n 2) 68–70, 73.

⁴ Jose Harris, ‘Political Thought and the State’ in S.J.D. Green and R.C. Whitely (ed), *The Boundaries of the State in Modern Britain* (Cambridge University Press, 1996) 26–27.

⁵ For more on affluence, the Labour Party, and revisionism, see: Laurence Black, *The Political Culture of the Left in Britain, 1951-64: Old Labour, New Britain?* (Palgrave Macmillan, 2003) 12; Vernon Bogdanor and Robert Skidelsky, *The Age of Affluence 1951-1964* (Macmillan 1970) 78; and Stuart Middleton, ‘Affluence and the Left in Britain’ (2014) 129 *English Historical Review* 107.

⁶ Ferdinand Zweig argued that, for British workers, “old calls, old slogans, old loyalties often leave him cold. The class struggle interests him less and less. The idea of the working class as an oppressed or an exploited class or the romanticised idea of the working class as foremost in the struggle for progress

backdrop, Gaitskell believed that voter values had become more individualistic and less communitarian.⁷ He claimed:

I fancy that in the last year or two more and more people are beginning to turn to their own personal affairs and to concentrate more on their own material advancement. No doubt it has been stimulated by the end of post-war austerity, TV, new gadgets like refrigerators and washing machines, the glossy magazines with their special appeal to women, and even the flood of new cars on the home market. Call it if you like a growing Americanisation of outlook. I believe it's there, and it's no good moaning about it.⁸

Therefore, for Gaitskell, the concept of rights being attached to duties risked being patronising, elitist, and judgmental. He warned that the Labour Party should be cognisant of being seen as “armchair politicians” i.e., prescriptive and out of touch.⁹ Similarly, Douglas Jay argued the Labour Party should avoid deriding those who were self-interested and wanted looked out for their own needs before others. He argued:

it is only the exceptional disinterested altruistic individual who cares about his less fortunate neighbour getting a pension, house, good education or adequate legal advice if he has already secured these for himself and his family.¹⁰

While this context certainly contributed to a departure from ethically socialist and communitarian notions about society, more fundamental thinking about the nature of society also took place. This firstly, justified the rejection of rights from duties and, secondly, purposely placed emphasis on personal choice in society. Crosland’s seminal book, *The Future of Socialism*, provided such thinking. Despite recognising that the Labour Party had traditionally been concerned with advancing moral values, Crosland claimed he found it “impossible” to reach a definitive conclusion about the “cooperative aspiration”. Or, in other words, the ethic of duty, obligation, and service. Because of this, he could not

and social justice is fading from his mind and is more and more replaced by the idea of the working class as a class well established and well-to-do in its own right”: See: Ferdinand Zweig, ‘The New Factory Worker’ (1960) 167 *Twentieth Century British History* 397.

⁷ Nuttall (n 2) 10.

⁸ Hugh Gaitskell, ‘Understanding the Electorate’ *Socialist Commentary* (London, 19 July 1955)

⁹ Hugh Gaitskell, ‘Proof Copy of Forward December 1953’ in Evan Durbin, *The Politics of Democratic Socialism* (first published 1940, Routledge, 2018) 9; Gaitskell Papers (University College London), GAITSKELL/A, A124; Nuttall (n 2) 667–694.

¹⁰ Douglas Jay, *Socialism in the New Society* (Longmans, 1962) 387.

include this ideal in a definitive statement of socialist aims.¹¹ First, Crosland expressed doubt as to whether a cooperative ethic could ever be established. He stated:

a change in social character, altering the underlying balance between self-regarding and other regarding instincts cannot, I suppose, be ruled out as a matter of theory... But of course, we know too little about the determinants to say anything very useful when it comes to practical policy.¹²

Unlike Attlee et al, who extolled the virtues of duties and suggested ways to achieve them, Crosland claimed it would be difficult to create the conditions where ethical motives can operate effectively. If on moral grounds attempts were made to transform society from self to other regarding, a change in the basic social character of citizens or a novel institutional framework would be required to help with said change.¹³ This was believed to be both unrealistic and unlikely. Secondly, Crosland outlined what he saw as the disadvantages of a dutiful society. If the implementation of a cooperative ideal occurred, this would negatively impact, among other things, personal independence, privacy, and an increased standard of living. As a result, Crosland thought an emphasis on cooperation might mean the ossification or complete interdependence of society and the denial of individual rights.¹⁴ This is used as a key reason to shift away from the desire to create other-regarding citizens towards a society that recognised and valued personal choice. For example, Crosland claimed that competition in society was a good within itself and reflected opportunity to advance. Further, economic growth, which was central to Crosland's and revisionists' economic policy, was based on incentives that were geared towards competition not cooperation.¹⁵ Lastly, while Crosland accepted that people should work for social goods, which can provide a sense of fulfilment, he was equally clear that society could and should vary according to individual efforts. It was possible that people were able to work hard for personal gain and badly for the common good.¹⁶ Overall, Crosland suggested there was no reason why a society based on "high consumption" and competition could not be compatible with the cooperative spirit of

¹¹Crosland (n 1) 79-86, 109.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

“brotherly love”.¹⁷ But he maintained that people would become just as socially responsible in traditionally self-interested roles. Douglas Jay thought similarly. He suggested that there was still room for more ethical ideals, “idealism and social responsibility will still have appeal in Britain...provided they are applied to real and contemporary issues”.¹⁸

With these types of arguments finding favour among the early revisionist right, Gaitskell et al actively argued for self-interest and personal choice in society. More specifically, they supported citizens or individuals having more control over their lives – whether this was in realms of personal taxation or in spheres of collective activity.¹⁹ Gaitskell firmly believed that the pursuit of happiness had always been an individual and personal matter. As such, it would be intervening far too much with person freedom if the state was to direct how individuals should find fulfilment or create the conditions for citizens to fulfil community-facing obligations. Gaitskell thought this was tantamount to tyranny. Instead, it was desirable to leave people to decide for themselves how to achieve this.²⁰ For the early revisionist right, it was never acceptable to assume how citizens should conduct themselves.

Crucially, Gaitskell directly acknowledged that the Labour Party was moving into a new direction in relation to the nature of society; away from ethical notions that key figures like MacDonald, Lansbury and Attlee once espoused. Tellingly, he claimed that there would be reservations amongst the Labour Party’s “staunchest supporters”, e.g., those within the “chapel”(Christian socialists), “working men’s club”, and the “paternalists and organicists” about the prioritisation of self-interest in society and, among other things, the departure from messages of societal duties.²¹ While it would split opinion, Gaitskell argued it was much better to advance policies which were most in line with an individual’s own preferences.²² In sum, Patrick Diamond has claimed “the idea of co-operative social purpose” based on altruism and solidarity raised numerous problems for

¹⁷ Ibid, 247.

¹⁸ Jay (n 10) 387.

¹⁹ Nick Ellison, *Egalitarian Thought and Labour Politics: Retreating Visions* (Routledge, 1994) 200.

²⁰ Phillip Williams, *Hugh Gaitskell* (Oxford University Press, 1982) 69, 486; Hugh Gaitskell, 'The Ideological Development of Democratic Socialism in Great Britain' (1955) 5 *Socialist International Information* 52.

²¹ David Reisman, *Anthony Crosland: The Mixed Economy* (Macmillan, 1997) 113.

²² Ibid.

revisionist thinkers—who could not “foresee tangible commitments arising from such principle”.²³

4.2.2. The Wilson Government and Ethical Remorse

Leading figures in Harold Wilson’s Labour governments, from 1964 to 1970, also rejected ideas of duties towards the community and placed great emphasis on personal choice in society.²⁴ The 1964 election manifesto offered a sense that a Labour government would offer a new way of life—by placing emphasis on citizenship above the private profit and gain, which had taken hold in the affluent society. The manifesto claimed that the Labour Party:

does not accept that democracy is a five-yearly visit to the polling booth that changes little but the men at the top. We are working for an active democracy, in which men and women as responsible citizens who consciously assist in shaping the surroundings in which they live and take part in deciding how the community's wealth is to be shared among all its members.²⁵

However, this was, ultimately, empty rhetoric. Instead, heeding the calls of the early revisionist right, the Wilson government, whom Crosland was a part of, reinforced its commitment to a personal choice through a series of liberalising reforms. This affected the areas of sexual orientation, women’s health, the distribution of pornography, and the scope for divorce. None of these measures were, of course, bad things—they were humanising and tolerant. Speaking about these reforms and his aims as Secretary of State for the Home Office, Roy Jenkins claimed he was resolutely committed to the individual in society. He recalled viewing his first period at the department as opening the “windows of freedom” into the “fusty and restrictive” atmosphere. Indeed, Jenkins was crucial for the creation of a new society, which can be linked with his broader revisionist political philosophy and his socialism – which he argued centred on enlarging human choice.²⁶

²³ Patrick Diamond, *New Labour's Roots: Revisionist Thinkers in Labour's History* (Andrews U.K. Limited, 2005) 16.

²⁴ Jeremy Nuttall, ‘Wilson and Social Change’ in Kevin Hickson, *The Unprincipled Prime Minister?: A Reappraisal of Harold Wilson* (Biteback Publishing, 2016) 20.

²⁵ Labour Party, *General Election Manifesto: The New Britain* (The Labour Party, 1964).

²⁶ Roy Jenkins, *A Life at the Centre* (Macmillan, 1991) 376.

Some critics suggest there was passiveness on the part of Wilson in relation to these reforms. For example, Kevin Hickson argues that while Wilson did not seek to stop their implementation, he did not appear to share the zeal of his reforming Home Secretary. However, Peter Hennessy and Ben Pimlott have claimed that Wilson was happy to accept the reforms that had the backing of the party.²⁷ In his own memoirs, Wilson offers an account that suggests he was more emphatic and proactive in his support for the reforms. He reflected that Jenkins provided a “revolutionary change” in attitude at the Home Office.²⁸ Importantly, Wilson also gave Jenkins the parliamentary time and space to pass the relevant legislation. Doubtless he was also opposed to the unjust treatment of sections of society. Between Wilson and Jenkins, there was an active effort to emphasise and enhance personal freedom in society.

Despite the well-intentioned nature of the reforms and their associated benefits, prioritising personal freedom in society and generally fostering widespread feelings of permissibility or individual empowerment had, according to some within the Labour Party, an impact on the role citizens played in society. More specifically, the lack of duty that citizens felt towards one another. The historian, Peter Thompson, has argued that a substantial minority of Labour Party MPs, especially non-conformists and Catholics, were opposed to the liberal growth of some personal freedoms.²⁹ Of course, opposition to the liberalising reforms like legalising homosexuality or divorce can be interpreted as a distaste towards minority groups and individual preferences. Certainly, in some quarters of the Labour Party it was.³⁰ However, for other key figures in the Labour Party, their opposition did not stem from a dislike of specific reforms, but a broader objection to embellishing personal choice without simultaneously fostering responsibility and duty. In other words, there was unease about there being no adjacent emphasis being placed on rights and duties in society.

Firstly, the Leader of the House of Lords and Lord Privy Seal, from 1964 to 1968, considered the idea of permissiveness and justified his position, as a Catholic, in supporting homosexuality law reform. However, he opposed other aspects such as the

²⁷ Kevin Hickson, *The Unprincipled Prime Minister?: A Reappraisal of Harold Wilson* (Biteback Publishing, 2016) 11, 74; Ben Pimlott, *Harold Wilson* (Harper Collins Publishers, 1993) 345.

²⁸ Harold Wilson, *A Personal Record: The Labour Government 1964–1970* (Atlantic, 1970) 191.

²⁹ Peter Thompson, ‘Labour's Gannex Conscience? Politics and Popular Attitudes in the Permissive Society’ in Steven Fielding et al. (ed), *The Wilson Governments 1964–70* (UNKO, 1993) 140.

³⁰ Peter Dorey, ‘Social and Sexual Liberalisation’ in Kevin Hickson, *The Unprincipled Prime Minister?: A Reappraisal of Harold Wilson* (Biteback Publishing, 2016) 71-76.

distribution of pornographic material and cinema, etc. He claimed “I am in favour of a permissive society if it involves a more humane attitude to prisoners, drug addicts, unmarried mothers, and other outcasts.”³¹ However, he qualified this by stating, “I am utterly against it if it involves a lowering of moral standards, whether in sexual or other fields.”³² While Longford indulges in stereotypes about sexual behaviour and morality, his position gives some force to the claim that the objections to personal choice in society stemmed from there being no equal effort put into cultivating responsibility among the citizenry.³³

Secondly, despite foregoing his Baptist religion, James Callaghan, Home Secretary from 1967 to 1970, aligned with its moral virtues. Importantly, he thought highly of and subscribed to notions of fellowship—which he saw as the basis of socialism. While serving as Prime Minister, from 1976 to 1979, Callaghan claimed he wanted men and women to lead the fullest possible lives, not just for their own satisfaction but so they could contribute to others and society.³⁴ Influenced by this ethically socialist ideological position, Callaghan accepted that the societal reforms enacted by the Wilson government were civilising, but he broadly disapproved of what he saw as the liberal moral permissiveness of the revisionist agenda. In 1969, he claimed that the tide of permissiveness had gone too far. He specifically acknowledged the potential ideological conflict between the ethical and materialist strands of the Labour Party. Callaghan felt that, because of the emphasis placed on personal choice, there was less responsibility among individuals in society. He suggested it was not enough to simply extend unconditional entitlements, freedoms, and choices in society. There also had to be a change in both human attitudes and relationships.³⁵ Following the end of the Wilson and Labour government that he led, Callaghan specifically reflected on the loss of the “citizenship ideal” that had been fostered under the leadership of Attlee. In 1983, Callaghan wrote:

if Attlee were alive today his virtues would not be fashionable in some quarters. Let there be no doubt that he would encourage us to go forward on a socialist path.

³¹ Lord Longford, *The Grain of Wheat* (Collins, 1974) 179, 191–204.

³² *Ibid.*

³³ *Ibid.*

³⁴ Jim Callaghan, *Time and Chance* (first published 1987, Politico’s Publishing Ltd, 2006) 396–397.

³⁵ Kenneth Morgan, *Callaghan: A Life* (Oxford University Press, 1997) 753–754; *Ibid* 22, 40, 164, 395–6; and Black (n 5) 35.

He would place as much emphasis on ethical principles as on detailed programmes: on the bounden duty we owe one another as much as our rights.³⁶

More broadly, others within government and the PLP reflected on the less ethical nature of society. George Brown, who was Foreign Secretary, reflected on the selfishness he believed to have witnessed. He argued that once people had achieved a certain degree of emancipation, their habits and thinking changed. With this change in mindset, Brown claimed there had been a sharp decline in the interest and well-being of others and those less fortunate. He criticised the Labour Party and Wilson government for not managing to convince enough people to live in a society that contributes to one another, and the importance that contribution has for the rights of others. He uses the example of taxation and people wanting better services, housing, and other entitlements, but not wanting to contribute to the cause personally. This lack of enthusiasm to contribute was hurting the community, according to Brown.³⁷ Christopher Mayhew, a backbench Labour MP, argued that it was moral and psychological needs, and not socio-economic, which hindered human welfare in the 1970s. He suggested that society, as it was, could be blamed for aggravating the consequences of social ills. He pointed out to immature personalities which were both self-centred and acquisitive.³⁸

Overall, what can be traced is a clear period of giving prominence to personal choice without simultaneously emphasising rights and duties in society. Because of this, there was a growing sense of ethical remorse among some sections of the Labour government and wider PLP at the direction of travel. However, despite these complaints, little was done to change course by key figures in the Labour government and party. It has been suggested that the revisionism Wilson and his government showed was the closest to Crosland's vision of socialism—which included a firm rejection of the “cooperative aspiration”.³⁹

³⁶ Kevin Hickson and Jasper Miles (ed), *James Callaghan: An Underrated Prime Minister* (Biteback Publishing, 2023) 33; John Bew, *Clement Attlee: A Biography of Attlee* (Oxford University Press, 2017) 556.

³⁷ George Brown, *In My Way: The Political Memoirs of Lord George-Brown of Harmondsworth* (Penguin Pages, 1972) 262–265.

³⁸ Christopher Mayhew, *Party Games* (Hutchinson, 1969) 146–150.

³⁹ Hickson and Miles (n 36) 19.

4.3. A Liberal Untrammelled Sovereignty

The early revisionist right and subsequent Wilson government were also influenced by a liberally reorientated socialistic-political constitutionalism. This reshaped the key tenet of untrammelled sovereignty towards liberal ends. Support for this led to greater acceptance of individual rights-based measures and legal controls. As will be shown, this, ultimately, culminated in the Wilson government's acceptance of individual petition and jurisdiction of the ECtHR.

4.3.1. The Early Revisionist Right

It would be true to say that the early revisionist right placed significantly less emphasis on popular notions of sovereignty. Unlike those in the Labour Party from 1900 to 1955, there are fewer recorded discussions of it in primary material like political writings or autobiographies. Or, in other words, less attention was given to theorising such matters. However, in his detailed study of Labour Party revisionism in 1969, Stephen Haseler confirmed leading figures continued to believe that sovereignty, in the British constitution, meant a direct connection between the electorate and the authority of the elected majority in Parliament.⁴⁰ There was agreement that the Labour Party should be a parliamentary force responsible to the electorate and, importantly, continue to accept the electorate as a fundamental power base. This was seen as both democratic and sensible. It was vital that ultimate sovereignty should be located in the body (Parliament), which remained sensitive to electoral opinion.⁴¹ In addition to this, even after three general election defeats, the early revisionist right believed in the elected majority in Parliament having meaningful, effective, and independent exercise of domestic decision and policymaking. As Peter Dorey argues, the Attlee government's success in using Parliament to implement a comprehensive programme of social and economic reform reaffirmed the Labour Party's faith in such arrangements.⁴² For example, Crosland continued to emphasise how the elected majority in Parliament had a dominant position

⁴⁰ Stephen Haseler, *The Gaitskellites: Revisionism in the British Labour Party 1951-64* (Macmillan, 1969) 149-150.

⁴¹ *Ibid.*

⁴² Peter Dorey, *The Labour Party and Constitutional Reform: A History of Constitutional Conservatism* (Macmillan, 2008) 23.

which allowed those in control of it to enact their own policy priorities.⁴³ Even in his last major publication, *Socialism Now*, Crosland failed to doubt the efficacy and transformative nature of the British constitution to enact radical change.⁴⁴ Despite some disagreements with other factions of the Labour Party, the early revisionist right did not countenance radical constitutional reform that would have limited the elected majority in Parliament. They believed the advance towards socialism was possible only because of the existing constitutional arrangements. In this way, the early revisionist right continued to adhere to untrammelled sovereignty as this research has understood it to be.

However, the early revisionist right was influenced by a broader ideological framework of a liberally reorientated socialistic-political constitutionalism—as understood in Chapter 1 Section 1.2.2. Indeed, Jon Cruddas has characterised the Labour Party, during this period, as undergoing a liberal intellectual reorientation.⁴⁵ This reorientation meant the aim for the elected majority in Parliament was to use its political power to enhance individual liberty. Gaitskell would often argue that a majority in Parliament should look to protect the individual and cater its agenda towards providing a framework of opportunity—through which people had the best chance of finding happiness.⁴⁶ Similarly, Jenkins claimed enhancement and protection of liberty was necessary to ensure “that our new society of near equals is left confronting a state machine in which power, both economic and political, is as widely diffused as possible”.⁴⁷ Crosland was also a simultaneous believer in the “active state” and enhancing individual liberty.⁴⁸ As such, he called for power to be dispersed and, in doing so, he argued for legal controls as a way in which to regulate the relationship between state and citizen—with the aim of ensuring a more transparent and accountable relationship between the two. This, for Crosland, would avoid arbitrary controls, commanding prescriptions, and safeguarded liberty.⁴⁹ He argued:

⁴³ Barry Jones and Michael Keating, *Labour and the British State* (Clarendon Press, 1985) 3.

⁴⁴ Anthony Crosland, ‘Socialism Now’ in David Leonard (ed), *Socialism Now and Other Essays* (Jonathan Cape, 1974).

⁴⁵ : Jon Cruddas, *A Century of Labour* (Polity, 2024) 113-114.

⁴⁶ LSE Digital Library, Gaitskell Papers, BP161511(300), Hugh Gaitskell, *Socialism and Nationalisation* (Fabian Tracts, 1956) 4-14.

⁴⁷ Roy Jenkins, ‘Equality’ in Richard Crossman (ed), *New Fabian Essays* (Turnstile Press, 1952) 69, 88-90; Roy Jenkins, *The Labour Case* (Penguin Books, 1959) 36-37.

⁴⁸ Diamond (n 23) 102.

⁴⁹ Crosland (n 1) 308.

...the State's relations with its citizens should be regulated by the law, so that everyone knows where he stands, and what behaviour is reprehensible and what is not, and not by a system of Government agents with no fixed terms of reference, and hence invariably arbitrary in their decisions.⁵⁰

As early revisionists failed to win a general election in 1956 and 1959, the implications of a liberal untrammelled sovereignty for rights is best evidenced through official Labour Party policy while in opposition. In summary, such documents show support for what has been argued. For example, in the 1956 policy paper *Personal Freedom*, it was suggested that the sole responsibility of the state was to promote liberty.⁵¹ Secondly, in 1962, the Labour Party's Home Policy Committee concluded the party required a "brighter", "more optimistic", and "stronger passion for individual liberty".⁵² Lastly, a 1960 NEC statement suggested the Labour Party stood for happiness and freedom of the individual against the "glorification of the state". The statement went on to claim the Labour Party would seek to protect the individual from arbitrary power, whether exercised by the state or public or private bodies.⁵³

Despite tilting untrammelled sovereignty towards liberal ends, those from the early revisionist right still rejected external commands. As such, a key difference between early revisionists and the later Wilson government was the former's continued dislike of supranational institutions and instruments. Despite Crossland's position on supranational institutions changing over the years, he initially was against commanding supranational voices over domestic policies—as set out in Chapter 3 Section 3.7.1. Similarly, Gaitskell was not willing to give up untrammelled sovereignty to any form of supranational institution. For example, in the context of Britain entering the European Common Market, he warned that a thousand years of British history would be ended by acceding to a form of European federal structure.⁵⁴ Moreover, during Gaitskell's tenure of the Labour Party, the Council of Europe—which Gaitskell believed to be "a pure waste of

⁵⁰ Ibid.

⁵¹ Stephen Brooke, *Sexual Politics: Sexuality, Family Planning, and the British Left from the 1880s to the Present Day* (Oxford University Press, 2011) 150-151.

⁵² Ibid.

⁵³ National Executive Committee, *Labour's Aims: Statement on Clause IV, Party Objects, of the Constitution and Standing Orders* (Labour Party, 1960).

⁵⁴ Labour Party, *Britain and the Common Market* (Labour Party, 1962) 12; Jasper Miles, 'Sovereignty and the State' in Kevin Hickson et al. (ed), *The Struggle for Labour's Soul: Understanding Labour's Political Thought Since 1945* (Routledge, 2018) 148.

time”—began negotiating a European Social Charter.⁵⁵ The twin sister of the ECHR sought to provide a system of social policy that could be agreed on by all member states. While there is little recorded material about Gaitskell’s or other early revisionists’ view on the proposed supranational European Social Charter, the position of Labour Party representatives at the Consultative Assembly gives an indication of views the leadership would have either sanctioned or supported.⁵⁶ Archival records show that there was widespread concern about the new supranational proposals. More specifically, there was condemnation of the rigid nature of legalised social rights, the potential impact on the British government’s ability to design social policy (pensions, the right to work, etc.), and there was a rejection of any form of supranational oversight body on such matters and the British government more generally. Because of this, Elaine Burton, the Labour Party’s representative, argued for the production of a Charter with general principles only.⁵⁷

Overall, while the ideological framework that influenced the early revisionist right was a socialistic-political constitutionalism, the liberal orientation of it led to an understanding of untrammelled sovereignty that significantly changed the approach to rights. More specifically, the main aim of the elected majority in Parliament was to actively extend individual rights and freedom-enhancing measures to its citizens.

4.3.2. The Wilson Government

Like the early revisionist right, key figures in the Wilson government understood untrammelled sovereignty in traditional socialistic-political constitutional terms i.e., securing a parliamentary majority which would allow for domestic policies to be

⁵⁵ Rohan d'Olier Butler et al. (ed), *Documents on British Policy Overseas Volume 2 Part 1* (Stationary Office, 1984) 423.

