

The Doctrine of Parliamentary Sovereignty in the United Kingdom: Is It Still Supreme?

Introduction

The doctrine of parliamentary sovereignty has traditionally been regarded as the cornerstone of the United Kingdom's constitutional framework. According to the classical theory formulated by A. V. Dicey, Parliament possesses unlimited legislative authority and may enact or repeal any law without legal restriction. Unlike many modern democracies, the United Kingdom lacks a single written constitution that places constitutional limits on legislative power. Instead, Parliament has historically occupied the highest position within the constitutional hierarchy.

However, constitutional developments over the last fifty years have raised significant questions regarding whether parliamentary sovereignty remains absolute.

Membership of the European Union, the incorporation of the European Convention on Human Rights through the Human Rights Act 1998, the expansion of judicial review, constitutional devolution, and evolving constitutional conventions have all altered the practical operation of legislative supremacy. Although the United Kingdom's withdrawal from the European Union restored aspects of parliamentary authority, debates surrounding judicial power and constitutional reform continue.

This essay argues that parliamentary sovereignty remains the central constitutional principle in legal theory but has evolved into a more nuanced doctrine in constitutional practice. While Parliament continues to enjoy ultimate legal authority, political, constitutional, and judicial developments increasingly influence how that authority is exercised.

The Classical Doctrine of Parliamentary Sovereignty

The traditional understanding of parliamentary sovereignty is largely derived from the work of constitutional scholar A. V. Dicey. Dicey identified three essential principles:

1. Parliament may make or unmake any law.
2. No Parliament may bind a future Parliament.
3. No court has authority to invalidate an Act of Parliament.

These principles established Parliament as the supreme law-making institution within the British constitution.

Unlike constitutional systems such as the United States, where courts possess constitutional review powers, British courts have historically been required to apply Acts of Parliament regardless of their content. The judiciary's constitutional role was therefore one of interpretation rather than invalidation.

The courts consistently affirmed this position throughout the twentieth century. In **Madzimbamuto v Lardner-Burke [1969] 1 AC 645**, the Privy Council reaffirmed that Parliament could legislate contrary to constitutional conventions or international expectations. Lord Reid observed that while Parliament might choose not to exercise certain powers, the legal authority to do so nevertheless remained.

The classical doctrine therefore distinguished between legal power and political restraint. Parliament possessed unlimited legal authority even where political realities discouraged its exercise.

European Union Membership and the Challenge to Sovereignty

Perhaps the most significant challenge to Dicey's theory emerged following the United Kingdom's accession to the European Communities in 1973.

The **European Communities Act 1972** incorporated European Community law into domestic law and required courts to give effect to directly applicable European legislation. This created circumstances in which European law enjoyed priority over conflicting Acts of Parliament.

The constitutional implications became evident in **R v Secretary of State for Transport, ex parte Factortame Ltd (No 2) [1991] 1 AC 603**. Spanish fishing companies challenged provisions of the Merchant Shipping Act 1988 that conflicted with European law. The House of Lords suspended the operation of parts of an Act of Parliament pending the determination of compatibility with European law.

At first glance, Factortame appeared fundamentally inconsistent with parliamentary sovereignty. If courts could decline to apply legislation enacted by Parliament, Parliament could no longer be regarded as legally supreme.

However, many constitutional scholars argue that sovereignty was not abolished but voluntarily modified. Parliament itself enacted the European Communities Act and therefore accepted the supremacy of European law. Importantly, Parliament retained the legal authority to repeal that Act, as ultimately occurred through Brexit legislation.

Sir William Wade famously described Factortame as a constitutional revolution, arguing that the courts fundamentally altered the traditional rule of recognition. By contrast, Sir John Laws contended that sovereignty remained intact because Parliament retained ultimate authority over the constitutional arrangement.

The Brexit process largely supports the latter view. Through the European Union (Withdrawal) Act 2018, Parliament removed the domestic legal effect of European supremacy. The ease with which Parliament reversed this constitutional relationship illustrates that legislative sovereignty ultimately survived.

The Human Rights Act 1998

The Human Rights Act 1998 introduced another important constitutional development by incorporating the rights contained in the European Convention on Human Rights into domestic law.