⁵⁶ There is little record on the Labour Party’s approach to and position on the ESC by key figures like Gaitskell et al, during the drafting and negotiation stage. There are two plausible reasons for this. First, after two general election defeats, the party was preoccupied with domestic matters and any energy given to foreign policy centered around the fallout from the Suez Crisis and the construction of a European Economic Community. Parliamentary Hansard records also show little interest in the matter, with only two questions being asked by Labour Party backbenchers. Also, there was little coverage of the ESC by newspapers. Only *The Times* printed an article about the ESC and described it as being a waste of time. See: HC Debate 8 February 1957 vol 564 col 775–874; HC Debate 11 May 1959 vol 605 col 830l; HC Debate January 1959 vol 608 col 102; and Times Reporter, ‘Strasbourg talk on European Social Charter Eighteen Aims of Policy’ *The Times London* (London, 1958).

⁵⁷ ESCTP Vol 2, 194–195; ESCTP Vol 3, 29, 523–524; ESCTP Vol 4, 700–784; and Council of Europe Archives, As/EC (7) 22, ‘Minute of a Meeting from a working party of the Committee of Social Questions 23 January 1956’.

implemented freely.⁵⁸ But this was also liberally reorientated. As the Wilson administration governed for a sustained period of six years, firmer examples that show the approach to rights being rooted in a liberal untrammelled sovereignty are available.

4.3.2.1. Harold Wilson's Liberalism

Like key Labour Party figures before him, Wilson believed that once a majority in Parliament had been secured, the machinery of the existing state would be used to implement social and economic policies freely.⁵⁹ Wilson was somewhat casual in his approach to the nature of the state, or Parliament, and simply believed it to work according to the "man behind the machine".⁶⁰ Importantly, like Gaitskell and Crosland, Wilson wanted untrammelled sovereignty to operate within the boundaries of enhancing the liberty and individual rights. This significantly influenced his approach to rights as Prime Minister, and by extension the Labour government's.

Firstly, Wilson's rhetorical emphasis on enlarging liberty and individual rights can be seen in several publications and speeches he authored. During the Labour Party's annual conference in 1964, Wilson, like Gaitskell before him, argued the Labour Party's purpose was not merely to maintain but enhance the freedom of the individual. He argued:

we have to ensure that not only does socialist planning not infringe on freedom but that in everything we do, we extend and make more real the freedom of the individual in an increasingly complex society.⁶¹

In his 1968 Labour Party conference speech, Wilson asserted the Labour Party was the party of human rights. This was suggested to be the central theme of his government from day one.⁶² Wilson further showed his desire to enhance individual liberty when addressing the society of Labour Lawyers, in a speech called "Liberty and the Law". After

⁵⁸ Hickson (n 27) 13.

⁵⁹ Ibid, 13.

⁶⁰ David Coates, *The Labour Party, and the Struggle for Socialism* (Cambridge University Press, 1975) 142–143.

⁶¹ Harold Wilson, 'Speech to Labour's Annual Conference 1964' in *Purpose and Power: Selected Speeches by Harold Wilson* (London, 1996) 28.

⁶² Harold Wilson, 'Speech to Labour's Annual Conference 1968' (The Labour Party, 1968).

emphasising the rule of law as a central means of ensuring greater security for members of society, Wilson claimed:

whatever our achievements in terms of economic or social policy, in housing, health, pensions, education, in foreign and Commonwealth affairs, in the machinery of our national Government, or the creation of a new system of regional planning, it is our determination that the next Labour Government will go down in history as one of the great liberal reforming administrations of this century, challenging any comparison with any of the past.⁶³

In the same speech, Wilson went on to stress his desire to empower citizens against the state and to move towards placing the individual and their autonomy at the centre of his legislative programmes.⁶⁴ Further, Wilson also hinted at his openness of using accepting codified measures, on the international front, to protect individual liberty. He believed that the UK had to ratify more international conventions, and that insufficient progress had been made in relation to the rights of women and minorities. In sum, Wilson thought that it was a propitious moment for a British government to take a fresh and vigorous initiative within the international space.⁶⁵ Indeed, Tom Buchanan claims that Wilson was personally supportive of human rights schemes globally. For example, he records that Wilson firmly committed the Labour Party to the human rights work of the United Nations.⁶⁶

Secondly, Wilson's support for freedom and individual rights also translated into practice on the domestic front. Firstly, Wilson supported proposals for a Parliamentary Commissioner (Ombudsman).⁶⁷ According to Peter Dorey, the innovation looked to, among other things, enhance the accountability of the elected majority in Parliament.⁶⁸ Wilson and the Labour Party wanted to remedy the view that the Labour Party pursued policies that increased state power at the expense of the individual. According to Richard Crossman, who held multiple positions in Cabinet, the proposal would "take up the cudgels" for individuals who felt their rights had been violated by a department of state

⁶³ Labour Party Archive (National Museum of Labour History), SLL/7/30, 'Harold Wilson, Liberty and Law – Speech to the Society of Labour Lawyers 20 April 1964'.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Tom Buchanan, *Amnesty International and Human Rights Activism in Post-war Britain, 1945–1977* (Cambridge University Press, 2020) 156-172.

⁶⁷ Stationary Office, *The Parliamentary Commissioner for Administration* (Cmd 2767, 1968).

⁶⁸ Dorey (n 42) 71-75.

or public body.⁶⁹ The measure neatly chimed with Crossman's own beliefs. For example, he claimed that socialists should defend the individual against socialism's "excess" or "incipient despotism".⁷⁰ This aim was reflected in the 1964 general election manifesto that promised more open and accountable government.⁷¹ The proposal also drew wide acclaim from Sidney Silverman, who argued it to be the "greatest constitutional amendment" taken since universal suffrage. He believed it would "contribute greatly" to holding members of the elected majority in Parliament to account.⁷² Unlike those in the Attlee government, Wilson was adamant that individuals should have clear methods by which to register grievances against the state. This, he said, was an "important advance in protecting the rights of individual citizens".⁷³

Additionally, Wilson was in favour of positive rights and enforcement mechanisms within the context of anti-discrimination legislation. Despite the justified weaknesses of the Labour government's Race Relations Act 1965, critics have noted that it was the first institutional framework of its kind and constituted "the first legal challenge to white prejudice".⁷⁴ Lastly, national assistance in social security was reformed and reframed around citizens claiming their rights. Timmins argues that there was a general reluctance to claim benefits, specifically due to the stigma of means testing under the National Assistance Act 1948.⁷⁵ National assistance and a limited means test had been introduced by the Attlee government for those who did not meet the criteria for national insurance. However, a third of pensioners who were entitled to claim under the means test did not. To overcome this, Wilson promised an income guarantee for pensioners and a minimum benefit to be paid free of means testing—or, in other words, unconditional. Along with this, under the Social Security Act 1966, the position of the claimant was enhanced. A new body called the Supplementary Benefits Commission was created. This body emphasised the right of the claimant and reduced the discretionary powers of administrative officials

⁶⁹ Richard Crossman, 'Socialism and the new Despotism' (1956) 298 *Fabian Tract* 6, 18, 20.

⁷⁰ *Ibid.*

⁷¹ Labour Party (n 25).

⁷² HC Deb 18 October 1966 vol 734 col 124.

⁷³ *Ibid.*

⁷⁴ Steven Feilding, *The Labour Governments, 1964-70: Volume 1: Labour and Cultural Change* (Manchester University Press, 2003) 152. For a neat overview of the issues with the Race Relations Act 1965, and its political context see: Simon Peplow, 'The 'Linchpin for Success'? The Problematic Establishment of the 1965 Race Relations Act and its Conciliation Board' (2017) 31 *Contemporary British History* 430.

⁷⁵ Nicholas Timmins, *The Five Giants* (William Collins, 2017) 226.

to deny a claim. Lastly, the rules around national assistance were codified. According to Timmins, the rationale behind the reform was that benefits under the scheme would no longer be “charity for the poorest, but a right for anyone who got into severe difficulties”.⁷⁶ Tellingly, Crossman called this “brilliantly worked out” and compared it to a form of “universal income guarantee”.⁷⁷ Wilson himself claimed that these were some of his most popular reforms. He suggested that hundreds of thousands of the least well off would now be able to claim their rights.⁷⁸

Overall, Wilson's political thought and position was instrumental in his party and government's policy towards the promotion of individual rights and liberty. He was inclined to countenance combined elements of codification, review of executive action, and external rights—a stark contrast to key figures in the Labour Party between 1900 and 1955. More specifically, it was Wilson's view of a liberal untrammelled sovereignty that helped to shape his views on individual rights.

4.3.2.2. A Pro-Judicial Attitude

Policies were also pursued that sought to alleviate concerns about the individual's relationship with the elected majority in Parliament.⁷⁹ Among the legal minds of the Wilson government and Cabinet, the traditional anti-judicial constitutionalism that had dominated for half a century had waned—a pro-judicial attitude began to emerge. As individual liberty and rights became the touchstone for untrammelled sovereignty, there was a concerted effort by Lord Gerald Gardiner, the Lord Chancellor, and others, to bolster judicial authority, the role of the judge, and increase the number of accountability bodies. Unlike leading figures in the war Attlee government, Wilson personally gave greater credence to judicial authority. For example, he claimed, under his leadership, the Labour Party accepted that the function of judges was to stand between the citizen and executive.⁸⁰ He went on to say that the Labour Party and his government had some of the most “liberally minded” and “distinguished lawyers”, who had prepared plans for the

⁷⁶ Ibid.

⁷⁷ Ibid, 227.

⁷⁸ Ibid.

⁷⁹ Jasper Miles, ‘Harold Wilson and the British Constitution’ in Kevin Hickson, *The Unprincipled Prime Minister?: A Reappraisal of Harold Wilson* (Biteback Publishing, 2016) 87.

⁸⁰ Labour Party Archive (n 63).

enactment of sweeping reforms “designed to increase liberty of the individual, whether against the state or any body, private or public” and “whose actions under the present law diminish human freedoms”.⁸¹

What’s more, the Wilson government, according to Robert Stevens, assisted and accelerated the greater scrutiny that was already being placed on the elected majority in Parliament by the judiciary e.g., Lord Reid's rejection of formal judicial interpretation, cases like *Ridge v Baldwin* which saw the restoration of due process, *Conway v Rimmer* which began taking back the initiative from Crown privilege, and *Padfield v Minister of Agriculture* and *Anisminic v Foreign Compensation Commission* which reaffirmed judicial review of administrative actions.⁸² Firstly, Lord Gardiner changed the way in which appeals worked. He allowed the House of Lords to overrule its earlier decisions, with the aim of keeping internal consistency of the law. Stevens argues that the practical and psychological impact of this change was broad and more dramatic than it seemed. Indeed, measures like this went beyond maintaining the internal consistency of the law. It created the space for new opportunities to challenge and re-challenge the Labour government on proposed or previously settled areas of policy and legislation.⁸³ Secondly, the Wilson government sanctioned the use of dissenting opinions; which left room for greater judicial creativity and potential future legal arguments to limit government.⁸⁴ Thirdly, this new environment of resurging judicial authority led to the House of Lords holding that a person who was dismissed by their employer after a strike threat by trade unions was *able* to sue union officials for conspiracy and, later, boycotts.⁸⁵ Unlike key figures in the Labour Party from 1900 to 1955, who argued for legislating against hostile judgments towards trade unions, the Wilson government responded by creating the Donovan Commission. This looked to reflect and accommodate the judgment into future policy. As a result, the Labour government produced the controversial policy paper *In Place of Strife*. This recommended the establishment of an industrial board that would monitor labour relations and, in some circumstances, impose sanctions.⁸⁶ While politically difficult for

⁸¹ Harold Wilson, *The Relevance of British Socialism* (Weidenfeld and Nicolson, 1964) 108–110.

⁸² Robert Stevens, *The English Judges: Their Role in the Changing Constitution* (Hart Publishing, 2002) 40; *Ridge v Baldwin* [1964] AC 40; *Conway v Rimmer* [1968] AC 910; *Padfield v Minister of Agriculture, Fisheries and Food* [1968] UKHL 1; *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147.

⁸³ *Ibid* Stevens, 39–44

⁸⁴ *Ibid*.

⁸⁵ *Rookes v Barnard* [1964] 1964 1129; *Stratford v Lindlay* [1965] AC 269.

⁸⁶ Pimlott (n 27) 367–384.

the Wilson government, this saga shows the extent to which the Labour government was willing to heed judicial authority and cater policy with legal judgments in mind.

Furthermore, the liberal instincts and reforming zeal of the Lord Chancellor, Gardiner, cannot be ignored. Prior to being in government, in *Law Reform Now*, Gardiner broadly set out the case for legal reforms that considered the interests of the fundamental liberties of citizens.⁸⁷ Lord Gardiner responded robustly in response to Conservative Party taunts that the Labour government was against individual rights and favoured clandestine decision-making processes. He claimed all the work that had been done on civil liberties was authored by the Labour Party and that the government itself was desperately concerned for the individual. He went on to cite a flurry of individual rights enhancing statutes—the Race Relations Act 1965, the Tribunals and Inquiries Act 1966, the Parliamentary Commissioner Act 1967, and, as will be shown further on, ratification of individual petition and jurisdiction of the ECtHR—and efforts which were used to decentralise and reduce the power of government. He also claimed that the outlined goals of international rights texts were something “to which we should all be aiming”.⁸⁸

Additionally, a growing body of anti-discrimination laws allowed for new claims against public bodies. The enforcement of positive anti-discrimination rights, according to Sir Frank Soskice, Home Secretary from 1964 to 1965, was the linchpin on which the success of the whole system depended. He referenced civil rights in the United States and claimed codification in legislation could have a great impact in the UK. Also, the new body (Race Relations Board), created by the anti-discrimination legislation, had powers to investigate public bodies, bypass the Attorney General in a range of different areas, and could collect evidence and obtain damages on behalf of the victim.⁸⁹ These reforms point to a wider ideological drive to ensure that the elected majority in Parliament put in place firmer checks and controls for the individual.

Despite some critics claiming that there was no cogent strategy in relation to a more open and accountable government, when viewed through the lens of advancing individual rights and liberty, a clear set of aims emerge.⁹⁰ More specifically, the reframing of untrammelled sovereignty within liberal parameters saw an emphasis on the enhancing traditional domestic judicial and adjudication methods.

⁸⁷ Gerald Gardiner and Andrew Martin, *Law Reform Now* (Victor Gollancz, 1963).

⁸⁸ HL Debate 18 June 1969 vol 302 col 1040.

⁸⁹ National Archives, HO 371/161.

⁹⁰ Miles (n 79) 87-91.

4.3.2.3. Comfortability and Engagement with Supranational Bills of Rights

Finally, the Wilson government's understanding of a liberal untrammelled sovereignty led to broader comfortability and engagement with a range of supranational bills of rights. Some critics have attributed this shift in policy to Britain having to defend its record throughout the British Empire and generally playing "catch up" in relation to rights on a global stage.⁹¹ While this type of argument holds some weight, greater emphasis should be placed on the Wilson government's deliberate change of policy that saw Britain be subject to the obligations and jurisdiction of a range of supranational bill of rights. Indeed, archival material in the form of Foreign Office memorandums, that were circulated to other state departments, evidence this sharp change of policy. These memos conclude that human rights were seen as a legitimate issue for supranational and international arena. The idea of human rights being placed under external protection was accepted and there was a belief that external oversight mechanisms would lead to favourable settlements for individuals.⁹²

The Wilson government actively supported other external rights documents with enforcement mechanisms. For example, one Foreign Office memorandum outlined how the Labour government was to give its support to the International Convention on Civil and Political Rights (ICCPR). Crucially, the document noted that the government attached great importance to the ICCPR having adequate enforcement mechanisms. It claimed, firstly, that the protection of human rights was a legitimate concern for the Labour government. Secondly, acceptance of international machinery designed to protect said rights would show a laudable willingness on the part of states to subject their actors to an element of international scrutiny. The memo concluded by stating those countries that solely rely on national systems of rights implementation deny their people the additional safeguard provided by international entitlements.⁹³

What is more, in relation to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Labour government's negotiating delegation was instructed to push for a "feasible" and "simple" monitoring system in the form of a periodic reporting

⁹¹ Ian Patel, *We're Here Because You Were There: Immigration and End of Empire* (Verso Books, 2021) 150.

⁹² National Archives, HO 325/192 Confidential Memo 1964–1965.

⁹³ National Archives, LAB 13/1937 Draft Convention on Human Rights from December 1963–1965.

mechanism.⁹⁴ However, the memorandum also instructed the negotiating delegation to ensure that the reporting mechanism did not distract from the need for an implementation procedure—where states who are considered to fall short can be brought before another international tribunal by another state party. The memorandum claimed, “it remains the firm view of HMG that this international machinery is essential for the protection of the rights in this covenant”.⁹⁵ Indeed, the Wilson government did not share the view of the USSR that implementation through a complaints tribunal was unnecessary. In a telling passage, the memorandum made an honest acknowledgement that a complaint system, where the state is brought before a tribunal, involves a “voluntary surrender of sovereignty”.⁹⁶ However, it was suggested that this should be accepted by all states who are “sincerely interested in advancing human rights”.⁹⁷ The broader and active desire to engage with external bills of rights further demonstrates the impact of a liberal untrammelled sovereignty towards rights. The Wilson government was entirely comfortable protecting individual rights, and by extension ceding degrees of sovereignty, via a range of external bills of rights.

Overall, the commitment to a liberal untrammelled sovereignty and its influence on the approach to rights helps to contextualise and set the scene for the Wilson government eventually accepting individual petition and jurisdiction of the ECtHR.

4.4. Individual Petition and Jurisdiction of the European Court of Human Rights

In December 1965, Wilson unexpectedly informed Parliament that the British government was to:

accept, in respect of the United Kingdom and for an initial period of three years, the right of Individual Petition to the European Commission of Human Rights and the Compulsory Jurisdiction of the European Court of Human Rights.⁹⁸

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ HC Debate 7 December 1965 col 235 vol 722. This statement also followed a conference on the ECHR held at the British Institute of International and Comparative Law. See: BIICL, 'The ECHR' (1965) 5 Supplement to International and Comparative Law Quarterly.

According to archival records, there was no mention of the intention to accept these Convention mechanisms during Cabinet meetings and neither was there a commitment to do so in general election manifestos. The abrupt change in policy has, on the whole, left critics searching for reasons why acceptance of individual petition and jurisdiction of the ECtHR occurred.

There are suggestions that the government had come under some political and public pressure to accept these supranational measures. Firstly, Lord McNair, the outgoing president of the ECtHR, wrote to the Foreign Secretary, Michael Stewart about the issue. He argued it was intolerable that the Labour government had ratified the Convention in 1950, but believed domestic laws and processes were so superior that it was unnecessary for the machinery of the ECHR to apply in the UK.⁹⁹ Secondly, during negotiations for the Convention on Elimination of all Forms of Discrimination, Britain's position of non-acceptance of individual petition and the ECtHR was highlighted. Because of this, British negotiators were unable to define their position on the discrimination convention's proposed enforcement mechanism. A British delegate stated the Labour government was "not at present in a position to take any decision regarding the right of individual petition", but it "hoped the Article would command a large majority".¹⁰⁰ There was some degree of pressure on the Labour government not to be seen as dragging its feet on the issue. As a result, the Wilson government was forced into acceptance of individual petition and jurisdiction of the ECtHR. Thirdly, in his study of the rise of Amnesty International during the 1960s, Tom Buchanan suggests the pressure placed on the Labour government by NGOs was a factor in the accepting greater oversight from the ECHR and its associated bodies.¹⁰¹ He documents the correspondence Wilson had with the founder of Amnesty International, where Wilson promises to ratify the ECHR "in full".¹⁰² Lastly, other critics, like A.W.B. Simpson and Ed Bates, suggest the diminishing role of the British Empire gave space to freely accept individual petition and oversight from

⁹⁹ Ed Bates, *The Evolution of the European Convention on Human Rights: From its Inception to the Creation of a Permanent Court of Human Rights* (Oxford University Press, 2010) 186.

¹⁰⁰ United Nations General Assembly Twentieth Session Official Records, Third Committee, 1363rd Meeting, December 2 1965, 143; Steven L.B Jensen, 'The Cold War and UNHR Diplomacy 1960-68' in Rasmus Mariager (ed) *Human Rights in Europe during the Cold War* (Routledge, 2014) 64-66.

¹⁰¹ Buchanan (n 66) 156-172.

¹⁰² Ibid.

the ECtHR.¹⁰³ While Anthony Lester frames acceptance in terms of a cost-benefit analysis that each department of state had to make in relation to the risk of political embarrassment if Britain was the only one not to accede to supranational oversight.¹⁰⁴

Overall, these accounts are useful and provide some persuasive reasons for the acceptance of individual petition and the jurisdiction of the ECtHR. However, they do not explain or appreciate the more fundamental shift that occurred among leading figures of the Wilson government that led to acceptance of these supranational mechanisms. Namely, the Wilson government's understanding of untrammelled sovereignty and how this shaped its approach to rights—or, more specifically, individual rights and accompanying legal controls—as explained in the previous section. Full access to the Wilson government's archival papers in relation to individual petition and the ECtHR allows us to confirm this position. Importantly, the material shows, firstly, there is an acute interest in extending more rights-based protections citizens. Secondly, it reveals a severe underappreciation of the extent to which domestic legislation and policy could be curtailed or be subject to individual rights-based review. Finally, it becomes clear that by adhering to a liberal untrammelled sovereignty, the Wilson government were prepared to countenance external interference by a supranational judicial body—with the aim of securing greater protection for individual rights.¹⁰⁵

Before documenting the shift towards and analysing the reasons accepting individual petition and jurisdiction of the ECtHR, it would be prudent to analyse the Attlee government's specific resistance to these supranational mechanisms. This would allow for a clearer juxtaposition of the two Labour governments' positions and, importantly, show how two different versions of sovereignty, or untrammelled sovereignty, shaped the approach to rights—in the context of individual petition and the ECtHR.

¹⁰³ A.W.B. Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (OUP 2004); Ed Bates, *The Evolution of the European Convention on Human Rights: From its Inception to the Creation of a Permanent Court of Human Rights* (Oxford University Press, 2010).

¹⁰⁴Anthony Lester, 'Fundamental Rights: the United Kingdom isolated?' (1976) 25 U. Pa. L. Rev 337.

¹⁰⁵ National Archives, HO 394/84 'Acceptance of UK of Article 25 (IP) and Article 46 (Compulsory Jurisdiction)'.

4.5. The Attlee Government's Rejection

4.5.1. Clement Attlee's Ultimatum

As a reminder, Attlee believed in an elected majority in Parliament carrying out its domestic policies. Despite once extolling the virtues of global government and European integration—claiming Europe should “federate or die”—Attlee ultimately rejected supranational integration and oversight as Prime Minister.¹⁰⁶ Indeed, such was his antipathy towards such arrangements, as opposition leader, that Churchill often goaded Attlee's change of position. In a House of Commons debate, Churchill attacked the government for its “hostile” and “squalid” attitude toward the Council of Europe and integration with Europe more broadly. He compared Attlee's past support for federalism with his new acceptance of national sovereignty, claiming:

his own political creed and record are, if I may say so, in a sad plight. We all remember how before the war he said that national patriotism and national armaments were wrong.”

But now, Churchill claimed, Attlee was “the champion of the extreme insular view ...”.¹⁰⁷ Despite Attlee being somewhat resentful that Churchill had injected the broader idea of European integration in domestic political debate, Churchill's assessment of him was not wrong. Attlee did hold an insular view or, in other words, supporting and defending national sovereignty. As Prime Minister, with the levers of British political powers before him, Attlee was increasingly sceptical of European institutions and bodies. More specifically, he was concerned about their impact on implementing domestic socialist policies and the risk of supranational oversight forcing the government into invidious positions.

Sticking to this position, Attlee personally objected to individual members of the public and pressure groups challenging the state before a supranational court. Civil servants had advised the Prime Minister that the British government would isolate itself from the other members states if did not accept the Convention more broadly.¹⁰⁸ As such, total opposition became difficult and politically divisive; especially as there was gaining

¹⁰⁶ Clement Attlee, *Labour's Aims in War and Peace* (Lincolns-Prager, 1940) 106.

¹⁰⁷ HC Debate 27 June 1950 vol 476 col 2104-59.

¹⁰⁸ National Archives, FO 371/80752 Glldwyn Jebb Minute 31 May 1950.

momentum for individual petition amongst other member states. Indeed, Attlee knew the Labour government's negotiators could not completely torpedo the proposed mechanism. However, despite extreme pressure to conform, the Prime Minister and Labour government maintained their commitment to untrammelled sovereignty. As a result, British negotiators suggested numerous proposals that limited the effects of individual petition: time bars and limitations on standing, petitions being anonymous, a verification process for petitioners, petitions being specific and containing enough evidence to show a prima facie case, domestic remedies being exhausted first, petitions being in relation to new matters only, and petitions being couched in clear, courteous language. These proposals were accepted by member states.¹⁰⁹

But even with these concessions, Attlee remained resolute that individual petition and jurisdiction of the ECtHR would not be accepted at any cost. Documented minutes between Attlee and Foreign Office officials confirm this. More specifically, they show, even with the risk of diplomatic consequences, Attlee threatened and was prepared to walk away from negotiations unless further concessions were made. In a memo to officials, Attlee wrote:

it would be the wish of the Cabinet that the Secretary of State [Ernest Bevan] should stand out against adoption of the Convention [including individual petition] even if it meant him being in a minority of one...if the Secretary of State felt this to be unacceptable, he had better ring direct from Strasbourg to Chequers.¹¹⁰

Attlee's position comes as no surprise as he was entirely committed to untrammelled sovereignty or, in other words, believed in an elected majority in Parliament carrying out its manifesto commitments unimpeded. More specifically, he did not want the Labour government's domestic agenda to be hostage to any type of supranational judicial review. As such, safeguarding autonomous decision-making from individual petition was paramount.

At the closing stages of negotiations, Attlee's objections were made clear to negotiators and Bevin. As a result, Bevin astutely suggested to Cabinet and negotiators at Brussels that there should be an opt-in rather than opt-out in relation to individual

¹⁰⁹ National Archives, FO 371/88752 Memo to Delegation in Strasbourg Regarding Individual Petition in file US 731/1124 9 March 1950.

¹¹⁰ National Archives, FO 371/88764 Foreign Office Minute in file US/17311/76 4 August 1950.

petition. This, he believed, prevented the Labour government outright rejecting the mechanism. With the British ambassador to Brussels reaffirming to negotiators the government would not entertain mandatory individual petition or ECtHR jurisdiction, the proposal for an opt-in provision was accepted—indeed, it even gained support amongst other countries who also registered their concern about individual petition.¹¹¹ Despite the intense efforts aimed at removing opt-in by those within the EM, the Labour government was successful in its aims.¹¹²

4.5.2. Cabinet's Concerns and Lord Jowitt's Memorandum

Among Cabinet members there were also strong untrammelled sovereignty-based views about individual petition and jurisdiction of the ECtHR. It would be no exaggeration to say Jowitt *despised* the way the Convention had been drafted. More specifically, he believed the proposed enforcement mechanisms were a threat to domestic reform and the nature of the British constitution. Venting about the proposed Convention in a letter to Dalton, Jowitt suggested it had been crafted by those who were not skilled in constitutional law and its *laissez-faire* nature would not be compatible with a planned economy.¹¹³ More broadly, Jowitt resiled from the idea of supranational court via individual petition either procedurally or substantively reviewing aspects of the British system. He was not prepared to:

jeopardise our whole system of law, which we have laboriously built up over the centuries in favour of some half-baked scheme to be administered by some unknown court.¹¹⁴

Jowitt's resistance to individual petition and a supranational court was set out in a detailed memorandum circulated amongst Bevin, Jim Griffith Colonial Secretary, Home Secretary James Chuter Ede, and Attorney General Hartley Shawcross.¹¹⁵ While Jowitt

¹¹¹ National Archives, FO 371/88754 Cypher Telegram from UK delegation to Strasbourg to FO in file US173/117 4 August 1950.

¹¹² National Archives, FO 371/88755 Draft Brief from Foreign Office to UK representatives to confidential Committee of Ministers in file US 17311/10311 November 1950 28 October 1950; National Archives, FO 371/88744 Minutes in file US/73/1188 11 September 1950.

¹¹³ National Archives, LCO 216/247 in file US17311/96 21 September 1950.

¹¹⁴ *Ibid.*

¹¹⁵ National Archives, LCO 2/5570 file UN 3363/22 Part 2.

accepted the inevitability of an ECHR, he did not believe individual petition or jurisdiction of the ECtHR had to be and argued accordingly.

Firstly, Jowitt set out the ramifications of allowing a supranational court to enter substantive deliberations about British law based on ECHR principles that he believed were “woolly”.¹¹⁶ The result, he said, would be the alteration of existing British laws, practices, and the undermining of the way in which English law was administered.¹¹⁷ For example, Jowitt complained that the legal assistance required under the terms being discussed for Right to Fair Trial (Article 6) would go beyond what the Labour government and British Parliament deemed acceptable. He stated:

it can hardly be argued that a defendant has the right to the free assistance of anyone of his own choice, and certainly such a provision goes beyond even our own new arrangements for legal aid.¹¹⁸

Secondly, the memorandum stated the development of European jurisprudence would undermine the common law—which had its own traditions and took centuries to develop. He also believed through a “necessary in a democratic society test” an ECtHR would be given license to pursue a heavier form of supranational review.¹¹⁹ For Jowitt, this would have fundamental impact on domestic decision-making—which either would prevent the government from acting in fear of not meeting the test or the risk of unlawful action. Jowitt believed it was the elected government of the day who should be making such decisions, whether in the national or public interest. Indeed, as already highlighted, Jowitt and the Labour government had limited the extent of judicial interference domestically. Therefore, there was little to no chance of supporting a supranational court with greater powers for review. Overall, Jowitt believed an ECtHR left Britain at risk of interference from external bodies that would result in “drastic modification of our law or practice”.¹²⁰ Lastly, despite muting its powers and formalising its role, Jowitt defended the House of Lords’ (Britain’s highest court) “satisfactory system of review” and authority in the face of supranational oversight. More specifically, he argued that the House of Lords should be

¹¹⁶ National Archives FO 371/88755 William Jowitt, Cabinet Paper in file US/731/196 11 September 1950.

¹¹⁷ National Archives, FO 371/88755 Memo on Agreed Text by Ministers in file US 1731/196.

¹¹⁸ National Archives FO 371/88755 William Jowitt, Cabinet Paper in file US/731/196 11 September 1950.

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

the prime judicial authority in the British constitution. The creation of a supranational court would render it subservient. Jowitt was explicit in his rejection of an ECtHR, claiming he did not appreciate appeals to a:

secret court composed of persons with no legal training, possessing the unfettered right to expound the meaning of 17 articles which may mean anything or – as I hope – nothing.¹²¹

The most troubling aspect, for Jowitt, was the precedent that individual petition would set for future international instrument negotiations. In other words, objecting to individual petition now was vital to prevent the inclusion of similar enforcement measures in later UN draft instruments.¹²²

Persuaded by Jowitt's arguments, the Cabinet agreed to support the ECHR subject to non-compliance with individual petition, the proposed ECtHR, and any other binding or review-based mechanisms. Figures like Ede and Shawcross, for example, claimed continued refusal was necessary as individual petition and ECtHR jurisdiction was wholly averse to any form of responsible government.¹²³

4.5.3. Minimal Colonial Concerns

Critics like A.W.B. Simpson are right to suggest that Colonial Offices across the Commonwealth were incredibly hostile to individual petition and jurisdiction of the ECtHR.¹²⁴ They placed pressure on the Attlee government to reject supranational oversight and mechanisms. More specifically, archival records show they provided a degree of obstruction to the Foreign Office's attempts in getting the Cabinet's approval for the ECHR.¹²⁵ Some Colonial Offices went so far as to say they would only accept the measures where Cabinet directly compelled them to do so.¹²⁶ Writing to Jowitt, the Permanent Private Secretary to the Colonial Office stated that if the Convention was applied to the colonies, it would do nothing but embarrass colonial governments and, as

¹²¹ Ibid.

¹²² National Archives, FO 371/88754 in file US17311/59.

¹²³ National Archives, CAB 129/42 CB (50) 236).

¹²⁴ Simpson (n 103) 649-709.

¹²⁵ National Archives, FO 371/88752, Foreign Office Letter to Colonial Office 1 June 1950.

¹²⁶ National Archives, file US 17311/49 Colonial Office letter to Foreign Office.

such, the Attlee government should resist as much as possible. There were also specific concerns about individual petition being used vexatiously and, as such, the colonies' executive and judicial branches being undermined.¹²⁷ The Colonial Offices were also vehemently against a new hierarchy of supranational courts that could trump their own governing branches. A Colonial Office memo stated the essence of good government was single undivided authority, and individual petition would regulate this authority or devolve it among different actors. The memo went on to say the "confusion caused in the minds of primitive people would make administration more difficult and the work of agitation easier".¹²⁸ Moreover, the Colonial Offices were concerned that individual petition and the ECtHR would exacerbate several social issues. This included, but was not limited to, matters of race relations in East Africa, struggles against terrorism in Malaya, and the precious position of Hong Kong vis a vis China and the Commonwealth. The Colonial Offices believed in order to tackle these issues effectively, there could be no barriers to dealing with "troublemakers".¹²⁹ Overall, maintaining authority and territorial supremacy were key reasons for colonial outputs placing pressure on the Labour government to resist the supranational mechanisms.

While these are good reasons for the Labour government resisting individual petition and the ECtHR, on closer inspection archival material show it was not as potent a factor as originally thought. In other words, it was a smaller concern when compared to untrammelled sovereignty-based reasons that shaped the approach to said mechanisms. Despite Jowitt relaying the Colonial Office's concerns to Cabinet, their objections held very little weight.¹³⁰ Giving force to this is a memo written by the Foreign Office, which claimed the view of the Colonial Office was "narrow" and if non-acceptance was based on such opinions, it would give the inescapable impression that the government "had things to hide in our colonies".¹³¹ The impression given by this archival record is that other key departments in the Labour government were less concerned by the Colonial Office's grievances and more focused on the British government being seen as a responsible, cooperative, state amongst other states. Indeed, they were relatively unmoved by the

¹²⁷ National Archives, FO 371/88754 Colonial Letter to Foreign Office.

¹²⁸ Ibid.

¹²⁹ National Archives, FO 371/88754 Colonial Memorandum in file US 17311/59.

¹³⁰ National Archives, FO 371/88 754 Letter of 29 September Lord Chancellor Department to Permanent Private Secretary in Colonial Office in file US 173/119.

¹³¹ National Archives, FO 173/1154 Memo 5 July 1950.

response of the Colonial Offices to individual petition jurisdiction of the ECtHR. Other considerations, such as the loss of untrammelled sovereignty and being seen to be a responsible state, were more potent issues to consider.

4.6. Analysing the Wilson Government's Liberal Untrammelled Sovereignty-based Reasons for Acceptance

The Attlee government had been successful in its political and diplomatic efforts of muting the threat posed to its domestic agenda by individual petition and jurisdiction of the ECtHR. This position held until Harold Wilson's Labour government. By looking at leading figures of the Wilson Cabinet and their respective state departments, we can document the shift and identify how a liberal untrammelled sovereignty led to a greater willingness to accept individual petition and jurisdiction of the ECtHR.

4.6.1. Colonial Office

The Colonial Secretary, Arthur Greenwood, retained lingering worries about accepting individual petition and compulsory jurisdiction of the ECtHR. Like those in the Attlee government, he believed it could be used vexatiously, as a "potent weapon for mischief", and for "racial or political ends".¹³² Despite this, Greenwood decided to officially reverse the traditionally hostile position of the Colonial Office. This was predominately on the basis that the Convention's operation would have minimal impact. Greenwood also welcomed the broader goals of individual petition and jurisdiction of the ECtHR—namely, the protection of individual rights.¹³³

In a memo to colonial leaders and governors, Greenwood set out a more detailed set of reasons for why the Labour government was deciding to accept the measures. Crucially, the material shows the underlying rationale for acceptance that corresponds with this chapter's arguments—that acceptance was a result of a liberal reframing of untrammelled sovereignty. Firstly, the memo argued that the current arrangements between the UK and the Convention meant there were no practical means for a British

¹³² National Archives, WUC 1753/44 15 Foreign Office and Colonial Office Correspondence February 1965.

¹³³ Ibid.

national to seek redress for an alleged breach of Convention rights by the British government.¹³⁴ In the absence of access to individual petition and the ECtHR, Greenwood argued that only another state would have the power to lodge a complaint on behalf of British citizens. This was both inappropriate and impractical. Greenwood thought that citizens should not be put in a position of asking foreign governments to secure entitlements that should be guaranteed by their own government—who is already a signatory to the Convention.¹³⁵ There was also a reluctance for the British government to be subject to an inter-state dispute concerning a complaint from their own citizen. Accepting the two measures was, for Greenwood, an important step towards the more effective international protection of human rights for Britons.¹³⁶ Secondly, Greenwood recognised the importance of an individuals' right to access the enforcement machinery of the Convention if the objectives of the Convention were to be fully achieved. He explicitly stated that this was a key policy aim for the Labour government.¹³⁷ The memo was positive and encouraging towards individual petition and the ECtHR.

Next, Greenwood went on to reassure the colonial governors about several aspects of the enforcement mechanisms that had previously caused concern. First, he claimed there was an adequate filtering system, via the European Human Rights Commission (the Commission). This prevented vexatious applications reaching the ECtHR. Unlike the Attlee government who rejected a range of safeguards, Greenwood argued that, while the government would remain wary, the following measures were deemed sufficient to prevent politically motivated petitions: the exhaustion of domestic remedies; time bars on making an application; a prevention of repetitive applications; the Commission would have a duty to secure friendly settlements where a petition was deemed admissible before it reached the ECtHR.¹³⁸ Greenwood also noted since the creation of the ECHR, the number of petitions that were deemed admissible were small. He believed it was unlikely large volumes of petitions would find their way to the ECtHR.¹³⁹

¹³⁴ National Archives, RD 149/167/01 Confidential Memo from SOS Colonies 24 January 1966; National Archives, RD 149/167/01 Confidential Memo from Secretary of State for the Colonies to Governors of Guiana, Mauritius, Swaziland, Basutoland 28 January 1966.

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

Secondly, unlike the Attlee government, Greenwood significantly downplayed the implications of cases being brought before the Court. This was doubtless influenced by the pro-judicial attitude that permeated across the Wilson government. Indeed, Greenwood viewed the Convention as purely a legal instrument that only imposed specific legal obligations. Because of this, it was desirable that final decisions should be reached by a judicial body. This was significant and showed Greenwood's and, by extension, the Labour government's willingness to accept and accede to codified rights determined by a supranational court. Despite acknowledging the potential exporting nature of European jurisprudence on British systems and legislative agenda, Greenwood argued the ECHR's institutions were "impartial bodies of the highest competence and the judges of the court are distinguished jurists of very wide experience".¹⁴⁰ Greenwood felt there was little risk of judicial overreach and was entirely comfortable with judicial discretion and authority. He suggested the Court would only consider local factors when adjudicating, and this was an entirely adequate means of settlement.¹⁴¹

Lastly, Greenwood made two important points. The Labour government believed the rights contained in the ECHR were simply a legal translation of aspirations already contained in the preamble of the Charter of the United Nations and UNDHR. This meant there was an expectation that no new obligations were to be imposed on the government. Secondly, in stark contrast to Lord Jowitt, Greenwood went on to claim that the Labour government was entirely comfortable with some things, like individual rights, being principles of law. For Greenwood, the governments across European countries were like-minded and shared a common heritage of freedom and the rule of law. As such, accepting individual petition and compulsory jurisdiction of the ECtHR rested on "an entirely logical basis".¹⁴²

In the end, acceptance of individual petition and the jurisdiction of the ECtHR excluded commonwealth countries due to push back from colonial governors.¹⁴³ But the justifications given by Greenwood, to persuade colonial leaders, revealed a fundamental shift in attitude and policy towards making the Convention actively operational for British

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ For example, the Governors from Tonga and the Bahamas registered their concern about adjudication of local issues by a European Court by claiming that there should be no attempt to override local courts and opinions. See: National Archives, CO 936/949 Note from Colonial Office Civil Servants 1965.

citizens. More specifically, it showed how a liberal untrammelled sovereignty influenced the approach to individual petition and the ECtHR.

4.6.2. The Lord Chancellor's Office

The Lord Chancellor, Gerald Gardiner, and Attorney General, Frederick Elwyn-Jones, also held a positive attitude towards accepting the two supranational mechanisms. These reforming law officers in Cabinet thought there was no compelling reason why the mechanics of the ECHR should remain unaccepted. Indeed, Cedric Thornberry, a prominent academic who was active during the Wilson government, claimed it was well known that the legal members of the Labour government were committed to radical law reform and favoured a change of policy in relation to the Convention's enforcement mechanisms.¹⁴⁴

In contrast to his Labour Party predecessor, Lord Jowitt, Gardiner claimed that accepting the supranational measures would show that the Labour government was not anti-European.¹⁴⁵ This position can, to a degree, be contextualised within the broader European Common Market discussions. Secondly, as already documented in Section 4.3.2.2, Gardiner was favourable towards and encouraged greater judicial authority. Because the Convention was a legal instrument that imposed legal obligations, he believed it was entirely appropriate that any dispute under the Convention should be decided by an independent judicial body.¹⁴⁶ In an incorrect reading of the British position, historically and constitutionally, Gardiner noted that Britain had traditionally favoured the inclusion of dispute mechanisms via judicial bodies in international agreements.¹⁴⁷

Moreover, other reasons for acceptance included Gardiner believing, in practice, there would be no difference in outcome between individual petition cases being settled by the political branch (the Commission) or the ECtHR.¹⁴⁸ Like Greenwood, Gardner also rejected traditional concerns regarding the supranational mechanism (vexatious litigants, etc.) as overexaggerated. More specifically, he argued "past experience shows

¹⁴⁴ Bates (n 103) 286.

¹⁴⁵ National Archives, WUC 1735/17.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ National Archives, HO 394/84 'Confidential Note' About Ministers Position of Optional Clauses under Article 25 and 46.

how very few cases go to the court”.¹⁴⁹ Gardiner was confident that if a case reached the ECtHR, and passed the filtering and standing processes, the ECtHR would not treat the British government less favourably than the political bodies involved in the filtering process. Gardiner went so far as to say that no harm would come, even where a few petitions had been successfully brought against the UK—this would have been unconscionable to leading figures in the Attlee government.¹⁵⁰

Further, in response to a question about domestic legislation being required to bring human rights applications before domestic courts, Elwyn-Jones indicated the Labour government believed there would be little chance of breaching the ECHR, as existing laws and practices of the UK already complied with the Convention.¹⁵¹

Based on these views Gardiner and Elwyn-Jones pushed for unconditional acceptance and resisted the initial time limit of three years.¹⁵² Gardiner argued that once “we have taken the plunge” attempts to go back on the decision would gain so much publicity “as to be highly embarrassing”.¹⁵³ He claimed that acceptance would mean withdrawal would not be possible without attracting the gravest possible criticism.¹⁵⁴ The position of Gardiner and Elwyn-Jones can also neatly be placed within the idea of a liberal untrammelled sovereignty influencing proactive attempts to extend greater individual rights and liberty.

4.6.3. The Foreign Office

The Foreign Secretary, Michael Stewart, was also extremely receptive to accepting individual petition and jurisdiction of the ECtHR. Ed Bates argues that this position can be contextualised as a gesture. More specifically, it showed the Wilson administration to be more friendly and cooperative in respect of European integration and a looming European Economic Community application.¹⁵⁵ Archival material does suggest that the Labour government wanted to take a full part in the ECHR and its associated bodies to, in

¹⁴⁹ National Archives, WUC 1735/13 Foreign Office Paper to UN Dept 12 February 1965.

¹⁵⁰ National Archives, WUC 1735/13 9 February 1965.

¹⁵¹ National Archives, HO 394/84 Hansard HOC Written Answers 15/7/1968.

¹⁵² National Archives, WUC 1735/13 Letter from Lord Chancellor to Foreign Secretary 9 February 1965.

¹⁵³ National Archives, LCO 2/9706 Restricted Memo Between LC and others to discuss the ECHR February 10th 1964.

¹⁵⁴ *Ibid.*

¹⁵⁵ Bates (n 103) 187.

part, to show the government's newfound sense of pro-Europeanism and internationalism—which was also specifically emphasised in the Queen's Speech.¹⁵⁶ But, like his Cabinet colleagues, Stewart also believed acceptance to be a “considerable step” in the “direction of human rights policy”—which the Labour government had specifically decided to pursue.¹⁵⁷ Therefore this was a proactive move that reflected the political motives of the Labour Party, not simply a reaction to broader European diplomatic issues.

This proactiveness is evidenced through archival material that shows Stewart, in conjunction with his civil servants, specifically considering the political and constitutional questions of acceptance. This was outlined in a list of “not good reasons” for rejecting individual petition and the Court. Firstly, the risk of being bound by decisions of the Court or taking remedial action that involved amending legislation was no longer a valid reason for rejecting individual petition and the Court. Like the Lord Chancellor and Colonial Secretary, the Foreign Secretary claimed the Convention was a legal instrument and any dispute should be resolved by a judicial body.¹⁵⁸ More specifically, he suggested the Labour government's policy was to actively promote the development of judicial dispute resolution. He claimed the previous Labour government had already accepted the principle of putting human rights under international protection by acceding to the ECHR. Therefore, the current government felt it was logical to recognise the jurisdiction of the ECtHR.¹⁵⁹ It was thought that there was no reason to expect the ECtHR not to conduct judicial functions appropriately. Stewart argued the Court contained “eminent lawyers” and “outstanding international jurists” who fully understood the problems confronting European governments.¹⁶⁰ This position was affirmed by official legal advice given to Stewart by the Foreign Office's legal advisor:

the approach of the Commission... has in my experience been reasonable. I do not see why we should expect less of the Court, which is composed of even more eminent men than the commission.¹⁶¹

¹⁵⁶ National Archives, HO 325/192 Confidential Memo 1964–1965.

¹⁵⁷ Ibid.

¹⁵⁸ National Archives, HO 394/86, Letter from Foreign Secretary to Home Secretary 'European Convention Human Right' 9 September 1965.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

Quite strikingly, the Foreign Secretary also believed the ECtHR to be the most appropriate forum to decide whether derogations were necessary in a democratic society, in the interests of national security, or for the public or economic well-being.¹⁶²

Secondly, it was argued that the Labour government's policy was to ensure that the rights of individuals everywhere were being protected. The ECHR was the one key instrument with the appropriate mechanism to do this. It was therefore in the British people's interests that its authority was strengthened.¹⁶³ Thirdly, the Foreign Office and Secretary sought to mute the claim that the British constitution would be significantly altered by supranational rights and oversight. They rejected these concerns by stressing the Convention was largely a British initiative. Despite this being somewhat of an inaccurate reading of history, Stewart went on to claim that the Labour government were comfortable with the rights set out in the Convention being operational—as they were already protected under domestic legislation.¹⁶⁴ Lastly, the memo claimed that acceptance of the ECtHR would open the way to a more positive British approach to human rights questions on the global stage, within the United Nations.¹⁶⁵

Overall, Stewart's approach these measures, while influenced by some diplomatic aims, was firmly rooted in the idea of the Labour government securing greater individual liberty and rights for British citizens. The potential risks posed, as outlined by the Attlee government, quickly fell away.

4.6.4. The Home Office

The position of Sir Frank Soskice, Home Secretary from 1964 to 1965, towards the two mechanisms was unenthusiastic. Soskice reflected an approach to rights that was rooted in a purely socialistic-political constitutional understanding of untrammelled sovereignty. Despite eventually agreeing to acceptance, archival records show a deep unease about the constitutional consequences of ceding to the supranational mechanisms. More specifically, the impact of supranational oversight on the ability of the elected majority in Parliament to have legislative freedom.

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ National Archives, FO 371/178987.

¹⁶⁵ National Archives, FS/65/33 Note to Lord Chancellor from Foreign Secretary 'Confidential – European Human Rights Convention' February 15 1965.

First, Soskice preferred political resolutions for Convention disputes via the Committee of Ministers. He was not in favour of giving a supranational court the powers to interpret and apply an instrument that was new to the British system. There was, he thought, less flexibility in the final word of a judicial body like the ECtHR.¹⁶⁶ Secondly, Soskice argued that the jurisprudence of the ECtHR represented a compromise of legal systems and, as a result, this could not be feasibly subject to strict legal consideration. He claimed, “if we are to avoid grave embarrassment I am convinced that we should keep the utmost flexibility in defending ourselves against individual petition”.¹⁶⁷ Finally, he suggested that, even where states legitimately derogated from the Convention, for public interest or national security reasons, they would still be subject to review on “purely legal grounds”.¹⁶⁸ This would leave no plausible escape from supranational review. With these considerations in mind, and acknowledging other department of states’ view, Soskice pushed for a time limit “to preserve the escape route if individual petitions proved more troublesome than expected”.¹⁶⁹

Moreover, several Home Office memorandums document the concern officials had about the measures impact on domestic initiatives—particularly within the context of immigration policy. It was suggested that those who were detained on immigration grounds, refused to leave the UK, or at risk of deportation would be able to challenge the nation’s immigration system under a “global spotlight”.¹⁷⁰ While it was recognised that vexatious applications would be filtered out, matters of immigration were deemed to be strictly political and inappropriate for judicial deliberation. The fear was that accepting individual petition and jurisdiction of the ECtHR would give rise to “hard cases” and, at worst, “some enforced changes of legislation in the field of alien control”.¹⁷¹ More specifically, there were concerns that supranational judicial review and interpretation might limit the deportation provisions under the Commonwealth Immigration Act

¹⁶⁶ National Archives, HO 394/84 – Acceptance of UK of Article 25 (IP) and Article 46 (Compulsory Jurisdiction).

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ National Archives, WUC 1735/49 Home Secretary Letter 2 August 1965.

¹⁷⁰ National Archives, HO 394/84, Acceptance of UK of Article 25 (IP) and Article 46 (Compulsory Jurisdiction) Home Office Minutes from Home Office Civil Servants 14/04/1965 'Comments on the Proposal'.

¹⁷¹ Ibid.

1962.¹⁷² But due to widespread support among Cabinet, Soskice and his Home Office officials recognised the reality before them.

It is worth noting that archival material from the Home Office, post-acceptance and before the second Wilson administration in the 1970s, show the concerns outlined above manifesting. The discontent with and effect of individual petition and the ECtHR was made clear in relation to the East African Asian cases—which concerned restricting the high number of East African Asians seeking refuge in the UK, the measures within the Commonwealth Immigrants Act 1968, and a breach of Article 3 ECHR.¹⁷³ Here, officials claimed that acceptance proved troublesome for immigration policy and there was a “much more significant effect” than previously imagined. More specifically, the decision in the *East African Asians* was thought to have fundamentally affected the government's “control” under the 1968 Act.¹⁷⁴ One civil servant went so far as to say the “consequence is likely to be that the United Kingdom is no longer master of its own horse”.¹⁷⁵ In addition, *Golder v United Kingdom* held that Article 6 did not just include procedural safeguards which must be complied with by courts and tribunals, but it also conferred the right of access to domestic courts to anyone who thought that they had a case.¹⁷⁶ The material suggested that ministers and civil servants believed this decision was not within the natural meaning of Article 6 and went against its original strict intention, as discussed during the early stages of the ECHR. These archival records show that the main issue became the ECtHR taking an expansive rather than restrictive interpretation of ECHR provisions.¹⁷⁷

Unlike the previous Labour government, which showed a degree of foresight and wariness about the risk of individual petition and the ECtHR, Wilson and his Cabinet colleagues seemingly took at face value the relative inactivity of the supranational mechanism and Court. Recognition should be given to the fact that this may have played some part in acceptance. For example, despite the Home Secretary raising concerns that domestic immigration policy might conflict with Article 4 Protocol 4 ECHR (the

¹⁷² Ibid.

¹⁷³ *East African Asians (British Protected Persons) v United Kingdom* (1973) 3 EHRR 76.

¹⁷⁴ National Archives, HO 394/84, U.K Acceptance of Article 25 (IP) and Article 46 (Compulsory Jurisdiction).

¹⁷⁵ Ibid.

¹⁷⁶ *Golder v United Kingdom* (1979-80) 1 EHRR 524.

¹⁷⁷ National Archives, HO 325/192, ‘Confidential Note’ European Commission of Human Rights – Review of Development Since 1971’.

prohibition of the collective expulsion of aliens), leading figures were confident that their record on rights would not be challenged. The Attorney General, Elwyn-Jones, suggested that accepting the right to petition would be a harmless gesture and, in effect, “cost nothing”.¹⁷⁸ Similarly, shortly after Wilson's Labour government was elected, Lord Shawcross, a Labour Party peer in the House of Lords, claimed the Convention served to define a limited narrow set of rights which were already fully recognised domestically. He felt the laws of the UK went far beyond that of the Convention.¹⁷⁹ Sir Vincent Evans, Legal Advisor to the Foreign Office in 1966, reflected the Wilson government's decision to accept stemmed from a place of believing that British laws and practices fully complied with the ECHR.¹⁸⁰ Perhaps this complacency was also exacerbated due to the limited activity of the Court by 1965. For example, only 1,698 applications had been made, the test of “necessary in a democratic society” and “living instrument” principle had not been developed, and there was little or no jurisprudence on qualified rights. At this point the ECtHR also extended a high degree of discretion towards member states. Even academics at the time did not identify any risks posed by acceptance of the two measures to domestic initiatives. For example, one suggested it seemed unlikely accession to individual petition and the ECtHR would impact English criminal law, and that mere errors of law would not be considered unless they amount to a severe abuse.¹⁸¹

Despite the above, the more convincing reason for acceptance, as has been shown through archival material at key Departments of State, was the commitment to a liberal untrammelled sovereignty. This section has shown how each Cabinet member, bar Soskice, justified acceptance as a means for the Labour government to achieve its policy aim. Namely, ensuring the elected majority in Parliament positively secured individual liberty and rights for citizens.

¹⁷⁸ Chris Moores, *Civil Liberties and Human Rights in the Twentieth Century* (Cambridge University Press, 2017) 138.

¹⁷⁹ Lord Hartley Shawcross 'United Kingdom Practice on the ECHR' (1965) 1 *Revue Belge De Droit International* 297.

¹⁸⁰ Sir Vincent Evans, 'The European Court of Human Rights: A Time for Appraisal' in Robert Blackburn and James Busuttill (ed), *Human Rights in the 21st Century* (Pinter, 1997) 88.

¹⁸¹ C. Morrison, 'The Margin of Appreciation: Doctrine Standards in the Jurisprudence of the European Court of Human Rights' (1982) 4 *Human Rights Quarterly* 175; C.A. Hopkins, 'Case and Comment' (1966) 42 *Cambridge Law Journal*; D. Harris, 'The European Convention on Human Rights and English Criminal Law' [1966] *Criminal Law Review* 205.

4.7. Tensions

In the final Wilson and then Jim Callaghan Labour government, from 1974 to 1979, inter-party tensions arose around proposals for a domestic bill of rights.

As early as 1969, Anthony Lester, advisor to Roy Jenkins as Home Secretary, published a Fabian Society pamphlet arguing in favour of domestic bills of right.¹⁸² Lester believed the British political system was incredibly susceptible to populist governments overturning rights. Therefore, a codified set of entitlements would be restrictive, hold governments to account, and prevent key liberties from being eroded. It would also enhance judicial oversight over government administration and provide some restraint in relation to legislation. Lester was aware that a bill of rights would reconfigure the British constitution and impede on sovereignty.¹⁸³ Lester was associated with the revisionist right of the Labour Party, some of who remained committed to securing individual rights.¹⁸⁴ For example, Jenkins, who returned at Home Secretary, responded to arguments made by Lord Scarman at the 1974 Hamlyn Lecture—that liberty could only be preserved through institutional muscle power i.e., firmer rights—by stating “he read with much interest, and appreciated the relevance and importance of the issues raised”.¹⁸⁵ Moreover, he and Cabinet colleague Shirley Williams supported a working group of all government departments. This group contributed to a Home Office report that considered the adequacy of existing safeguards for fundamental human rights. However, familiar concerns about sovereignty and power moving away from the elected majority in Parliament to the judiciary were raised.¹⁸⁶

Within the wider Labour government, others began to soften their view on the British constitution having written elements to it. A letter from the Junior Minister at the Home Office, Shirley Summerskill, to the Leader of the House of Commons, Edward Shot, noted and accepted how a codified domestic rights document posed a “threat to the sovereignty of the Queen in Parliament, which has always been regarded as the chief

¹⁸² This gained some attention from the media. See: Times Reporter, ‘Bill of Rights is urged to guard the citizen’ *The Times* (London, 21 November 1968) 3.

¹⁸³ Anthony Lester, ‘Democracy and Individual Rights’ (Fabian Society, Fabian Tract 390, 1969).

¹⁸⁴ Lewis Minkin, *The Contentious Alliance: Trade Unions and the Labour Party* (Edinburgh University Press, 1992) 214.

¹⁸⁵ National Archives, HO 342/246

¹⁸⁶ Home Office, *Legislation on Human Rights with Particular Reference to European Convention – A Discussion Document* (HMSO June 1976).

safeguard for the liberties of the subject".¹⁸⁷ But the letter also acknowledged because of accession to the EEC, there was a chance of Britain "trending....towards some elements of a written constitution" and:

[while] the traditional arguments against a Bill of Rights continue to have a great deal of strength... constitutional developments may ultimately have effects which would alter the balance of advantage.¹⁸⁸

Others, like the Solicitor General, in a lecture to the Fabian Society, rejected the calls for a domestic rights document. He argued that a fixed written document was of little to no value when compared to the responsiveness of parliament and parliamentary debate in terms of protecting individual liberties. He questioned whether the British people would really prefer to delegate their liberty to judges instead of elected politicians. The Solicitor General also claimed while the law was important for protecting liberty, it also had to evolve to protect those with no economic power. He stated, the "law is not merely a brake on governments. It is an active process. We must beware of persuading ourselves that freedom can be embalmed."¹⁸⁹ Moreover, a Home Office minister claimed, "most of our judiciary are not trained to interpret social legislation and are constitutionally insensitive to the kind of issues which such legislation promotes".¹⁹⁰ Parliament, he believed, was to be and remain the institution for safeguarding rights. It was also suggested a "British Bill of Rights could inhibit the kind of social reforms which a Labour Government wish to achieve".¹⁹¹

By the 5 April 1976, Callaghan had become Prime Minister and this all but quashed the desire to engage with any proposals that would risk the curtailment of untrammelled sovereignty. According to Kevin Hickson, any liberal reform that might have increased the power of the judiciary was rejected by the then Prime Minister.¹⁹² Ministers within the Callaghan government also reflected this view. More specifically, they revealed their concerns about social policy and legislation being impacted on by the domestic judiciary

¹⁸⁷ National Archives, HO 342/275/1, Letter from Shirley Summerskill, Junior Minister in Home Office to Edward Shot, Leader of the House of Commons 1 July 1975.

¹⁸⁸ Ibid.

¹⁸⁹ Times Correspondent, 'Bill of Rights proposal rejected by law chief' *The Times* (London, 14 December 1974).

¹⁹⁰ National Archives, HO 342/264, 30 April 1975.

¹⁹¹ Ibid.

¹⁹² Hickson (n 36) 32–33.

enforcing a bill of rights. This concern was highlighted in recorded Cabinet minutes. In a discussion about a proposed domestic bill of rights being introduced by Conservative politician Lord Wade in 1977, the Defence Secretary suggested the judicial system was totally unsuited to deal with matters of administration and Ministerial discretion. He claimed, the “courts would always be prejudiced against a radical government”.¹⁹³ Similarly, the Trade Secretary, who was less resistant, still agreed that “such legislation would encourage the courts to impede radical action by Labour governments”.¹⁹⁴ In summary, there was little to no appetite for any domestic codified or bills of rights among Cabinet members of Callaghan’s, short-lived, Labour government.

4.8. Conclusion

This crucial period has seen significant and persuasive evidence that leading figures in the Labour Party rejected an ethical socialistic-communitarian notion of society and the purely socialistic-political constitutional tenet of untrammelled sovereignty. For this to happen, there would have had to have been a major ideological shift. Influenced by a new ideological framework revisionism and a liberally orientated socialistic-political constitutionalism, this chapter has shown how those in the early revisionist right and Wilson government radically changed their view of society and sovereignty. This had specific and wide-ranging implications for the theory and practice of rights. Firstly, it saw no further emphasis on rights and duties; there was wholesale rejection of such an idea. Instead, personal choice was promoted. Interestingly, this chapter has also documented strains of ethical remorse among leading figures in the Wilson government following a raft of personal freedom enhancing measures. Secondly, informed by a liberal untrammelled sovereignty, this chapter has shown in great detail an active policy towards ensuring the elected majority in Parliament secured individual rights and liberty. This resulted in key figures in the Wilson government changing their policy towards the ECHR’s enforcement mechanisms. While critics present a range of reasons for acceptance of individual petition and jurisdiction of the ECtHR, this chapter has shown acceptance occurred mainly because of shifts in attitudes towards sovereignty. Finally, archival records have shown some inter-party tension in relation to proposals for a domestic bill

¹⁹³ National Archives, CAB 129/194/67, January 1977.

¹⁹⁴ Ibid.

of rights in the 1970s. However, a Callaghan-led Labour government rejected this and, in some ways, reverted to a pre-1955 untrammelled sovereignty. Overall, this chapter has shown how the Labour Party entered into a new era in relation to how it approached the theory and practice of rights.

PART III

Market Citizens and Curtailing Untrammelled Sovereignty

Chapter 5: New Labour, Citizenship via Rights and Responsibilities, and the Human Rights Act 1998; 1980–2000

On the constitution, we face a massive task that the 1945 government did not address: to modernise our institutions of government to make them fit for the twenty first century...which is why we are committed to a Bill of Rights.¹

- Tony Blair

5.1. Introduction

In this final substantive chapter, the Labour Party's last ideological transformation of the 20th century is considered. After a tumultuous 18 years in opposition, the leadership of Neil Kinnock and John Smith, and a major political rethink leading figures in New Labour were influenced by an ideological framework that consisted of Thatcherite ethics and a modernising constitutionalism. This saw, firstly, support for a type of citizenship that included responsible individualism and the prioritisation of market entry. Secondly, there was a belief in a reduced untrammelled sovereignty. This meant the elected majority in Parliament retaining its legal right to pursue its legislative agenda but having its political capacity to do so reduced. Like their historical predecessors, this informed New Labour's approach to the theory and practice of rights following their election victory in 1997.

The first part of this chapter gives an account about how, from the 1980s, the Labour Party absorbed ideas about society espoused by Margaret Thatcher. Instead of resisting, the Labour Party—between Neil Kinnock and John Smith's leadership—positively endorsed responsible individualism and market entry as the ethic that underpinned society. I will then go on to show how this led to the policy of rights and responsibilities—which was, eventually, adopted and implemented by New Labour. Importantly, this chapter debunks the claim made by leading figures in New Labour that this was a revival of a pre-1955 societal ethic. This chapter then considers New Labour's eventual implementation of rights and responsibilities in aspects of the welfare state and national health. There will also be a brief consideration of Gordon Brown's Bill of Rights

¹ Tony Blair, *New Britain: My Vision for a Young Country* (Harper Collins 1997) 20.

and Responsibilities which, in a break from New Labour, looked to redefine how rights and responsibilities were understood.

The second half of this chapter will begin by explaining how a modernising constitutionalism influenced ideas around sovereignty and, specifically, a reduced untrammelled sovereignty. Through a range of speeches, policy reviews, and primary material, I will document how this view of sovereignty had purposely been developed under the leadership of both Kinnock and Smith. Consequently, by the time of Tony Blair's ascent and tenure as Prime Minister, there was a clear ideological influence that underpinned the long-anticipated incorporation of the ECHR into domestic law—via the HRA 1998. This will be followed by an analysis of how the HRA 1998 specifically reflected the desire to reduce the political capacity of the elected majority in Parliament. The analytical framework used will include looking at the HRA 1998 at the intersection of: individual empowerment, rights-based compatibility measures, fostering feelings of judicial supremacy, and adhering to supranational standards.

5.2. New Citizenship via Rights and Responsibilities

5.2.1. Thatcherite Ethics: Responsible Individualism and Market Entry

The literature on how the Labour Party and, eventually, New Labour co-opted and repackaged Thatcherite ideas of citizenship and rights and responsibilities is limited. But critics, like Kevin Hickson, have acknowledged New Labour's emphasis on individual responsibility in society was neo-conservative—especially when contrasting it to the Labour Party's moral traditions of the past. Hickson explains that the tendency of New Labour was to focus on the moral failings of people out of work and those who were claiming social entitlements.² Similarly, in an extensive study of New Labour's ideology, Sarah Hale has addressed the “myth” surrounding the idea that its leading figures were communitarian. On closer inspection, she argues beyond the ethical rhetoric there were strains of Thatcherism.³ The following account shows how the Labour Party and New Labour ended up in such a position.

² Kevin Hickson, 'Equality' in Matt Beech, and Raymond Plant (ed), *The Struggle for Labour's Soul: Understanding Labour's Political Thought Since 1945* (Routledge, 2004) 131.

³ Sarah Hale, *Blair's Community: Communitarian Thought and New Labour* (Manchester University Press, 2005) 100.

It is incorrectly assumed that Thatcher's agenda for society aimed at creating atomistic, uncaring, and insular individuals. It would be more accurate to say that her politics and faith were deeply moralistic. According to John Campbell, Thatcher's biographer, her aim was to create a "wholly new attitude of mind" in society and sought to resurrect a version of British character which she felt had been lost.⁴ Directly challenging socialistic ethical notions of obligation and solidarity, Thatcher was of the view that appealing to citizens of all backgrounds to perform public duties was outdated. While recognising that post-war socialists had been successful in persuading people against motives of self-interest, Thatcher suggested they failed to understand that an army of well-intentioned citizens to carry out socialism and public duties did not exist.⁵ People, according to Thatcher, were increasingly motivated by self-interest. Because of this, her aim became to construct a society where self-interest could be channelled into beneficial means. This was seen as more appropriate or realistic for the world:

there is not and cannot possibly be any hard and fast antithesis between self-interest and care for others, for man is a social creature [...] brought up in mutual dependence. The founders of our religion made this a cornerstone of morality. The admonition: love thy neighbour as thyself, and do as you would be done by, expresses this.⁶

In this way, Thatcher attempted to reconcile individualism and social duties into a form of responsible individualism. In her own memoirs, she claimed "I always refused to accept that there was some kind of conflict between...individualism and social responsibility".⁷ Historians, like Florence Sutcliffe-Braithwaite, have unearthed archival material that suggests Thatcher directly instructed her policy unit to devise ways of fostering of this type of responsibility in society.⁸ Writing from political opposition, Kinnock, leader of the Labour Party from 1983 to 1992, neatly described this as the ardent belief that "private

⁴ John Campbell and David Freeman, *The Iron Lady: Margaret Thatcher, From Grocer's Daughter to Prime Minister* (Penguin Books, 2009) 695. Also see: Robert Saunders, 'Crisis? What crisis? Thatcherism and the Seventies' in Ben Jackson and Robert Saunders (ed), *Making Thatcher's Britain* (Cambridge University Press, 2012) 27.

⁵ Margaret Thatcher, 'Speech to Conservative Party Conference' (Conservative Party, 10 October 1975).

⁶ Ibid.

⁷ Margaret Thatcher, *The Downing Street Years* (Harper Press, 1993) 627.

⁸ Florence Sutcliffe-Braithwaite, 'Neoliberalism and morality in the making of Thatcherite Policies' (2012) 55 *The Historical Journal* 497.

acquisitiveness is enough in itself to secure the public good and that self-interest is the best way to maximise community welfare”.⁹

Firstly, this meant during the course of people fulfilling their personal goals, if they were able to assist the community this would be welcomed.¹⁰ For example, this could be in the form of assisting a neighbourhood watch or being active in local charities. For Thatcher, it was these types of self-interested acts which were the real sinews of society. Secondly, Thatcher also believed that responsible individualism could be fostered through entry into the market i.e., work. The market was viewed as a “living, bustling, spontaneously generated community space” where the individual would have freedom of choice and, as such, improve their moral outlook.¹¹ More specifically, Thatcher claimed that people would consistently be confronted with moral dilemmas in the market—questions of right, wrong, good, evil, just, and unjust.¹² Therefore, participating and contributing to the market was essential for the moral development of citizens.¹³

These ideas were channelled into the operation of social rights. For Thatcher, social entitlements via the welfare state created a culture of dependency, prevented individual freedom, and stunted personal responsibility—as citizens became passive and dependant.¹⁴ To make social rights more consistent with responsible individualism and Thatcher’s general view of society, narrower eligibility and greater conditionality was introduced. Importantly, obligations and responsibilities were not just strictly correlated with a social right, but they became a fundamental prerequisite to access. For example, the Secretary of State for Social Security in Thatcher’s government claimed the aim was to work on the connection between benefits and behaviour and “how to solve the age-old problem: how to help someone without weakening his will to help himself”.¹⁵ Through reforms via the Social Security Act 1986, entitlements were restricted and obligations were targeted to stigmatised sections of society—low income, the young, and unmarried

⁹ Neil Kinnock, *Making Our Own Way: Britain's Future* (B. Blackwell, 1986) 180-181.

¹⁰ Robin Harris, 'Not for Turning' (Corgi Books, 2013) 13-16.

¹¹ Margaret Thatcher, 'Speech to Scottish Conservative Party Conference, (Conservative Party, 12 May 1990).

¹² Ibid.

¹³ For a more comprehensive account of Thatcher’s position on society and citizenship, see: Lenon Campos Maschette, 'Revisiting the concept of citizenship in Margaret Thatcher’s government: the individual, the state, and civil society' (2021) 28 *Journal of Political Ideologies* 180.

¹⁴ Andrew Gamble, *The Free Economy and the Strong State: The Politics of Thatcherism* (Palgrave, 1994) 34.

¹⁵ John Moore, 'Speech to Conservative Party Conference' (The Conservative Party, 1988).

parents. Moreover, single parents applying for their social entitlements would be monitored by a Child Support Agency to ensure they did not escape their responsibilities. Also, 16 and 17-year-olds who were not in work or education were denied access to support and were placed into mandatory schemes to help them find employment. Doubtless, Thatcher government's approach saw the requirement of obligations being fulfilled before access to social entitlements could occur.

5.2.2. The Labour Party's Response

Throughout Margaret Thatcher's premiership, from 1979 to 1990, her ethic of citizenship, based on responsible individualism, began to be co-opted into the discourse of the Labour Party—from key figures to local government officials and, importantly, party policy. In other words, attempts were beginning to be made to recast or repackage responsible individualism through the lens of the Labour Party. Critics, like Nuttall, have acknowledged this. He states that during the Thatcher years individualised notions of cooperation gained traction within the Labour Party.¹⁶ For example, those close to the leader of the Labour Party, Kinnock, tried to reconcile its language and ideas into their own view of society. Bernard Krick, who served as Kinnock's advisor, and Tony Wright, backbench MP who was politically close to Kinnock, accepted Thatcher's premise that older ethical notions, like fraternity, and the idea of working together as an obligation, were old, condescending, and a form of soggy altruism.¹⁷ More specifically, Wright went on to say the Labour Party had to accept the presence of self-interest and to "enable people to see how things they want to achieve for themselves can often be achieved in collaboration with other people".¹⁸ Secondly, within local government, David Blunkett, who was the leader of Sheffield Council at the time, supported the idea that people should work together. But, like Thatcher, Blunkett supported notions of individual responsibility. He echoed her argument that social responsibility could not be fostered where there was dependence on social entitlements.¹⁹ Later, in extra-political writings while serving in New Labour's government, Blunkett put forward a version of citizenship that reconciled

¹⁶ Nuttall (n 2) 130.

¹⁷ Bernard Krick, *Socialism* (Open University Press, 1987) 97; Ibid, Nuttall.

¹⁸ Nuttall (n 2) 130.

¹⁹ David Blunkett, *Democracy in Crisis: The Town Halls Respond* (London, 1987); David Blunkett, *Open Letter to M Thatcher and Neil Kinnock* (Newcastle upon Tyne, 1990) 18–20.

“interdependent” and “autonomous” lives—ones that did not “deny individuals the ability to lead fulfilling lives of real and genuine choices, and so it protects freedom and liberty”.²⁰ This fit the mould of Thatcherite ethics, as understood, as it accepts self-interest as the means to cooperation. Moreover, Frank Field, future Minister for Welfare, argued the Labour Party had, for his entire life, espoused the wrong positions about human nature. He believed the self-regarding side, the most powerful characteristic, of human beings had been ignored. Therefore, politics had to be built around this simple fundamental fact. As such, Field also wanted self-interest to be promoted and channelled into the common good.²¹ Lastly, when describing the society before him, the then retired Dennis Healey commented that regardless of Thatcher’s arguments, the motive of personal gain had already found footing amongst the public. As such, he went on to advise the Labour Party to welcome the new consumer society.²²

Those on the left of the Labour Party acknowledged the ethical deficiencies that had been created in society by Thatcher. For instance, Tony Benn argued that after all the years of Thatcherism, something in the psychological state of people had to change. While Stuart Holland acknowledged there had been a deprivation in citizens’ mentality since Thatcherism.²³ However, despite acknowledging the moral problem and challenges posed to the Labour Party, these figures responded in a purely material way—through structural reform of the economy, industry, and trade union powers. Holland argued change would not come about by alternative ethical notions and sermons on the mount or expressions of love for our neighbour.²⁴ Lastly, David Marquand, who left the Labour Party to form the Social Democratic Party, was critical of self-interested citizens. But he also suggested socialists were now not able to accommodate notions that a political community was a web of reciprocal duties and rights. It was not feasible to claim that rights imply duties, and that the health of the community rested on members of the community’s willingness to perform said duties just as much as their ability to enjoy rights.²⁵ As such, he challenged

²⁰ David Blunkett, *Politics and Progress: Renewing Democracy and Civil Society* (Politico, 2001) 18–21, 109–114.

²¹ Frank Field, *An Agenda for Britain* (Harper Collins, 1993) 16.

²² Dennis Healey, *The Time of My Life* (Methuen Publishing Limited, 1990) 486.

²³ Tony Benn, *Fighting Back: Speaking Out For Socialism* (Hutchinson, 1988) 72; Stuart Holland, *The Socialist Challenge* (Quartet Books, 1975) 36–37.

²⁴ *Ibid.*

²⁵ David Marquand, *The Unprincipled Society* (Harper Collins, 1988) 132–133, 234–237.

socialists to ask the question, why should I make sacrifices for others? However, while presenting this challenge, Marquand did not offer a clear answer or policy prescriptions.²⁶

The Labour Party's policy under the leadership of Kinnock and, later, John Smith saw the incorporation of Thatcherite ethics and the term rights and responsibilities being used. For example, major policy reviews looked at ways of rooting responsibilities within rights, specifically social rights. It was suggested that emphasis should be placed on opportunities to work and offering a "hand up" instead of a "handout"—a phrase which was to be used continuously during the New Labour era.²⁷ Moreover, the notion of responsibilities preceding limited social rights gained support. Policy documents set out the idea of rights (to health, education, and housing, etc.) being very tightly tied—or, in some cases, coming after—the performance of very specific duties. Some of these policy documents stated the state would allow individuals to claim rights, but they would be "compelled" to fulfil their responsibilities.²⁸ In addition, the language in the Labour Party's election manifestos began to change. For example, the 1983 manifesto—which suggested the Labour Party wanted to make sure the philosophy of selfishness and short-term gain was replaced by community and caring—was disregarded. According to Peter Dorey, from 1987 Labour Party policy reviews consistently looked to embrace the "Thatcherite entrenchment of neoliberalism and individualism" and, importantly, a version of "consumerism was to supersede citizenship".²⁹ Further, during Smith's leadership, from 1990, there was a continued emphasis on rights being balanced by responsibilities and the promise to make the country much more competitive.³⁰ Though, it should be recognised that Smith himself was in favour of greater universal entitlements. Therefore, the outcome of various policy reviews during his short leadership caused some tension. With some observers claiming it was unlikely the Labour Party would adopt radical change.³¹ However, this did not stop Blair, the then Shadow Home Secretary, using the language of rights and responsibilities. In 1993, he claimed, "a modern notion of

²⁶ Ibid.

²⁷ Labour Party, 'Commission on Social Justice: Strategies for National Renewal' (The Labour Party, 1992–1994) 222–223.

²⁸ Ibid.

²⁹ Peter Dorey, 'Constitutional Reform' in Kevin Hickson (ed), *Neil Kinnock: Saving the Labour Party?* (Routledge, 2022) 155.

³⁰ The Labour Party, *It's Time to Get Britain Working Again* (Labour Party, 1992).

³¹ Ben Williams, 'Social Policy' in Kevin Hickson (ed), *John Smith: Old Labour's Last Hurrah?* (Biteback Publishing, 2024) 116–120.

citizenship gives rights but demands obligations".³² More specifically, tough responsibilities were required to ensure that opportunities were taken up.³³

Overall, Nicholas Timmins claims that a remarkable number of these policy reviews were a precursor to New Labour and the benefits of a strong work culture or, in other words, entry into the marketplace.³⁴ The overall shift by the Labour Party was towards a Thatcherite societal ethic of responsible individualism, market entry, and an emphasis on responsibilities that would come to precede rights. This was by no means a mistake or simply adapting to Thatcher's world—it was carefully and proactively adopted.

5.2.3. New Labour's Faux Ethical Socialism and Communitarianism

The purpose of this section is to clarify the ideological underpinnings of New Labour's rhetoric and approach to citizenship via rights and responsibilities from 1997. Despite there being a decade plus shift towards absorbing Thatcherite notions of society, rights, and responsibilities, as documented, leading figures New Labour suggested their approach was a reassertion of ethical socialist communitarian traditions of the Labour Party. It might be tempting to conclude this when looking at the rhetoric and arguments used by the likes of Blair and Brown.

First, Blair would often lean into traditional ethical socialist-communitarian themes.³⁵ He suggested his version of socialism centred on social relationships, and it was within the contours of these relationships that people would be able fulfil and express themselves.³⁶ People could, therefore, not be seen as separate economic actors who were competing in the marketplace. Instead, they were social beings that were nurtured in both families and communities.³⁷ To the Women's Institute, Blair stressed his belief in community. He stated, "our fulfilment as individuals lies in a decent society of others".³⁸ Similarly, Brown was of the view that people could be organically driven by idealistic and altruistic motives in society. He claimed to have witnessed the ethic of public service when

³² Tony Blair, 'Why Modernisation Matters' (1993) 1 *Renewal Journal* 4.

³³ *Ibid.*

³⁴ Nicholas Timmins, *The Five Giants* (William Collins, 2017) 532–534.

³⁵ Tony Blair, 'Let us Face the Future' (1997) 571 *Fabian Pamphlet* 12.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ Tony Blair, 'Speech to Women's Institute' (Women's Institute, 7 June 2000).

he saw doctors and nurses perform, not just skill and professionalism, but care and friendship. He also gave the example of the carers and support staff who showed compassion and humanity for people. For Brown, these people showed that there were motives and values that went beyond those of contract and market exchange.³⁹

Secondly, both leading figures emphasised duties or responsibilities to society. For example, Blair argued that where society or communities were recognised as relationships with other people, it naturally followed that interdependence and obligation to one another were not just mere abstractions but a genuine fact of life.⁴⁰ Where a society denied obligations and responsibilities towards one another, Blair suggested it would become atomistic and fragmented. Therefore, it was vital that society included a sense of purpose amongst the citizenry, otherwise there could be no well-adjusted responsible citizens.⁴¹ A statement like this was designed to reflect Blair's belief that a decent society was based on, not just rights, but responsibilities. Brown also claimed that there would be a new era of active citizenship under New Labour. More specifically, there would be a civic society where the right to decent services and the responsibilities of citizenship went hand in hand. The focus would not only be on the rights that can be claimed, but the duties that can be discharged.⁴²

Of course, these types of arguments sound familiar and some critics have suggested they were ethically socialist and communitarian in nature. Jeremy Nuttall, for example, argues support for traditional cooperative ideals and attempts at improving the moral character of citizens in society were doubtless present for New Labour.⁴³ Secondly, Matt Carter claims Blair's personal socialism centred around the common good, an organic society, and individuals flourishing when they worked together. He concludes that New Labour's project was to revive the socialism of, among others, Tawney.⁴⁴ While Jon Cruddas recently argued New Labour and Blair's reference to the benefits of the "common weal" was a conscious nod to the ethical socialist approach of William Morris.⁴⁵ Lastly, Stephen Driver and Luke Martell conclude that New Labour was ethically communitarian,

³⁹ Gordon Brown, 'Speech to Labour Party Conference Brighton' (The Labour Party, 2004).

⁴⁰ Stephen Driver and Luke Martell, *New Labour* (Polity, 2000) 200.

⁴¹ Ibid.

⁴² Gordon Brown, *Gordon Brown Speeches 1997–2004* (Bloomsbury, 2004) 176, 234.

⁴³ Jeremy Nuttall, *Psychological Socialism: The Labour Party and Qualities of Mind and Character; 1931 to the present* (Manchester University Press, 2006) 156–186.

⁴⁴ Matt Carter, *T H Green and the Development of Ethical Socialism* (Imprint Academic, 2003) 109.

⁴⁵ Jon Cruddas, *A Century of Labour* (Polity, 2024) 176–177.

as it understood the fostering of community to be a good thing and the cure to Thatcherite or Conservative individualism.⁴⁶ More specifically, New Labour's emphasis on the bonds of mutuality, which drew on traditional Labour Party themes such as "cooperation, fellowship, and mutualism", evidenced the return of an ethical socialist-communitarian ideology.⁴⁷

In reality, the actual ideological position of New Labour meant the rhetoric and practical policy in relation to society, rights, and responsibilities can be understood as a continuation of Thatcherite-inspired citizenship—an emphasis on responsible individualism and market entry. It was no longer about cooperative actions or networks of obligations that emanated from within a person or were fostered between people. New Labour, like leading figures in the Labour Party pre-1955, chose to channel their societal views through social entitlements or rights. However, unlike those before—who saw rights as a form of positive freedom that allowed individuals to flourish and lead a fulfilled life—they were viewed as a share of national resources and a means to a dependent citizen. As such, reducing reliance on said social entitlements became a key theme for New Labour.⁴⁸ It was thought that removing this type of culture would lead to a form of citizenship and, importantly, enhance personal responsibility. Consequently, by stressing greater personal responsibility, social rights were tied strictly to personal behaviour and the performance of specified activities—which the following sections explains in more detail. Blair claimed that modern society centred around an ethic of mutual responsibilities, a society of something for something, and a society where people take out only if they put in.⁴⁹ At the same time, Alastair Darling, Secretary of State for Work and Pensions, referred to the ethics of rights and responsibilities as a way to change culture within the area of social entitlements. In a letter to the *Guardian* newspaper, he stated:

surely it is not unreasonable to say to someone that if they enter into an agreement they should stick to it?... We are all responsible for our actions. Society is built on a contract. There are rights, yes, but there are responsibilities too.⁵⁰

⁴⁶ Stephen Driver and Luke Martell, 'New Labour's Communitarianism' (1997) 17 *Critical Social Policy* 27.

⁴⁷ *Ibid*, 37.

⁴⁸ Tony Blair, 'Reforming Welfare—Building on Beveridge, Speech to the Southampton Institute' (Labour Party, 13 July 1994).

⁴⁹ BBC News, 'Blair's Speech Single Mothers Won't Be Forced To Work' *BBC News* (London, 1997).

⁵⁰ The Guardian, 'Letters' *The Guardian* (London, 24 June 2000).

As will be shown, these responsibilities were paternalistic and coercive. More specifically, they were designed with punitive conditions and sanctions attached to them. They did not reflect the ethical cooperative nature of duties the Labour Party once espoused. In sum, Blair suggested that powerful new signals were being sent. He argued that those who could work should, and those who are dishonest would not receive social entitlements.⁵¹

But what explains the gap between the ethically driven rhetoric and Thatcherite inspired practice? Geoffrey Foote neatly explains New Labour's elastic use of language often meant that the party could present its politics in different lights.⁵² While Mark Bevir concludes New Labour's view of society was one of "competitive individualism wrapped within a moral framework".⁵³ Therefore, any rhetoric about inspiring neighbourliness, service, and duties to one another was superficial at best.

5.3. New Labour's Rights and Responsibilities in Practice

5.3.1. Social Entitlements in the Welfare State

There were some key changes to the rights and responsibilities nexus under New Labour. Firstly, citizens went from the *recipient of social rights to bearer of responsibilities*. New Labour invoked a hierarchical relationship whereby responsibilities preceded and became more important than rights. In doing this, the party directly channelled Thatcher, who, as outlined already, once claimed "there is no such thing as an entitlement unless someone has an obligation".⁵⁴ In other words, the sole emphasis was placed on individuals carrying out their obligations. This can be contrasted to the pre-1955 Labour Party, which sought to emphasise different duties equally with widely accessible social entitlements. At a Labour Party conference in 1997, Blair argued that rights were not the basis of society but duties, and duties "defines the context in which rights are given".⁵⁵ Blair often argued

⁵¹ Tony Blair, 'It really is the end of the something for nothing days', *Daily Mail* (10 February 1999).

⁵² Geoffrey Foote, *The Labour Party's Political Thought: A History* (Macmillan, 1997) 347.

⁵³ Mark Bevir, *New Labour: A Critique* (Routledge, 2012) 71.

⁵⁴ Hale (n 3) 100.

⁵⁵ Tony Blair, 'Speech to the Labour Party Conference' (Labour Party, 1997); Tony Blair, *New Britain: My Vision Of a Young Country* (Basic Books, 2004) 238.

that “we accept our duties as a society to give each person a stake in their future. But in return each person accepts a responsibility to respond to work to improve themselves.”⁵⁶ Subsequently, this position was entrenched in Clause 4 of the Labour Party’s constitution and Blair would consistently compare the Labour Party’s founding fathers message of societal duties in the same way as he and New Labour did.⁵⁷ But even Anthony Giddens, the sociologist associated with New Labour, commented that New Labour’s strong emphasis on responsibilities was the traditional stuff of conservatism and not socialism.⁵⁸

Secondly, with the emphasis on responsibilities came their *paternalistic, coercive, and exclusionary nature*. Unlike the pre-1955 Labour Party, who targeted duties to every section of society, New Labour, like Thatcher, aimed the rights and responsibilities dichotomy towards members of society who were often labelled with undignified stereotypes. This included the unemployed, young people, and single mothers. More broadly, New Labour would speak about instilling virtue in those members who benefited from welfare.⁵⁹ To do this, there was a punitive element to these responsibilities; which meant where they were neglected, they were strictly enforced. New Labour claimed that there would be no option for those out of work, for example, to claim their entitlements where there was a suitable offer for employment—people would be expected to take up their position.⁶⁰ If they failed to take up said work, sanctions would be applied, i.e., a reduction of their access to the relevant entitlement.⁶¹ Another example was New Labour’s Home-School agreement. This saw parents have the right to free education for their children, but be subject to court proceedings if they failed to send their children to school. Similarly, punitive punishments also manifested in the entitlement to public housing, where access would strictly be premised on not engaging in anti-social behaviour.⁶² Overall, specifically targeted sections of society who did not keep their side of the bargain were seen as not acting responsibly and, consequently, were sanctioned.

⁵⁶ Ibid, 298.

⁵⁷ Ibid, 326; Tony Blair ‘The Third Way: New Politics For The New Century’ (Fabian Society, 1998) 3–4.

⁵⁸ *The Independent* (6 July 1995).

⁵⁹ Tony Blair, ‘Speech to Women’s Institute’ (Labour Party, 7 June 2000).

⁶⁰ The Labour Party, *New Life for Britain* (The Labour Party, 1996).

⁶¹ Tony Blair, ‘Values and the Power of Community’ Speech to Global Ethics Foundation’ (Tubingen University 30 June 2000).

⁶² For a detailed account of these types of rights-responsibilities policies see: Judi Atkins, *Justifying New Labour Policy* (Palgrave, 2011); Hale (n 3) 35-47.

Thirdly, Blair and Brown heavily emphasised the *responsibility of citizens to engage in the market*. Responsibilities were no longer about interdependence, networks of obligations, and taking on cooperative activity in conjunction with fellow citizens. Instead, New Labour aimed to foster responsible individualism through market entry. For example, Brown claimed “the community must accept its responsibilities for the goals of sustained growth and full employment”.⁶³ While Blair said the true destination for his idea of a society was one which was “strong and competitive and enterprising”.⁶⁴ New Labour’s Department for Work and Pensions claimed that exclusion from the labour market can produce a range of negative consequences for individuals, which included a loss of role, social contact, daily routine, feelings of participation, and worth. As such, it was thought that work and economic opportunity strengthened, among other things, community.⁶⁵ Raymond Plant has argued New Labour, at least in relation to welfare policy, adopted an “obligation-view of citizenship” and, more specifically, “supply-side based citizenship”. In other words, there was a particular emphasis on being in work as a major part of their ethic and view of citizenship.⁶⁶

This approach culminated in the New Deal programmes that looked to change social entitlement systems from “passive support for jobless claimants towards active efforts to improve their chances of securing employment within a more prudently managed and stable economy”.⁶⁷ The New Deal for Young People made unemployment benefits contingent on 18 to 24 year olds accepting either paid employment, further education or training, undertaking voluntary work, or joining an environmental task force (where they would earn less than claiming welfare rights or benefits). Where these responsibilities were not undertaken, access to payments would be limited.⁶⁸ Brown, like Blair, argued it was something for something and there would be no option for young people to stay at home and avoid their responsibilities.⁶⁹ Secondly, the New Deal for the Long-Term Unemployed targeted those who were 25 or older and had been out of work

⁶³ Gordon Brown, ‘Speech to the Labour Party Annual Conference’ (The Labour Party, 1994).

⁶⁴ Tony Blair, ‘Speech to the Labour Party Annual Conference’ (The Labour Party, 1994); Tony Blair, ‘Speech to the Labour Party Annual Conference’ (Labour Party, 1995); and Tony Blair, ‘Speech to the IPPR’ (Labour Party, 1999).

⁶⁵ Department for Work and Pensions, *Pathways to Work: Helping People into Employment* (Cm 5690, 2002).

⁶⁶ Raymond Plant, ‘So You Want to be a Citizen’ *New Statesman* (London, 1998) 31.

⁶⁷ Atkins (n 62) 99.

⁶⁸ Department for Social Development, *New Deal for 18 to 24 Year Olds* (HMSO, 2006).

⁶⁹ Gordon Brown, ‘Speech Launching New Deal’ (Dundee, 5 January 1998).

for 18 to 21 months. To access the benefits, participants were required to attend a compulsory interview with a career advisor, after which they had to accept a subsidised job with an employer, undertake a six-month training and work experience placement, voluntary work, or train in an essential skill. These were mandatory sets of obligations and non-cooperation would result in benefit sanctions.⁷⁰ Lastly, the New Deal for Partners and New Deal for Lone Parents ensured that unemployed partners and single parents attended work-focused interviews and skills training. Like the other programmes, non-compliance led to the loss of benefits.⁷¹ Citizenship, for New Labour, heavily centred around being active in the market. This clearly represented a departure from the pre-1955 Labour Party notion of rights and duties, where the latter placed greater emphasis on ethical or public-facing duties.

Overall, just because New Labour claimed to be evoking older ideas of rights and duties as rights and responsibilities, this did not mean the party had returned to the Labour Party's more traditional, ethical socialist and communitarian, roots. For Sarah Hale, what truly reveals the ideological position of rights and duties is the emphasis on aims, and operation of duties.⁷² As this section has shown, key figures like Blair and Brown did not frame responsibilities as a way to foster citizenship or community-focused action. It was, as explained, viewed as a means towards fostering individual responsibility and market entry. Further, while there were initiatives to place people into voluntary work, as part of the New Deal programmes, the practical benefit of this was outweighed by the compulsory nature of such voluntary work. Forcing people to be active took away from the moral value of the work, specifically in relation to fostering an internal cooperative sentiment. If these reforms were in the spirit of the pre-1955 Labour Party, responsibilities and duties would emphasise other-regarding actions, be non-coercive, and apply to a wide range of people.

⁷⁰ HM Treasury and Department for Work and Pensions, *The Changing Welfare State: Employment Opportunity for All* (HMSO, 2001) 26.

⁷¹ HM Treasury and Department for Work and Pensions, *Full Employment in Every Region* (HMSO, 2003) 27.

⁷² Hale (n 3) 38-39.

5.3.2. National Health Service

New Labour also tried to shape the NHS around the party's new ethic of society and citizenship via rights and responsibilities. While the scope and entitlement to healthcare remained, there were firm attempts to ensure patients showed degrees of responsible individualism when claiming their right to healthcare and using the NHS. Tellingly, in a revised patient charter that set out a new contract between the NHS and citizens, patients were framed as "knowledgeable and responsible users" of the healthcare service.⁷³ While government policy documents made clear that individual patient involvement should be integrated in the daily work of the NHS.⁷⁴

There are several examples of this. Firstly, New Labour promised to create a more individualised healthcare system where citizens could exercise their own responsibility. For example, patients were given a greater range of choices and better information about local health services, possible treatments and tips to look after their own health. This included an expansion of information services, access to patient data and records, and the publication of more user-friendly clinical guides. In addition, the party widened individual patient choice in primary and hospital care—based on a range of information about general practitioner (GP) practices, the performance of hospital services, and patient views of these hospital services.⁷⁵ Secondly, responsibilities were also placed on patients to look after their own health. For example, there was the promotion of greater patient involvement by decreasing contact with healthcare professionals. The *Expert Patient Programme*, launched in 2001, consisted of non-medical led training for patients with chronic illnesses that included, among other things, arthritis. In addition, the New Labour government asked citizens to be more mindful or considerate of their lifestyle choices. Blair claimed that "our public health problems are not, strictly speaking, public health question at all. They were a question of individual lifestyle."⁷⁶

Critics have reflected that while the developments in the NHS could be attributed to political calculations, cost effectiveness, and pragmatism, in reality they were doubtless

⁷³ Department of Health, *NHS Plan: a plan for Investment a plan for Reform* (Cm 4818-I, 2000).

⁷⁴ Department of Health, *Patient and Public Involvement* (HMSO, 1997).

⁷⁵ Department of Health, *The Expert Patient: A New Approach to Chronic Disease Management for the 21st Century* (HMSO, 2001).

⁷⁶ HM Department of Health, *Saving Lives Our Healthier Nation* (Cm 4386, 1999); Tony Blair, 'Healthy Living' *The Guardian*, (London, 2006).

influenced by New Labour's ideology.⁷⁷ This, as discussed, included attempting to foster a society centred around rights and responsibilities. While access to the NHS did not change, per se, there were active attempts to push citizens into a position where they had to exercise their own responsibility for their healthcare needs. Importantly, New Labour tried to frame and position the individual as a "responsible co-producer of health".⁷⁸

5.3.3. Rowing Back? The Rights and Responsibilities Bill

While this episode is beyond the thesis' time frame, it is worth briefly noting that during Gordon Brown's short tenure as Prime Minister, from 2007 to 2010, a Bill of Rights and Responsibilities was set out in a Green Paper. The proposal did not seek to rehash New Labour's version of responsibilities, as we have understood them to be. Instead, the proposal, seemingly, aimed to be more traditionally ethically socialist and communitarian in nature. Its main motive of "fostering mutual responsibility" was notable. The Green Paper was self-aware in that it claimed society was "less deferential", the public more "consumerist", and rights had become "commodified". It also claimed that responsibilities had not been given the same degree of prominence or constitutional recognition as rights.⁷⁹

Importantly, the proposal sought to enhance public understanding of civil duties and strengthen the case for performing them. The Green Paper went on to outline several duties that it was thought citizens owed to one another: protecting and promoting the welfare of our children; respectful treatment of NHS and public service staff; civic participation, voting, and jury service; respect for the environment; and other duties such as obeying the law and paying taxes.⁸⁰ Jack Straw, the Lord Chancellor, claimed the intention was to focus on "how this relationship can best be defined to protect fundamental freedoms and foster mutual responsibility".⁸¹ However, the Rights and Responsibilities Bill itself was flawed and underdeveloped, mainly because its section on rights failed to provide clarity on the types of rights that would be tied to responsibilities.

⁷⁷ Rudolf Forster and Jonathan Gabe, 'Voice or Choice: Patient and Public Involvement in the NHS Service in England under New Labour' (2008) 38 *International Journal of Health Services* 333–356.

⁷⁸ Department of Health, *NHS Improvement Plan* (Cm 6238, 2004).

⁷⁹ Ministry of Justice, *Rights and Responsibilities: Developing our Constitutional Framework. Response to the Ministry of Justice Green Paper* (Cmd 7577, 2010) 3–8.

⁸⁰ *Ibid.*

⁸¹ *Ibid* 3.

Also, the mechanics of the responsibilities were unclear—whether they were to be strict or non-correlative. The Green Paper claimed the imposition of new penalties and legal sanction was unlikely to foster a sense of civic participation and responsibility.⁸²

Due to the political landscape and Labour Party's 2010 election defeat, nothing more came of this proposal. It does, nevertheless, give a unique insight into key figures like Brown and Straw wanting a significant degree of renewal in relation to the understanding of rights and responsibilities—so that a stronger sense of citizenship could be formed. Importantly, it also indicates a degree of backtracking and disowning about how rights and responsibilities had been approached by the Blair-led New Labour government.

5.4. New Labour and a Reduced Untrammelled Sovereignty

New Labour is often criticised for making little effort to explain the underlying rationale for its constitutional reforms, beyond the “vacuous reference to the need to ‘modernise’”.⁸³ However, this section argues that there was a relatively coherent view of sovereignty in the British constitution—heavily influenced by the ideology of modernising constitutionalism as understood in Chapter 1 Section 1.2.3. New Labour accepted the socialistic-political constitutional tenet of untrammelled sovereignty but, ultimately, revitalised it as a reduced untrammelled sovereignty. This meant the elected majority in Parliament *retaining the right* to enact its legislative agenda but having its *political capacity* to do so *reduced*. In other words, New Labour looked to temper the elected majority in Parliament through dispersing power via a range of constitutional reforms, which included the HRA 1998. Before documenting the shift towards this, it is important to highlight the support for a reduced untrammelled sovereignty in New Labour.

Untrammelled sovereignty was expressed in, broadly, similar ways by key figures in New Labour. Some, like Lord Derry Irvine, Lord Chancellor, provided a detailed theoretical account. First, he acknowledged that Dicey originally excluded all meaningful notions about the will of the electors and people from his version of sovereignty. However,

⁸² Ibid.

⁸³ Graham Gee, ‘Judicial Policy and New Labour’s Constitutional Project’ in Michael Gordon and Adam Tucker (ed), *The New Labour Constitution Twenty Years On* (Hart Publishing, 2021) 88.

this changed during the 21st century when the British doctrine of parliamentary sovereignty rested “on rather different foundations”.⁸⁴ This conception, according to Lord Irvine, found its clearest expression during the Attlee government and the Salsbury Convention, namely the unelected House of Lords does not vote against legislation which seeks to give effect to the electoral pledges that have been endorsed by the majority of the voters.⁸⁵ According to Lord Irvine, this was important. This was because it acknowledged that the legitimacy or authority of Parliament’s legislative powers is firmly rooted in the will of the electorate. He goes on to say:

this, in turn, clearly illustrates that the doctrine of parliamentary supremacy, seen from a modern perspective, is properly to be viewed as an expression of the political sovereignty of the people.⁸⁶

He concludes by explicitly suggesting that theories of government in the United Kingdom are founded on the idea of popular sovereignty. What’s more, in a White Paper, the New Labour government made the connection between the authority of the elected majority in Parliament and the electorate and having the ability to implement its agenda freely:

The House of Commons has... long since been established as the preeminent constitutional authority within the UK... The Party which secures a majority [of seats] has the right to force a government and subject to sustaining its Parliamentary majority, to carry through the programme set out in its election Manifesto... This constitutional framework, founded on the pre-eminence of the House of Commons, has provided Britain with effective democratic Government and accountability for more than a century, and few would wish to change it.⁸⁷

Similarly, Jack Straw, as Home Secretary, opined to Parliament:

The sovereignty of Parliament must be paramount. By that, I mean that Parliament must be competent to make any law on any matter of its choosing. In enacting legislation, Parliament is making decisions about important matter of public policy. The authority to make those decisions derives from a democratic mandate.⁸⁸

⁸⁴ Lord Derry Irvine, ‘Sovereignty in Comparative Perspective’ in *Human Rights, Constitutional Law and the Development of the English Legal System: Selected Essays* (Hart Publishing, 2003) 238-242.

⁸⁵ *Ibid*, 239-240.

⁸⁶ *Ibid*, 240-241.

⁸⁷ Stationary Office, *The House of Lords: Completing the Reform* (Cmd 2591, 2001) 13-17.

⁸⁸ HC Debate 16 February 1998 vol 306 col 772.

Critics like Mark Bevir and Peter Dorey have also given support to the idea that New Labour followed the dominant tradition of supporting popular notions of sovereignty in the Labour Party. More specifically, people voted for their representatives who then went on to pass legislation.⁸⁹

However, influenced by a modernising constitutionalism, New Labour couched this traditional understanding of untrammelled sovereignty within ideas of retaining, as a matter of fact, the legal capacity for the elected majority in Parliament to pursue its agenda, but reducing its political capacity to do so. The aim was to reduce or temper the political control and agenda of the elected majority in Parliament. For Blair, the old solutions of “state control” were no longer relevant and the “era of big centralised government” was over.⁹⁰ He suggested the role of the elected majority in Parliament was not to command, but to facilitate the empowerment of people. Therefore, Blair wanted to see a shift from an overpowering state to a citizens’ democracy. This included individuals’ having rights and powers and being served by responsible and accountable government. In such a society, Blair argued that people would feel the benefit of having more of a stake and role to play.⁹¹ Similarly, Mandelson argued that New Labour would ensure that individual citizens were no longer being sacrificed on the altar of collectivist ideology.⁹² Others, like David Lammy, Parliamentary Under-Secretary in the Department for Constitutional Affairs, claimed that New Labour’s strategy was about “focusing on individual need and moving away from block provision”.⁹³ Similarly, reflecting on New Labour’s constitutional position, Straw suggested what tied various proposals together was the issue of “power” and the location of that power. Indeed, New Labour wanted to radically break up traditional centres of power, to make those who hold power accountable for their actions, and transform the traditional arrangements of the country.⁹⁴ Lastly, Lord Irvine stated New Labour’s objective was to put in place an integrated programme of measures to decentralise power in the UK, and to “enhance the

⁸⁹ Bevir (n 53) 146; Peter Dorey, *The Labour Party and Constitutional Reform: A History of Constitutional Conservatism* (Macmillan, 2008) 98.

⁹⁰ Blair (n 1) 90, 261.

⁹¹ *Ibid*, 310-321.

⁹² Peter Mandelson and Rodger Liddle, *The Blair Revolution* (Faber and Faber, 1996) 196.

⁹³ David Lammy, “Third Anniversary of the Human Rights Act Speech to the (Audit Commission Conference, 6 November 2003).

⁹⁴ Jack Straw, ‘New Labour, Constitutional Change and Representative Democracy’ (2010) 63 *Parliamentary Affairs* 356, 259-360.

rights of individuals within a more open society”.⁹⁵ Tellingly, he also suggested that New Labour’s approach was a return to 19th and 20th century liberal tradition of constitutional reform.⁹⁶ This implied a return to the elected majority in Parliament not having the total authority or political power to pursue its ends unilaterally.

This idea of reducing the political capacity of the elected majority in Parliament was also reflected in other constitutional and accountability measures such as devolution, solidifying the separation of powers with the creation of the Supreme Court via the Constitutional Reform Act 2005, and implementation of the Freedom of Information Act 2000. Overall, Lord Charlie Falconer, Attorney General under New Labour, recently reflected that the constitutional reforms were right for preventing an “elective dictatorship”, ensured that the whole of Parliament and not just the government were involved in decision-making, and dispersed power as much and widely as possible.⁹⁷

5.5. Towards a Human Rights Act 1998

The HRA 1998, which codified the ECHR into domestic law, came into being not passively, or solely as a reaction to accusations of Thatcher’s illiberal civil and political legacy, as a direct response to liberal support and campaigns for codified rights, or as a reflection of the broader global trend towards judicialisation—the expansion of judicial involvement in a range of domestic policy areas at the expense of politicians—that Ran Hirchel and Danny Nicols have argued to have taken place in the late 20th and early 21st century.⁹⁸ Instead, it was a carefully crafted piece of legislation that reflected a longstanding ideological development and commitment to a modernising constitutionalism within the Labour Party itself—one that looked to profoundly reshape British institutions for the 21st century. More specifically, the HRA 1998 came about from the specific desire to

⁹⁵ Lord Derry Irvine, *Government’s Programme of Constitutional Reform* (Constitution Unit Annual Lecture, 8 December 1998).

⁹⁶ *Ibid.*

⁹⁷ Lord Charlie Falconer, ‘New Labour’s Constitutional Changes: Time for More’ in Michael Gordon and Adam Tucker (ed), *The New Labour Constitution Twenty Years On* (Hart Publishing, 2021) 12–13.

⁹⁸ Mark Evans, *Constitution-Making and the Labour Party* (Palgrave, 2003) 26–39; Danny Nicol, ‘The Human Rights Act and the Politicians’ (2004) 3 *Legal Studies* 295; Ran Hirchl, ‘The Judicialisation of Mega-Politics and the Rise of Political Courts (2008) 11 *ARPS* 1; Colm Murphy, ‘Towards a modern democracy? The constitutional politics of the 1990s British left’ (2024) 38 *Contemporary British History* 1.

reduce the political capacity of the elected majority in Parliament—reflecting the belief in a reduced untrammelled sovereignty.

5.5.1. Neil Kinnock's Leadership: Slowly but Surely

Kinnock's desire to reduce untrammelled sovereignty through constitutional reform was not, initially, an instinctive one. As Kevin Hickson argues, Kinnock was heavily influenced by the likes of Tawney and Bevan.⁹⁹ Both of which, as documented in this research, supported the traditional socialistic-political constitutional tenet of untrammelled sovereignty. It has been suggested Kinnock's "belated acceptance" of constitutional reform was motivated by, among other things, electoral appeal after his defeat in the general election of 1987. Namely, the "concerns of many voters that Labour itself was the party of centralisation, statism and mass conformity".¹⁰⁰ While there is some truth to this, it would also be accurate to say, whether intentional or not, Kinnock commonly emphasised the need to reduce the power of the elected majority in Parliament and prioritise individual needs. For example, in 1983 he argued the Labour Party had to recognise that people had the right to expect greater sensitivity and responsiveness from the state, which could be at times prescriptive and patronising. Because of this, people did not want things to be just delivered, rather they wanted to be empowered.¹⁰¹

Another important moment in the early commitment to a modernising constitutionalism—which marked somewhat of a green light to a deeper ideological shift in relation to untrammelled sovereignty—came with the creation of the Democracy and Individual group. With the approval of Kinnock, this group was set up during a key 1987-1989 constitutional reform and policy review. It included constitutional modernisers like Lord Irvine et al. Their task was to develop ideas that included, but were not limited to, civil liberties and the decentralisation of political power and decision-taking.¹⁰² The outcome of the group was a convoluted range of proposals that fell short of a written bill of rights. However, there were active attempts that looked to disperse the power of the

⁹⁹ Kevin Hickson, *Neil Kinnock: Saving the Labour Party?* (Routledge, 2022) 21-23.

¹⁰⁰ Dorey (n 29) 161.

¹⁰¹ Neil Kinnock et al., *Labour's Choice* (Fabian Society, 1983) 11; Neil Kinnock, 'Leaders Speech at Bournemouth' (Labour Party, 11 October 1985) <Leader's Speech, Bournemouth, 1 October 1985> last accessed 8 August 2024.

¹⁰² Labour Party Papers at National Museum of Labour History, Manchester, "Minute of a Shadow Cabinet Meeting held on the 28 October 1987".

elected majority in Parliament via devolution and an elected House of Lords—all of which looked to reduce government power and empower citizens. However, within the wider PLP, there were still divisions about the value of major constitutional reform. In relation to ideas that looked to reduce the power of the House of Commons, those further to the left, like Labour MPs Jeremy Corbyn and David Winnick, feared that enhanced authority for any other body would lead to a reduction in the elected House of Commons primacy. Their main concern was to safeguard the ability to pass social and economic reforms freely. They directed this view at ideas which enhanced the power of the House of Lords, for example.¹⁰³

Overall, Peter Dorey claims while Kinnock himself was softening to various constitutional reform proposals he had very little input into the process himself. The suggestion made by Dorey is that Kinnock simply left the outcome of the policy review to others in the Democracy and Individual Group.¹⁰⁴ Despite Kinnock's agnostic approach, the principal point is that internally the Labour Party began to seriously think about how to modernise and reform aspects of the British constitution. The Democracy and Individual Group policy review concluded that the current arrangements were "antiquated" and "anachronistic". Tellingly, it also explicitly stated no centre-left party should continue to operate within the constitutional arrangements of previous Labour Party Prime Ministers i.e., Attlee, Wilson, and Callaghan.¹⁰⁵ One, among other, implications of this conclusion was genuine scepticism or less importance being placed on the elected majority in Parliament having total control over domestic decision, policy, and legislative making. The group recommended that the Labour Party should be prepared to shake up established structures of the British constitution to revitalise the relationship between citizen and state.

¹⁰³ Labour Party Papers at National Museum of Labour History, Manchester, "Minutes of a Meeting of the Parliamentary Labour Party, 24 May 1989".

¹⁰⁴ Peter Mandelson, *The Third Man: Life at the Heart of New Labour* (Harper, 2010) 105-106.

¹⁰⁵ Hickson (n 99) 240.

5.5.2. John Smith's Leadership: Acceleration

The ideological shift toward a modernising constitutionalism and, ultimately, a reduced untrammelled sovereignty accelerated tremendously under John Smith's short tenure as leader of the Labour Party. While this was, in some ways, a natural continuation of the Labour Party's direction of ideological travel, that began under Kinnock, Smith's modernising attitude, ideological position, and commitment to individual liberty cannot be understated. More specifically, he was a fundamental reason for the Labour Party accepting in principle and then later, under New Labour, in practice an enforceable set of codified set of rights in the British constitution or, in other words, the implementation of the HRA 1998.

Firstly, Smith's political-ideological outlook has been described as one that looked to "enhance individual freedom in a framework of common purpose and opportunity".¹⁰⁶ More specifically, Smith believed in a liberty-creating socialism which could only come about in an environment of political democracy and one that valued civil and political freedoms. He often claimed that, for the Labour Party, "freedom is our goal".¹⁰⁷ Because of this Smith often argued an enabling state should provide an "infrastructure of freedom".¹⁰⁸ In an early speech as leader of the Labour Party, Smith stated:

It is clear to me that we need to re-examine the relationship between individuals in our society and the institutions that purport to represent them. I will argue that, in our over-centralised democracy, it is not only the style of government but the structure that has led to its over-centralisation. And I will propose that we need a new system of government, appropriate to a modern European state, which puts the citizen at the centre of the picture and which has levels of government that are sensitive to individual needs and aspirations...all is not well with the governance of this country.¹⁰⁹

Furthermore, in another extensive speech, titled *The Standards and Practice of Government*, Smith went on to criticise the over-centralisation of the British government or, in other words, the authority and power that could be exercised by the elected majority

¹⁰⁶ Keith Laybourn, 'Tribune of the People: The Popularity, Appeal and Legacy of John Smith' in Kevin Hickson (ed) *John Smith: Old Labour's Last Hurrah?* (Biteback Publishing, 2024) 9.

¹⁰⁷ Ibid, 37.

¹⁰⁸ Ibid, 10.

¹⁰⁹ John Smith, 'Reforming Our Democracy' in Brian Brivati (ed) *Guiding Light: The Collected Speeches of John Smith* (Politico, 2000) 178.

in Parliament. Tellingly, he claimed that there were too few checks on the arbitrary use of political power. As such, he began to map out ideas that looked to strengthen the role of Parliament over the elected majority. This included devolution, a bill of rights, and freedom of information for the public. He concluded his overall aim was to “fashion a new constitution for a new century”.¹¹⁰ By the time of this speech, it is clear Smith was fundamentally influenced by a modernised constitutionalism and significantly developed constitutional proposals for change.

The specific and strong commitment to individual liberty, decentralisation, and reforming the British constitution was fundamentally developed in a further speech called *A Citizens Democracy*. Notably, this was given to Britain’s leading constitutional reform pressure group, Charter 88. In it, Smith, firstly, claimed he wanted to replace the “outmoded” and “out-of-date-idea” of an all-powerful nation state with a “modern European state” that was based on “subsidiarity” and empowered local, regional, national, and European decision-making.¹¹¹ Secondly, Smith rejected that the ideas put forward about constitutional reform were only for the “chattering” classes. By this, he believed it was both applicable and relevant to every citizen in the country that the arrangements of the British constitution were rejuvenated for modern circumstances. This was, partly, premised on Smith’s belief that the Conservative rule over 14 years had seen a “relentless centralisation of power and a systematic and cynical transferring of power to an unaccountable magistracy”.¹¹² In truth, the Thatcher government simply exercised the legitimate power of a democratically elected majority in Parliament, like previous Labour governments, effectively and without interference from constitutional restrictions. Instead of seeing the merits of potentially inheriting constitutional arrangements that could enact social and economic reform uninhibited, Smith saw power that had to be reduced.¹¹³ Thirdly, with these arguments in mind, Smith claimed he wanted a new deal between people and the state. More specifically, this deal would see the state bestow a range of rights and powers on the citizen and, importantly, “put the citizen centre stage”.¹¹⁴ Importantly, among other things, Smith argued for the incorporation of the

¹¹⁰ Gordon Brown and John Naughtie, *John Smith: Life and Soul of the Party* (Mainstream Publishing, 1994) 97.

¹¹¹ John Smith, ‘A Citizens Democracy’ Speech to Charter 88’ (Labour Party, 1 March 1993).

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

ECHR into the British constitution. Like some revisionists in the Wilson government, Smith believed the ECHR was not a vague untested code but a mature statement of rights—which had been interpreted and applied over many years by an experienced Court in Strasbourg. Crucially, in a statement that would sit uncomfortably with Labour Party figures pre-1955, Smith wanted the rights to “pervade the work of all courts”, against any branch of state, and against prior and future legislation.¹¹⁵ Indeed, Smith had previously claimed that Britain was:

alone among the major Western European nations in not laying down the basic rights of our citizens and in not giving them direct means of asserting these through the courts.¹¹⁶

According to Smith, ideas like the incorporation of the ECHR into domestic law would create a new deal that would see a:

...fundamental shift in the balance of power between citizen and the state – a shift away from an overpowering state to a citizen’s democracy where people have the rights and powers and where they are served by accountable and responsive government.

Interestingly, as recorded by this historian Jasper Miles, in a question and answer after the speech, Smith restated his concern about Britain having an “elective dictatorship”:

I myself used to believe in the mysteries of the British constitution. My experience over the last twelve years, like many people, has caused me to change my mind quite fundamentally on that.¹¹⁷

The head of policy for the campaign group Charter 88, David Ward, explained how, in his view, Smith genuinely in favour of constitutional reform. He claimed that Smith that had a “inner self confidence and commitment” to changing the operation of the British constitution.¹¹⁸

¹¹⁵ Ibid.

¹¹⁶ Guardian Reporter, ‘Smith pledged new paths for “listening leadership”: The front-runner in the Labour contest sets out his person manifesto’ *The Guardian* (London, 1 May 1992).

¹¹⁷ Jasper Miles, ‘John Smith and the British Constitution’ in Kevin Hickson (ed) *John Smith: Old Labour’s Last Hurrah* (Biteback, 2024) 152.

¹¹⁸ Ibid, 152.

Following these thorough and revealing speeches, Smith sanctioned and endorsed the Labour Party's policy *A New Agenda for Democracy: Labour's Proposals for Constitutional Reform*. The policy paper went on to further justify why the Labour Party wanted a new constitutional settlement. First, it claimed the Labour Party had to revive the true ideological purpose of democratic socialism that went beyond traditional forms of central government interventions. Secondly, the policy document went on to argue that prioritising checks and balances and limiting the elected majority in Parliament reflected the "more pluralist, more decentralised, more devolved government which the people of our country want to see".¹¹⁹ The report also officially argued for the direct incorporation of the ECHR into the British constitution. It claimed that enshrining codified rights in law would protect and empower individuals against the executive.¹²⁰

Overall, by the early 1990s the Labour Party had comprehensively moved towards a modernised constitutionalism and its tenet of a reduced untrammelled sovereignty. Indeed, they wanted to significantly alter the constitutional arrangements that had historically ensured primacy of the elected majority in Parliament. Jasper Miles argues that under Smith "the Labour Party became a different party".¹²¹ It is doubtless that Smith and those around him, which included key figures from New Labour, believed that ideas around untrammelled sovereignty or, more widely, the British constitution required updating. Critics disagree about the extent to which Smith would have, in practice, altered existing arrangements. Miles concludes Smith's ideas fell short transforming parliamentary sovereignty and, in essence, he kept the planks of the Westminster system intact.¹²² Similarly, others have suggested Smith might not have implemented all his proposals around judicial empowerment.¹²³ While Mark Barnett and Mark Evans have argued Smith had accepted the logic of a written constitution and his reform agenda was very close to that of Charter 88—who, among other reforms, supported a written bill of rights and reduced power for the elected majority in Parliament.¹²⁴ However, as will be shown, a significant number of Smith's proposals went on to be adopted by New Labour. The proposal for the incorporation of the ECHR into domestic law had a significant impact

¹¹⁹ Robert Blackburn and Raymond Plant (eds), *Constitutional Reform: The Labour Government's Constitutional Reform Agenda* (Longman, 1999) 446.

¹²⁰ *Ibid.*

¹²¹ Miles (n 117) 158.

¹²² *Ibid.*, 159.

¹²³ *Ibid.*, 160.

¹²⁴ *Ibid.*, 158.

which, contrary to Miles and other critics opinion, fundamentally altered the constitutional arrangements of the British constitution. Or, more specifically, it reflected and was rooted in the support for a reduced untrammelled sovereignty. What is abundantly clear, however, is Smith's important, if not vital, role in moving the Labour Party towards accepting these ideas and arguments.

By 1993, Smith placed Blair in charge of the party's constitutional committee. Despite initially being unsupportive of a bill of rights, Blair's stance softened and proposals for the incorporation of the ECHR into domestic law were authored. Brown also followed Smith's enthusiastic approach to constitution reform and greater individual rights. For example, in a speech to Charter 88, he claimed there was a need for greater individual empowerment. He also criticised the "old left" and claimed a "modern constitution...[is] essential to the task of establishing a modern view of society and in my view a modern view of democratic socialism"—this view reflected Brown's longstanding view on constitutional reform that stretched back to 1975.¹²⁵ Support for a domestic bill of rights was also growing within the wider Labour Party. The Labour Rights Campaign was created to encourage members of local constituencies or branches of the Labour Party to support, among other things, individual rights. Secondly, Labour Party members continuously put forward motions at Labour Party conferences in support of a domestic bills of rights.¹²⁶ By November 1993, the Labour Party was internally consulting its members and wider constituency parties about the introduction of a Bill of Rights to Parliament if they won the next general election in 1997.¹²⁷ After the premature death of Smith in 1994, Blair's ascent to the leadership did not stop the ideological influence of a modernising constitutionalism, belief in a reduced untrammelled sovereignty, and desire to create a domestic bill of rights. Blair vividly echoed Smith during a 1994 Labour Party leadership contest in Cardiff. Here, he claimed a programme of constitutional "renewal" was necessary after 15 years of the Conservative Party "systemically" undermining democracy.¹²⁸ Importantly, he repeated the calls for a domestic Human Rights Act which would reflect a modern socialism:

¹²⁵ Gordon Brown, 'Constitutional Change and the Future of Britain' (Charter 88, March 7 1992); Gordon Brown, 'Old Nationalism and New Nationalism' in *Red Paper on Scotland* (EUSPB, 1975).

¹²⁶ The Labour Party, *Conference 93: NEC Report* (Labour Party, 1993).

¹²⁷ Angela Hegarty, *Human Rights: 21st Century* (Taylor Francis, 2012) 298–299.

¹²⁸ Murphy (n 98) 16.

It is doubly important for socialists to modernise the system of Government...We need a new constitutional settlement to express the new relationship between individual and society, citizen and state, for the world today.¹²⁹

At the 1994 Labour Party conference, following Blair's election as leader of the Labour Party, a motion was carried which accepted the creation of a Human Rights Act—in addition to other constitutional reforms.¹³⁰

Unsurprisingly, with years of momentum behind the idea and six months after being elected in 1997, with a 179-seat majority, the HRA 1998 received royal assent on 9 November 1998 without much resistance from Cabinet, the PLP, or wider Labour Party. Leading figures in New Labour's government openly claimed the legislation was a deliberate attempt to reduce untrammelled sovereignty by enhancing individual rights. Straw suggested the HRA 1998 was an "important part of Labour's programme for restoring trust in the way we are governed" and as a means to "redress the dilution of individual rights by an over-centralising government".¹³¹ While, Yvette Cooper, Parliamentary Secretary to Lord Irvine—who was instrumental in formulating the legislation—argued the HRA 1998 aim was to secure the place of the individual among the masses. More specifically, it prevented governments and communities from running rough over the rights of individuals in the name of the majority. Cooper also stated any emphasis that was now placed on the collective could no longer lead to a lower tolerance and priority given to the individual. For Cooper, these rights did not sow discord or alienate, but they were the key to developing the fundamental relationships that bound society together.¹³²

Overall, critics like Polly Toynbee and David Walker understood New Labour's rights agenda as one which empowered people as individuals, but not in the traditional way of collective action through domestic and social policy. The "thrust" of the "human rights endeavour" was against the state or elected majority in Parliament.¹³³ Doubtless, the HRA 1998 was rooted in ideas of a reduced untrammelled sovereignty and a broader ideology of modernising constitutionalism—as discussed.

¹²⁹ Ibid.

¹³⁰ Tony Blair, 'Leader's Speech to Labour Party Conference' (Labour Party, 3 October 1994).

¹³¹ Paul Boateng and Jack Straw, 'Bringing Rights Home: Labour's Plans to Incorporate the European Convention on Human Rights into UK law' (1997) 19 *European Human Rights Law Review* 72.

¹³² Yvette Cooper, 'Keynote Speech at the Liberty Annual Conference: Championing the Values of Human Rights (Liberty, 2003).

¹³³ Polly Toynbee and David Walker, *Better or Worse Has Labour Delivered?* (Bloomsbury, 2005) 69.

5.6. Analysing the Reduction in Untrammelled Sovereignty via the Human Rights Act 1998

5.6.1. Individual Empowerment

The HRA 1998's empowerment of individuals proved most problematic for the passage of domestic policies that targeted unpopular sections of society. Lord Irvine was clear that the rights located in the HRA 1998 were fundamental and absolute. He, himself, believed in the Kantian concept of the man as an autonomous moral being and the individual as an end to himself, never a means. Because of this, Lord Irvine believed the main aim of the British constitution had to be the recognition of the sovereign autonomy of the individual.¹³⁴ As such, he suggested that absolute parliamentary sovereignty risked subjugating individual rights to the will or tyranny of the majority. It was only through a democratically validated bill of rights that this power could be curtailed and restrained.¹³⁵ The passing of the HRA 1998, for Lord Irvine, had been one of the most significant dispersals of political power the country had ever seen since 1911. By this, he meant it would deliver modern reconciliation between the right of the majority to exercise political power and the needs of individuals and minorities to have their human rights secured.¹³⁶ In other words, the political capacity of the elected majority in Parliament to intrude on these rights, for any public interest or national security reason, would be diminished.

This proved to be true, as national security policies that were targeted at unpopular sections of society had to be significantly adjusted because of these new fundamental rights and entitlements. Firstly, the HRA 1998 prevented the Home Secretary's, David Blunkett, decision to deport nine Afghan nationals, who arrived in the UK after hijacking a plane to escape the Taliban regime. These hijackers subsequently claimed asylum in the UK, claiming they would either be tortured or killed on their return to Afghanistan. Blair described the outcome of the case as an "assault on common sense"

¹³⁴ Lord Irvine of Lairg 'The Philosophical Case for Bill of Rights: A Response to Sir John Laws 1996' in *Human Rights, Constitutional Law and the Development of the English Legal System: Selected Essays* (Hart Publishing, 2003) 3-6.

¹³⁵ Ibid.

¹³⁶ HL Debate 3 November 1997 vol 582 col 1234.

and an “abuse of justice”.¹³⁷ Meanwhile, Blunkett suggested that the decision appeared inexplicable or bizarre to the public. He believed it reinforced the perception that human rights were working against the hard-working British citizens.¹³⁸ At a session of PMQs, Blair assured the House of Commons that human rights legislation would not impede common sense legislation that protected the country.¹³⁹ Blair was so taken aback by the decision that he also ordered a review of primary legislation, with the aim of addressing court rulings that overturned the government in a way that was inconsistent with other EU countries’ interpretation of the ECHR.¹⁴⁰ Striking a regretful tone, Blair stated New Labour had been “complacent” in failing to appreciate the extent to which the HRA 1998 would impede efforts to deal with suspected criminals.¹⁴¹

Secondly, the HRA 1998 also brought into question Britain’s settled domestic policy of prisoners being denied the vote by the Representation of People Act 1983 (as amended by the 1985 legislation). The legislation in question banned convicted prisoners irrespective of the length of sentences, nature or gravity of offence, and their individual circumstances. However, after challenges through the domestic courts, the ECtHR found a general automatic and indiscriminate blanket ban fell outside of the state’s margin of appreciation. This was found to have breached Article 3 Protocol 1, that looked to ensure free and fair elections.¹⁴² Of course, the judgment was about the nature of a general blanket ban being problematic, especially as Parliament had not taken up any engagement on the issue since the passing of the legislation. However, the fact that the New Labour government was being put in a position to contemplate a 100-year settled policy regarding the enfranchisement of prisoners was more evidence of the aim of the HRA 1998—to challenge, temper, and reduce political capacity of the elected majority in Parliament. The Joint Committee on Human Rights claimed that the government would be taking an unpopular course of action if it changed policy.¹⁴³ In response to the

¹³⁷ *R (on the application of S and Others) v. Secretary of State for the Home Department* [2006] EWHC 1111.

¹³⁸ BBC Reporter, ‘Government Appeal Over Hijackers’ *BBC* (London, 2006); A.C. Grayling, *The Guardian* ‘The Right Kind of Inconvenience’ (London, 26 June 2006)

¹³⁹ HC Debate 17 May 2006 vol 446 col 998.

¹⁴⁰ *The Observer*, ‘Blair Attacks on Human Rights Law’ (London, 14 May 2006); BBC Breakfast, ‘Frost Interview with Tony Blair’ (London, 26 January 2003).

¹⁴¹ Editorial, ‘Time to stop the madness’ *The Sun* (London, 31 July 2007).

¹⁴² *Hirst v United Kingdom* (No 2) (2005) ECHR 681; C.R.G. Murray. ‘A Perfect Storm: Parliament and Prisoner Disenfranchisement’ (2013) 66 *Parliamentary Affairs* 511.

¹⁴³ Joint Committee on Human Rights, *Sixteenth Report* (HL Paper 128, 2006)

judgment, New Labour looked to the ECtHR's concerns and set about on drawn-out consultations, procrastinating as long as possible. Reflecting on this case, Straw claimed the government took no decisions in relation to Hirst and "kicked it into the long grass with one inconclusive consultation after another".¹⁴⁴ While he was a strong supporter of the HRA 1998 and ECHR, Straw claimed the ECtHR had "overreached themselves here".¹⁴⁵ For Straw, ECtHR was there to ensure:

basic human rights across Europe, fair trials, no torture... It was not there to tell elected national parliaments what they could and could not do, about individuals' civic right when they broke the law.¹⁴⁶

Straw then stressed that the ECtHR and its enthusiast "must return to the important but limited purposes for which it was established, and not set itself up as a supranational Supreme Court for which it has no authority".¹⁴⁷

Considering these types of challenges to domestic policy by certain sections of society, Blunkett accused the HRA 1998 of usurping the government and Parliament. Moreover, he, along with other members of the New Labour government, did not go very far in defending their flagship legislation. Blunkett claimed to be "fed up" at having to deal with a situation where Parliament debates an issue and judges overturn them.¹⁴⁸ He specifically reflected on the difficulty of pursuing specific matters of immigration, in the shadow of the HRA 1998. As such, he recalled speaking to Blair about this and offered a range of policies that might limit the HRA 1988 effect—as they could no longer rely on the judiciary for favourable outcomes.¹⁴⁹ On the issue of asylum, despite his concerns, Blunkett recorded that he privately cautioned Blair on the UK withdrawing from the ECHR and, in effect, making the HRA 1998 redundant.¹⁵⁰ This is an interesting admission, and reveals the extent to which Blair was exasperated by the operation of the HRA 1998. Blunkett concluded that these types of matters were an irritation and took up an enormous amount of time.¹⁵¹ At the same time, the first Home Secretary, John Reid,

¹⁴⁴ Jack Straw, *Last Man Standing* (Macmillan, 2012) 538–539.

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid.*

¹⁴⁸ BBC Reporter, Blunkett To Fight Extradition Ruling *BBC* (London, 2003)

¹⁴⁹ David Blunkett, *David Blunkett Tapes: My Life in the Blair Pitt* (Bloomsbury, 2006) 27, 213, 289, 295.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*, 334.

strongly expressed that he regretted that the New Labour government had ever introduced the HRA 1998.¹⁵²

Naturally, there must be a recognition that these types of cases were few and far between. They were also seized upon and emphasised by certain media outlets in campaigns against human rights and minority groups. Lord Charlie Falconer, who served as Lord Chancellor from 2003, argued the public heard only about the HRA 1998 “when the State is challenged in the courts, or in the grey areas where decisions are seen as going against the grain of popular opinion” or when it is was “wrongly applied”.¹⁵³ He claimed there was rarely a moment where the HRA 1998 had been reported on that showed it “functioning within, and for the benefit of, society as a whole on a daily basis”.¹⁵⁴ With this in mind, he believed the HRA 1998 became a scapegoat for a variety of social ills and the perception that it was there to serve entitlements for unpopular groups.¹⁵⁵ In sum, he believed that having made a commitment, ideologically, to human rights, society and the government should uphold that commitment—even if doing so was difficult and it gave the appearance of empowering unpopular groups.¹⁵⁶

These sagas all but confirm the original intention behind the HRA 1998—to limit and curtail the political power of the elected majority in Parliament. It is also clear there was a degree of regret among some key figures, as there was little attempt to defend their flagship legislation. Tellingly, the New Labour government was criticised by the Joint Committee on Human Rights for creating the public impression that the HRA 1998 was to blame for the difficult judgments. The committee suggested there was no effort in remedying this situation or to inform the public of the true situation.¹⁵⁷

5.6.2. Compatibility Measures

For New Labour, reducing the political capacity of the elected majority in Parliament also meant ensuring that domestic policy and legislation was subject to, and heavily shaped

¹⁵² Telegraph Reporter, ‘John Reid Calls for Human Rights Reform’ *The Telegraph* (17 September 2007).

¹⁵³ Lord Charlie Falconer, ‘The Lord Morris of Borth-y-Gest Memorial Lecture: Human Rights are Majority Rights’ (Bangor University, 23 March 2007).

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*

¹⁵⁷ The Joint Committee on Human Rights, *HRA Home Office Reviews 2005–2006* (HC 1716, 7 November 2006).

by, the rights found in the HRA 1998—regardless of whether the domestic public interest or common good, according to a democratically elected majority government, required a departure from measures.

The important provisions in relation to compatibility under the HRA 1998 were sections 3, 4, 6 and 19. Briefly, section 3 (1) requires a domestic court to read primary and subordinate legislation, when enacted, in a way that is compatible with Convention rights “so far as it is possible to do so”.¹⁵⁸ Section 3 (2) attempts to retain sovereignty by stating that the “article does not affect the validity, continuing operation or enforcement of any incompatible” primary legislation.¹⁵⁹ Section 6 makes public bodies subject to review under the HRA 1998. Lord Irvine claimed the Convention has origins in a desire to protect people from a misuse of power by the state, and it will apply to a range of public authorities to provide as much protection as possible to those who claim their rights have been infringed upon.¹⁶⁰ As such, judicial review was expanded immensely under the HRA 1998—with an easier threshold to meet under judicial proportionality tests than other forms of judicial review (e.g., *Wednesbury* doctrine).¹⁶¹ Finally, section 19(1) requires ministers to make a statement of compatibility before second readings of the HRA 1998 to the effect “that in his view the provisions of the Bill are compatible with Convention rights” or explicitly to state “that although he is unable to make a statement of compatibility the government nevertheless wishes the House to proceed with the Bill”.¹⁶²

The claim made is that New Labour wanted to predispose its own government into designing and arguing for policy and legislation that sat within the HRA 1998’s framework and ECHR case law. As such, policymaking and legislative deliberation would, for the most part, only ever been concerned with whether any intended action has overstepped the moral and legal boundaries set by the HRA 1998 and accompanying case law. Other pertinent questions about the need, validity, strengths, weaknesses, and democratic support for any proposed measure will often become secondary and be given

¹⁵⁸ Human Rights Act 1998, section 3(1).

¹⁵⁹ Human Rights Act 1998, section 3(2).

¹⁶⁰ Lord Derry Irvine, ‘The Human Rights Bill, House of Lords in 1996’ in *Human Rights, Constitutional Law and the Development of the English Legal System: Selected Essays* (Hart Publishing, 2003) 13.

¹⁶¹ Human Rights Act 1998, section 6.

¹⁶² Human Rights Act 1998, section 19.

much less attention. The political thought and constitutional rationale of the HRA 1998's main author, Lord Irvine, supports this.

Lord Irvine was clear-eyed about the types of rights-based reforms he wanted to introduce into the British constitution. He unequivocally claimed that New Labour's HRA 1998 sought to mould not only the content of law in a range of areas but also the law-making process.¹⁶³ He claimed it was New Labour's specific intention to ensure that government policy and legislation prioritised and was framed around individual rights. The requirement for government ministers to make statements of compatibility when introducing a bill into Parliament was vital to this end. Lord Irvine explained that such measures obligated ministers and legislatures to keep in mind the impact on rights as expressed in the HRA 1998—and, by extension, the ECHR jurisprudence—when carrying out their work. So, where a bill was introduced to the House of Commons, the government minister in charge had to make a statement in the affirmative or negative. Lord Irvine believed that this would ensure there was “no fudge” and guaranteed the government minister would face heavy scrutiny.¹⁶⁴ He claimed, “Parliament will, no doubt, scrutinise closely any draft legislation which risks infringing human rights.” As a result, the “responsible minister” would have to justify their decision openly “in the full glare of parliamentary and public opinion”.¹⁶⁵ Lord Irvine suggested that where ministers of a government sought to curtail qualified rights, or rights more broadly, legislators would have to think carefully about whether what they were proposing was necessary and for what object it was necessary in a democratic society. He ended this argument by claiming “sovereignty will in future have to be exercised within an environment highly sensitive to fundamental rights”.¹⁶⁶

Moreover, Lord Irvine argued the decision to subject all public bodies to the jurisdiction of the HRA 1998 showed the prioritisation of rights-based compatibility measures. New Labour's expansion of judicial review in that Act allowed for judges to use a more malleable proportionality test (compared to other stricter thresholds, e.g., *Wednesbury*) to achieve maximum compatibility with the rights in question. Indeed,

¹⁶³ Lord Irvine, ‘The Development of Human Rights in Britain Under an Incorporated Convention on Human Rights – Tom Sargant Memorial Lecture 16 December 1997’ in *Human Rights, Constitutional Law and the Development of the English Legal System: Selected Essays* (Hart Publishing, 2003) 18–36.

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*

when discussing the principle of proportionality, Lord Irvine confirmed that public bodies would be subject to “considerably more rigorous scrutiny... than Wednesbury review” and, importantly, he conceded the “special arena of human rights” would entail high degrees of judicial intervention.¹⁶⁷

In sum, Lord Irvine stated it was New Labour’s and his own intention to create a clear rights-based policymaking process. Indeed, the HRA 1998 designed a legislative and deliberative process that aptly manoeuvred government ministers, parliamentarians, courts, and, by extension, public discourse around the question of rights compatibility. While Lord Irvine maintained that parliamentary sovereignty would be preserved, and Parliament could continue to legislate as it wished, the intention was to reposition the terrain for legislating towards matters of compatibility. If Parliament sought to legislate against the grain of the HRA 1998, the question would not be of sovereignty or public interest but of rights compatibility. The duty placed on domestic courts to read primary and subordinate legislation in a way that is compatible with the rights located in the HRA 1998 has led to a wide range of British government policy being reduced to such debates. During New Labour’s period in office, British government policies concerning public ownership and late-night flights from London Heathrow airport were subject to questions of compatibility.¹⁶⁸ Of course, while these types of cases were decided in favour of New Labour, the result of such compatibility measures cannot be understated. Indeed, the intention of New Labour to reduce substantive policy proposals to discussions of HRA 1998-compatibility, and the resulting delays to implementation of policies, can be argued to be debilitating for domestic legislative or public interest programmes. What’s more, it increases the risk that proposed measures will have to be amended due to public pressure and the attention that surrounds that – even before any definitive decision has been made about compatibility.

Overall, New Labour, according to Lord Irvine, purposely looked to confine the elected majority in Parliament’s political capacity during the policymaking process so that it *only* or *disproportionately* considered HRA 1998 compatibility.

¹⁶⁷ Lord Irvine, ‘Human Rights under an Incorporated ECHR’ in *Human Rights, Constitutional Law and the Development of the English Legal System: Selected Essays* (Hart Publishing, 2003) 34-36.

¹⁶⁸ *Hatton and Others v United Kingdom* (2003) App. No.36022/97; *Grainger v. United Kingdom* (2010) App. No. 34940/10.

5.6.3. Fostering Feelings of Judicial Supremacy

In addition to individual empowerment and the culture of compatibility, New Labour and Lord Irvine's HRA 1998 purposely created the perception that the judiciary, and their judgments, were hierarchically superior to the elected majority in Parliament. In other words, a false impression was created that framed Parliament, and the majority within, as being unable to question or legislate against judicial decisions. Historically, the British constitution is no stranger to judicial checks on potential overreaches of power. However, it is not through enforced judgments that Parliament complies with judicial decisions. Instead, it has been through sovereign self-regulation, and conventions of restraint and respect; where this fails, the British system lends itself neatly to parliamentary scrutiny and, ultimately, electoral assessment. However, the New Labour government purposely encouraged an Americanised feeling of judicial supremacy by, firstly, reframing the role of judges and, secondly, allowing them to enter into more substantive discussions about the merits of any given policy or legislative measure in question.

Firstly, Lord Irvine confidently asserted that the HRA 1998 reforms ushered in a new system and prominence for judicial authority. He understood that the British system was not like that of the United States (US), with a written constitution, but he believed that the judiciary should be tasked with protecting substantive rights and the content of those rights. He argued that the success of the US constitution in delivering a developed system of rights protection was due to the power given to the courts.¹⁶⁹ He claimed, armed with positive rights that had a consensual basis, that the British judiciary would be provided with the "constitutional warrant" it needs to uphold those rights.¹⁷⁰ Strikingly, in comments that would have sat uncomfortably with the Lord Chancellors of the Labour Party's past, like Lord Jowitt, Lord Irvine also argued that characteristics of the US Supreme Court would underpin the new rights protection model in the UK. By moving away from the Diceyan common law model, the "the new legislation [HRA 1998] will allow the judges to fulfil a stronger constitutional role in a wholly constitutional way". This, he argued, would speak to Britain's proud libertarian system.¹⁷¹ Overall, Lord Irvine

¹⁶⁹ Lord Derry Irvine, 'British Solutions to Universal Problems 1998 National Heritage Lecture' in *Human Rights, Constitutional Law and the Development of the English Legal System: Selected Essays* (Hart Publishing, 2003) 42-56.

¹⁷⁰ Ibid.

¹⁷¹ Ibid, 52-56.

was explicit that the task being given to the judiciary, via the HRA 1998, was tantamount to the one begun by justices of the US Supreme Court over 200 years ago.

Secondly, with his recasting of the British judiciary in the same light as the US Supreme Court, Lord Irvine explained that the introduction of New Labour rights-based reforms would begin a specific, new process of justice based on the promotion of positive rights. He believed the mechanics of the HRA 1998 changed the constitution to one where citizens asserted a positive entitlement that was expressed in clear and principled terms. This meant that British judges, for the first time, were able to make their own distinctive contribution to the protection of rights. However, more importantly, Lord Irvine claimed the judiciary would now be armed with a “catalogue of new rights” and “new tools” to uphold freedom.¹⁷² Despite New Labour arguing that their rights-based reforms maintained the position of Parliament as the ultimate arbiter, Lord Irvine specifically claimed there would be much pressure to concede ground to any decision that the court has made. This would especially be the case where a section 4(2) declaration of incompatibility – where legislative provisions went against the grain and values of the HRA 1998 – was made. Lord Irvine claimed:

...the issue of a declaration of incompatibility is very *likely* to prompt the amendment of defective legislation. This follows because such a declaration is likely to create considerable political pressure in favour of the rectification of national law... Consequently, while British courts will not possess the power to strike down legislation which is incompatible with human rights, their power to issue a declaration of incompatibility is substantial, given that, in pragmatic terms, it very probably will lead to the amendment of defective legislation. In this *practical* sense, the Human Rights Act does introduce a *limited* form of constitutional review...¹⁷³

Commentators broadly agree on the potency of such a declaration, despite the elected majority in Parliament, in a technical sense, having the ability to ignore said declaration. With some arguing that “legislation has so far always been amended to respect such declarations of incompatibility”, a declaration of incompatibility places “immense pressure” on the government, and that it would be “politically inexpedient to go against such court rulings”.¹⁷⁴ Because of the pressure to adhere to any given judgment, this, in

¹⁷² Ibid 50; Ibid Lord Irvine (n 160) 22.

¹⁷³ Lord Irvine (n 84) 246.

¹⁷⁴ David Dyzenhaus, “The Incoherence of Constitutional Positivism” in Grant Huscroft (ed) *Expounding the Constitution: Essays in Constitutional Theory* (Cambridge University Press, 2008); Tom Hickman,

effect, is tantamount to ordering the elected majority in Parliament itself to halt or change direction.

Moreover, Lord Irvine claimed that judges would also be able to conduct a more substantive review of human rights and policy when ensuring the legislation or policy in question was compatible with the HRA 1998. This was described as a “major shift” from a concern with form to substance.¹⁷⁵ Lord Irvine argued that the domestic courts would be able to examine the merits of a decision to see whether it was necessary to limit a right and whether the extent of the proposed limitation was required. In this way, Lord Irvine and New Labour sought to create a moral approach to judicial decision-making. The courts would now have to be satisfied that interference with the protected right was justified in the public interest of a free democratic society.¹⁷⁶ The result, Lord Irvine explained, would be judicial decisions based on the morality of government policy and legislation—not simply its compliance with the bare letter of the law. Lord Irvine noted his pleasure at these new powers, which he recognised as going beyond constitutional norms by allowing courts to engage with previously forbidden matters, act against public bodies, and reshape public body decision-making. He closed these arguments by restating his belief that judges were guardians of fundamental rights. He also predicted that courts would now take an interventionist approach regarding rights, while narrowly construing any provisions that appear to inhibit their application.¹⁷⁷

In assessing the effect of the HRA 1998 at the time, critics argued that it effectively welcomed the courts into the policymaking process and, secondly, threatened, if not displaced, parliamentary sovereignty.¹⁷⁸ Doubtless, the effect of the HRA 1998 was for the judiciary to take up a degree of legislative, law, and policymaking. For example, the greater role for the judiciary was evident in domestic courts, where they read entire

‘Rwanda Redux’ (London Review of Books, 2023) <<https://www.lrb.co.uk/the-paper/v45/n24/tom-hickman/rwanda-redux>> accessed 9 August 2024; Richard Ekins et al., ‘Safety of Rwanda (Asylum and Immigration) Bill (Policy Exchange, 2023) < <https://policyexchange.org.uk/wp-content/uploads/Safety-of-Rwanda-Asylum-and-Migration-Bill.pdf>> accessed 9 August 2024. Even Alison Young, who argues that the British constitution can be regarded as a collaborative enterprise i.e., where all three branches of the states work together to protect rights, has suggested the HRA 1998 can tie the political hands of the government. See: Alison Young, *The Collaborative Constitution* (Cambridge University Press, 2023).

¹⁷⁵ Lord Irvine (n 134) 34-36.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Mark Bevir, ‘The Westminster Model, Governance, and Judicial Reform; (2008) 61 *Parliamentary Affairs* 559.

subsections into legislation, to make it compatible with the rights in the HRA 1998. For example, in relation to the Youth Justice and Criminal Evidence Act 1999, the courts inserted compatible measures for fair trial rights—which went beyond the intention of the elected majority in Parliament when passing the legislation.¹⁷⁹ What’s more, Jack Straw admitted that New Labour purposely intended for HRA 1998 to act as gateway for the judiciary to develop laws like privacy. This was to avoid the New Labour government having to handle the matter themselves and take legislative actions. To a public inquiry on privacy, Straw claimed:

to be truthful the politicians thought they’d like to will the end of a law of privacy but hand the means to The Strand and the Law Lords because it’s tricky, if you’re a politician, to develop a law of privacy and we thought that their Lordships on the bench would do a better job, so it was really a set question of passing the parcel to them. Everybody knew what was happening.¹⁸⁰

Lastly, while outside of this research’s time period, it is worth mentioning, taken with the above, that New Labour’s decision to disband the Appellate Committee of the House of Lords and create a new, relocated Supreme Court—via the Constitutional Reform Act 2005—gives further weight to the party’s intended aim of fostering feelings of judicial supremacy.¹⁸¹ Instead of adhering to the unique commixture of powers in the British constitution, the Department of Constitutional Affairs, at the time, explained that the intention was to redraw the relationship between the judiciary and other branches of the state—in addition to enhancing judicial independence.¹⁸² Lord Woolf also commented on the renaming and role given to a Supreme Court potentially being a “catalyst causing the new court to be more proactive than its predecessor. This could lead to tensions.”¹⁸³ However, New Labour firmly argued it was time for a Supreme Court to move out of the shadow of the legislature. This feeds into the notion of trying to reduce the political capacity of the elected majority in Parliament.¹⁸⁴

¹⁷⁹ *R v A* [2002] 1 AC 45.

¹⁸⁰ Levison Inquiry, ‘Day 72, Transcript of Morning Hearing, evidence of Jack Straw’ (London, 2012) 30-33.

¹⁸¹ Constitutional Reform Act 2005, section 23.

¹⁸² Department for Constitutional Affairs, *The Constitutional Reform Bill: A Supreme Court for the United Kingdom and judicial appointments* (Research paper 05/06, 13 January 2005).

¹⁸³ Mark Ryan, ‘The House of Lords and the Shaping of the Supreme Court’ (2005) 56 *Northern Ireland Legal Quarterly* 135, 136.

¹⁸⁴ *Ibid.*

5.6.4. Adhering to Supranational Standards

New Labour also believed the HRA 1998 would symbolise and practically show support for supranational and European standards. More specifically, following on from the pro-European attitude of both Kinnock and Smith—with the former pragmatically accepting Britain’s role in the European Economic Community and the latter unequivocally pro-European—¹⁸⁵ New Labour saw the HRA 1998 as an important step towards pushing Britain towards the heart of European spaces.¹⁸⁶ It did this by ensuring domestically designed policy or legislation was subject to review against European standards and norms via ECtHR jurisprudence. Importantly, the HRA 1998 provided a unique way for supranational standards to reduce untrammelled sovereignty.

The HRA 1998, in practice, facilitates—via section 2(1)—domestic courts “taking into account” the jurisprudence of the ECtHR when Convention rights are being adjudicated in domestic courts.¹⁸⁷ As such, domestic courts can draw on and be influenced by the range of ECtHR jurisprudence. While the text of the HRA 1998 suggests there is some degree of discretion for domestic courts, there is, at the same time, legislative licence to the importation of ECtHR jurisprudence. Indeed, in his political writings, Lord Irvine argued that the British courts would have the opportunity to use ECtHR jurisprudence as a guide to develop common law and, importantly, aid the construction of ambiguous legislation. He went on to say that the intention was for domestic courts to become more familiar with Convention jurisprudence and that this type of interpretation and application was essential to ensure no Convention right was curtailed more than necessary.¹⁸⁸ More specifically, Lord Irvine claimed:

The Convention rights are far from alien to our legal system; but the status and force now given to them by the Act has brought a clarity and coherence to our concept of fundamental rights. Clarity because the rights now can be seen free of the pre-Act limitations on use of the Convention: the condition, for example, that

¹⁸⁵ On Neil Kinnock and John Smith’s position in relation to Europe, see: Richard Johnson, ‘Neil Kinnock and Labour’s European Policy’ in Kevin Hickson (ed), *Neil Kinnock: Saving the Labour Party* (Routledge, 2022) 176-188; Richard Johnson, ‘John Smith: Labour’s Most Pro-European Leader’ in Kevin Hickson (ed), *John Smith: Old Labour’s Last Hurrah?* (Biteback Publishing, 2024) 187-211.

¹⁸⁶ HM Home Office, *Rights Brought Home: The Human Rights Bill* (Cmd 3078, October 1997).

¹⁸⁷ Human Rights Act 1998, Section 2(1).

¹⁸⁸ Lord Irvine, ‘Constitutional Change in the United Kingdom: British Solutions to Universal Problems 1998 National Heritage Lecture’ in *Human Rights, Constitutional Law and the Development of the English Legal System: Selected Essays* (Hart Publishing, 2003) 42–56.

a statute must be capable of two interpretations – one consistent with the Convention and one not – before the Convention could be applied. And coherence because for each part of the United Kingdom and each citizen, and each branch of law, the rights are the same and the language is the same.¹⁸⁹

Lord Irvine clearly sets out that British standards would now directly follow or match the ECHR—it was all to be viewed one in the same.

There were some initial attempts by domestic judges to reject the supranational importation of ECHR/ECtHR standards. For example, Lord Hoffmann sought to reframe and minimise the supranational importation and effect of European case-law, claiming that the HRA 1998 had created domestic rights that were simply expressed in the same terms at the ECHR. As such, the source of such rights was primary legislation and the meaning and matter of these rights were to be adjudicated by domestic courts.¹⁹⁰ However, the principle of “mirroring” was then later established and articulated by Lord Bingham—a widely known advocate of the HRA 1998.¹⁹¹ He claimed it was “duty” of national courts to keep pace with ECtHR jurisprudence.¹⁹² It has been Bingham’s approach that has dominated the domestic courts approach to the importation of ECHR standards in the British system for long periods of time. As a result, New Labour were hit by major decisions which stripped the Home Secretary’s power to alter life sentences and prevented national security policies to detain suspected terrorists.¹⁹³ Blair stated New Labour failed to appreciate how the HRA 1998 and its accompanying case-law would impede efforts to deal with immigrating criminals.¹⁹⁴ While there might have been good reason to challenge such decisions, the principal point is the curtailment of untrammelled sovereignty through the importation of supranational norms and standards. Judges have

¹⁸⁹ Lord Irvine, ‘The Impact of the HRA’ in *Human Rights, Constitutional Law and the Development of the English Legal System: Selected Essays* (Hart Publishing, 2003) 127.

¹⁹⁰ *In re McKerr* [2004] UKHL 12; Also see: Lord Hoffmann, ‘The Universality of Human Rights’ (2009) 125 LQR 416, 42.

¹⁹¹ Lord Bingham, *The Rule of Law* (Penguin Books, 2011) 66-85.

¹⁹² *R (Ullah) v Special Adjudicator* [2004] UK HL26, [20]. There has been a contemporary inter-judicial debate about how far domestic courts should mirror the ECtHR’s interpretation of rights. A more permissive approach is evident in: *Ullah (EM (Lebanon (FC) v Secretary of State for the Home Department* [2008] UKHL 64; *Limbuela* [2005] UKHL 66; *Re P and others* [2008] UKHL 38, and *Nicklinson* [2014] UKSC 38. While a restrictive approach can be seen in: *Al-Skeini v Secretary of State for Defence* [2007] UKHL 26 and *AB v Secretary of State for Justice* [2021] UKSC 28. Lord Reed in *AB* claimed domestic court should not establish new principles of ECHR law but should anticipate what the ECtHR might do where situations that have not yet arisen before them.

¹⁹³ *R v Secretary of State for the Home Department, ex p Anderson* [2001] EWCA Civ 1698 1; *A and others v Secretary of State for the Home Department* [2004] UKHL 56.

¹⁹⁴ Editorial, ‘Time to stop the madness’ *The Sun* (London, 31 July 2007).

described the HRA 1998 as having the ability to “subject the entire legal system to a fundamental process of review and, where necessary, reform”.¹⁹⁵

Reflecting on the HRA 1998 and the idea of “constitutional migration”—the movement of legal standards between jurisdictions—Roger Masterman has argued that the HRA 1998 was a landmark moment in the “Europeanisation of UK constitutional law”.¹⁹⁶ More specifically, when considering the extent to which Convention rights have resulted in the internationalisation of domestic law, Masterman makes several pertinent points. Firstly, the HRA 1998 was set up to make a legislative choice that “favours” internalising the external guarantees found in the Convention and, importantly, directing domestic adjudication to be guided by reference to jurisprudence of the ECtHR. This, he suggests, results in a “vertical” migration from the supranational to the national realm by, firstly, the domestication of supranational human rights and, secondly, its operation in practice relies on being influenced by the ECtHR.¹⁹⁷ Masterman claims in “taking into account” decisions from the ECtHR British courts are facilitators of a constitutional migration.¹⁹⁸ Secondly, Masterman argues given that domestic judicial consideration of external standards is “not only mandated, but an essential component” of the HRA 1998 sovereignty-based concerns are “pertinent”.¹⁹⁹ More specifically, the adherence to external standards facilitates the erosion of sovereignty by transforming domestic courts into “agents of outside powers”.²⁰⁰ Lastly, Masterman is sceptical of the claim that the HRA 1998 purposely created an environment whereby domestic courts approach the HRA 1998 as a “domestic enterprise” and exercise only. In summary, this position argues, like Lord Hoffmann, that there is a clear division between the British HRA 1998 and the ECtHR or Convention’s regime. While the HRA 1998 owes its heritage and terminology to Convention, and can be inspired by ECtHR jurisprudence, it can be considered to be moulded and administered in a purely domestic context.²⁰¹ This position tries to minimise and counter arguments that the HRA is sovereignty-reducing in nature by being

¹⁹⁵ *R v Director of Public Prosecutions, ex p. Kebeline* [2000] 2 AC 326, [374]-[375].

¹⁹⁶ Roger Masterman, ‘The United Kingdom’s Human Rights Act as a Catalyst of Constitutional Migration: Patterns and Limitations of Rights Importation by Design’ (2023) 19 *European Constitutional Law Review* 88.

¹⁹⁷ *Ibid*, 93-94.

¹⁹⁸ *Ibid*.

¹⁹⁹ *Ibid*, 99.

²⁰⁰ *Ibid*.

²⁰¹ *R (Animal Defenders International) v Secretary of State for Culture, Media and Sport* [2008] UKHL 15, [44].

a proxy for the ECtHR. However, for Masterman, even if such an idea was accepted to be true, the Supreme Court has cautioned against domestic courts adopting interpretations of Convention rights, via the HRA 1998, that “do not find support in the jurisprudence of the European Court of Human Rights”.²⁰² Overall, Masterman claims the extent to which British courts can depart from their supranational (ECtHR) counterparts is “somewhat limited”. Moreover, the general objective of the HRA 1998 and domestic courts remains i.e., the “alignment between interpretation [of Convention rights] at the international and domestic levels”.²⁰³

In summary, it would not be inaccurate to suggest that the excessive incorporation of ECtHR standards and values into the British system aided the reduction in untrammelled sovereignty. The Department for Constitutional Affairs neatly summarised the position. It suggested that the New Labour government would surely have anticipated incorporation of the HRA 1998 would, firstly, lead to acceptance of supranational norms into the domestic legal order and, secondly, the testing of primary legislation against a catalogue of external standards.²⁰⁴

5.7. Conclusion

This final episode and chapter are equally revealing. It has provided further concrete evidence that with shifting ideological frameworks and views about the nature of society and sovereignty, the Labour Party changed their theory and practice of rights. In this chapter, I have shown how the influence of Thatcherite ethics led New Labour to root its view of rights in a society that valued a form of citizenship based on responsible individualism and gaining market entry. This deliberate and purposeful shift can be traced from 1980 onwards and culminated in New Labour’s policy of rights and responsibilities. Secondly, following serious ideological shifts under Kinnick and Smith, New Labour rooted their view of rights in a reduced untrammelled sovereignty. In other words, the elected majority in Parliament retained its legal right to pursue its legislative agenda, as a matter of fact, but had its political capacity to do so reduced. This view of sovereignty led to leading figures to support a constitutional reform agenda that included

²⁰² Masterman (n 196) 102.

²⁰³ Ibid, 106.

²⁰⁴ HM Department of Constitutional Affairs, *Review of the Implementation of the Human Rights Act, Thirty-second Report of Session July 2005-06* (HC Paper 1716, 7 November 2006).

the HRA 1998—which, as explained, curtailed the political power of the elected majority in Parliament.

Chapter 6: Conclusion

This novel discursive and analytical legal-historical account set out with the intention of identifying and elucidating how ideas about the nature of society and sovereignty were fundamental to the Labour Party's approach to the theory and practice of rights across the 20th century. Firstly, this research has looked to neatly explain and weave together the Labour Party and its key figure's position on legal change, especially in the context of rights, through examination of a complex web of political thought and a detailed historiographical exercise. This involved engaging extensively with and the organising of primary material (archival records, key figures political writings etc), secondary material, and some tertiary sources—over a 100-year period. This allowed for the building of a rich and coherent account of the Labour Party's approach to the theory and practice of rights. Secondly, by undertaking a legal-historical analysis, each chapter of this research has been able to specifically consider *why* key figures in the Labour Party, during chosen moments across the 20th century, time in opposition, and when governing acted as they did. In doing this, it has evidenced how the ideological or political position of key figures in the Labour Party has played a defining role in relation to the nature and proposed operation of rights in the British constitution. More specifically, each period of constitutional and rights-based change was underpinned by potent, well-developed, ideas about the nature of society and sovereignty. The results of which cannot be understated and include: the adherence to rights and correlative/non-correlative societal duties; a significantly weakened Convention signed in the 1950s; an emphasis on personal choice and abandonment of the rights and correlative/non-correlative duties nexus in the 1960s; key figures of the Labour Party proactively accepting the novel supranational mechanisms of individual petition and jurisdiction of the ECtHR; the creation of a paternalistic rights and responsibilities relationship in relation to social entitlements; and the implementation of the HRA 1998 and its accompanying sovereignty-reducing qualities in the 1990s. Thirdly, this research has also built on and remedied the shortcomings in existing literature. More specifically, it has looked to provide an alternative account that goes beyond the current arguments that fail to consider how the Labour Party understood rights as being a means to other wider ideas about society and sovereignty.

Based on this research, several observations and conclusions can be made and restated. Part I has shown, from 1900-1955, the Labour Party and its key figures

subscribed to a coherent set of ideological frameworks—socialistic political constitutionalism, ethical socialism, and communitarianism—that informed their views about society and sovereignty. Key figures in the Labour Party – from Ramsay MacDonald, R.H Tawney, George Lansbury, Clement Attlee, Hugh Dalton, Herbert Morrison et al—were committed to, firstly, creating an ethical society which looked to foster a dutiful and other-regarding citizenry and, secondly, untrammelled sovereignty. This meant believing the elected majority in Parliament’s authority stemmed from the citizenry and, as such, having effective and independent control over domestic decision-making. These ideas had important implications for rights. For key figures in the early Labour Party and Attlee government, there was a widespread belief that the ethic of laissez-faire, which emphasised individual freedom and entitlements, led to rights being treated possessions, something to enforce against one, and, ultimately, led to sowing discord in society. The attempt to extinguish this type of thought led to the policy of rights, and more specifically social entitlements, being linked to and correlative and non-correlative societal duties. These duties were neither paternalistic nor coercive. Instead, the aim of them was to foster and stimulate an internal desire within citizens to assist the community. Of course, this research has shown that these views were not totally unanimous across the Labour Party. I have documented how some sections of the party and its associated groups were preferred limited social rights and coercive or enforced duties. Importantly, however, this research has shown there was a concerted and coherent effort that aimed to install a new societal structure, one that saw a more obligation driven citizenry. Astonishingly, this position lasted for 55-years.

Secondly, the first part of this research has also shown how the early Labour Party diverged from a Diceyan view of sovereignty. Instead, a commitment to untrammelled sovereignty informed a distinct antipathy towards codified rights and judiciary authority; both were thought to undermine democratic decision-making powers. There was often a comparison between the unflexible transformative nature of the British constitution and the rigid, anti-democratic, US constitution. While domestic judges were thought to have shown hostility towards working class interests. Indeed, the aim was to remove all barriers so that the Labour Party could, when in government, legislate into a variety of social and economic areas without restriction. Lastly, there was resistance towards institutions or external actors, beyond the nation state, that had the potential to interfere or curtail domestic decision-making. This final concern translated into an antipathy

towards supranational rights instruments and their accompanying institutions. This eventually saw the Attlee government, influenced by a socialistic-political constitutionalism and its tenet of untrammelled sovereignty, look to preserve domestic decision making when faced with the ECHR. This research has shown the eye-opening, highly critical, and resistant attitude the Attlee government had towards the EM-backed and inspired Convention during negotiations from 1949-1950. Indeed, there was a grave concern about the potential risks of the ECHR and its enforcement mechanisms, individual petition and the ECtHR, impacting their own domestic social and economic policies. Importantly, the legal-historical analysis conducted shows how the Attlee government valued a constitution that provided the conditions for an elected majority in Parliament to have legislative freedom. The Attlee government, firstly, had the foresight to recognise that any supranational instrument with an enforcement mechanism had the potential to place obligations the government that could make it difficult to craft social and economic legislative initiatives—without amending such initiatives in line with said obligations. Secondly, they believed that their socialistic ideas and legislative agenda—which stemmed from decades of British socialistic intellectual work/theorising, movements, and designed alongside legitimate domestic actors (e.g., trade unions)—should not be subject to external influence. Lastly, they did not appreciate the very high chance that political and policy deliberations would, ultimately, centre around ECHR compatibility. Overall, there was a strong desire to avoid commanding voices over areas of policy. The Attlee government were cognisant of the original intention of the ECHR that was advanced by the EM and the risk of this manifesting in the future. Namely, a supranational instrument that established body of European case-law that developed over time—a living instrument—and embedded itself into member states legal systems. Indeed, this research has shown how they were unwilling to risk legislation being framed by dynamic jurisprudence interpreted by an ECtHR. Because of these attitudes, this research neatly explains why the Labour Party, government, and Britain more widely simply wanted to adopt a formal catalogue of narrow rights which looked to protect the entitlements that were traditionally at risk from authoritarian regimes. Importantly, a narrower more formal set of rights would not impact British domestic policy and legislation-making.

The second part of this research has shown how at the end of the post-war Labour governments and Clement Attlee's leadership in 1955, the ideological framework that

informed key figures—Hugh Gaitskell, Anthony Crosland, and later Harold Wilson—in the Labour Party shifted towards revisionism and a liberally orientated socialistic-political constitutionalism. This crucial change in the nature of socialism, for these leading figures, had a fundamental impact on ideas about society and sovereignty. Firstly, there was a shift away from rights being rooted in an ethical society. Instead, from 1956 onwards, there was a concerted effort to reject societal duties in favour of personal choice in society. Leading this change of view were Gaitskell and Crosland, both of which could not reconcile their version of socialism with more collective societal ethics. This position fed into Harold Wilson's government and resulted in no desire to frame social entitlements or rights more broadly around duties. Instead, preference was given to embellishing individualism or personal choice in society. The implementation of such measures did not mean the whole Labour Party had moved on from more ethical notions of society and ideas of duties. As documented, the emphasis on individual permissiveness, personal choice, and disregard for societal duties led to key figures in the Wilson government's Cabinet—like Jim Callaghan—striking a regretful tone. More specifically, they believed, while humanising society through a range of personal and permissive measures, the total abandonment of any idea of duties towards the community caused a greater selfishness among the citizenry. Despite these traditional views of society, rights and duties still surfacing, they were significantly diminished.

Secondly, this period saw untrammelled sovereignty reframed towards liberal ends. More specifically, key figures in the Wilson government believed that the elected majority in Parliament's main aim was to extend greater individual rights and the tools to protect said rights to citizens. Or, in other words, there was a desire to ensure domestic decision-making centred around enhancing individual rights. This developed theoretically among the early revisionist right, but was able to be put into practice by the Wilson government when in government from 1964 to 1970. One of the first early acts of the Labour government was to accept the Convention's individual petition mechanism and jurisdiction of the ECtHR. While some critics suggest alternative reasons for acceptance—end of Empire, some external pressure from NGOs, and a long-period in opposition that resulted in an anti-executive sentiment—this research has shown a direct relationship between a liberal view of untrammelled sovereignty and such developments. Indeed, examination of archival records have revealed a concerted effort by the Wilson government to positively protect individual rights and emphasise human rights by ceding

to the Convention's enforcement mechanisms. Overall, this research has clearly shown how such developments in relation to the theory and practice of rights during from the late 1950s to 1970 were intrinsically tied to the broader ideological shifts and views about a liberal untrammelled sovereignty.

Finally, after slow but definitive shifts under the leadership of Neil Kinnock and rapid change under John Smith, another ideological transformation—adherence to Thatcherite ethics and a modernising constitutionalism—saw a simultaneous shift in the view of society and sovereignty. Despite New Labour often claiming to be a brand-new political project devised by a small group of people, there was 20 years of thinking and thought behind its eventual approach to, among other things, rights. From Kinnock to Smith to Blair this research has shown adherence to a new societal ethic that emphasised responsible individualism and entering the market/workforce. All of which, as has been explained, was influenced by purposeful adherence to Thatcherite ethics. Primary sources have also shown how Blair, Brown, and other leading figures designed social entitlements to reflect this view—resulting in responsibilities that preceded access to social rights and heavily focussed on work. Coinciding with this new societal view was the influence of a modernising constitutionalism and adherence to a reduced untrammelled sovereignty. The desire to reduce the political capacity of the elected majority in Parliament ultimately led to New Labour enacting the HRA 1998. Like with the Wilson government, this chapter rejected the idea that the HRA 1998 came to pass as a reactionary response to the circumstances at the time i.e., Thatcher's rule, human rights campaigns, and broader global shifts towards judicialising human rights etc. Instead, this technical and precise piece of legislation specifically reflected the view of sovereignty. True to its word, the HRA 1998 had a significant impact on the power of the elected majority in Parliament. This research has documented how key figures in New Labour, somewhat, underestimated its impact—with leading figures like Blair and Straw striking a regretful or almost spiteful tone. In summary, the HRA 1998 emboldened individuals, created a rights-based culture of computability, provided a route for the importation of European supranational standards, and created a subtle but potent hierarchy of laws.

Overall, I believe that accounts whereby the issue of rights have been contextualised, framed, and shaped by wider political ideas, within a specific political party, are not readily seen. Indeed, this is even more true across a period of 100-years, changing social and economic circumstances, and multiple ideological evolutions. It has

only been by targeting specific materials (archival primary source, and secondary) and using a clear legal-historical discursive and analytical framework that a nuanced account has been able to take place. It is my general hope that this research provides a new perspective for academics, students, and those who are generally interested in either rights, constitutional law, Labour Party history, or at the intersection of all three.

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