Unlike many constitutional bills of rights, the Act carefully preserved parliamentary sovereignty.

Section 3 requires courts to interpret legislation, so far as possible, consistently with Convention rights. However, where such interpretation proves impossible, courts may issue only a declaration of incompatibility under Section 4 rather than invalidate legislation.

This distinction preserves Parliament's ultimate legislative authority. Courts identify constitutional problems but cannot strike down primary legislation.

The constitutional operation of the Act is illustrated by **A v Secretary of State for the Home Department [2004] UKHL 56**, commonly known as the Belmarsh case. The House of Lords declared provisions allowing indefinite detention of foreign terrorist suspects incompatible with Convention rights. Nevertheless, the legislation remained legally valid until Parliament enacted replacement measures.

The Human Rights Act therefore strengthens judicial scrutiny without eliminating parliamentary supremacy.

Constitutional Statutes and Judicial Developments

Recent judicial decisions suggest that certain constitutional statutes occupy a distinctive position within British constitutional law.

In **Thoburn v Sunderland City Council [2002] EWHC 195**, Laws LJ introduced the concept of constitutional statutes. He argued that statutes such as the Human Rights Act 1998 and the European Communities Act 1972 could not be impliedly repealed by later inconsistent legislation. Instead, Parliament would need to repeal them expressly.

This doctrine appears to qualify the traditional principle that all statutes possess equal constitutional status.

Nevertheless, the doctrine remains compatible with parliamentary sovereignty because Parliament retains the power to repeal constitutional statutes explicitly. The courts merely require greater legislative clarity before assuming Parliament intended constitutional change.

The concept therefore modifies legislative interpretation rather than legislative authority itself.

Devolution and Parliamentary Authority

The establishment of devolved legislatures in Scotland, Wales, and Northern Ireland has significantly reshaped the United Kingdom's constitutional landscape.

The **Scotland Act 1998**, **Government of Wales Act 2006**, and **Northern Ireland Act 1998** transferred extensive legislative authority to regional institutions.

Despite these developments, Parliament legally retains authority to legislate on devolved matters.

Section 28(7) of the Scotland Act explicitly confirms that the Parliament of the United Kingdom retains power to legislate for Scotland.

However, constitutional conventions complicate this legal position. Under the Sewel Convention, Westminster normally refrains from legislating on devolved matters without consent.

In **R (Miller) v Secretary of State for Exiting the European Union [2017] UKSC 5**, the Supreme Court confirmed that the Sewel Convention possesses political rather than legal force. Consequently, the convention cannot be enforced by the courts.

This distinction again illustrates the separation between legal sovereignty and political reality.

Parliamentary Sovereignty After Brexit

Brexit provided perhaps the most significant constitutional test of parliamentary sovereignty in recent history.

Supporters of withdrawal argued that leaving the European Union would restore legislative independence by ending the supremacy of European law.

The European Union (Withdrawal) Act 2018 repealed the European Communities Act 1972 while preserving much existing EU-derived law as retained domestic legislation.

Legally, Parliament demonstrated its continuing authority by reversing decades of constitutional integration through ordinary legislation.

However, Brexit also exposed the practical constraints on parliamentary decision-making. Negotiations with the European Union, economic pressures, international treaties, and political divisions all influenced legislative outcomes.

Thus, while Parliament retained legal supremacy, its practical freedom remained constrained by political and international realities.

Academic Debate

Contemporary constitutional scholars remain divided regarding the current status of parliamentary sovereignty.

A. V. Dicey's traditional model continues to emphasise legal supremacy.

Sir William Wade argues that judicial decisions such as *Factortame* fundamentally altered the constitutional order and weakened parliamentary sovereignty.

By contrast, Sir John Laws maintains that Parliament voluntarily accepted constitutional limitations and therefore retained ultimate authority throughout.

Jeffrey Goldsworthy similarly argues that parliamentary sovereignty remains the foundational principle of the British constitution because Parliament always retains authority to reverse previous constitutional choices.

More recent scholarship increasingly distinguishes between legal sovereignty and constitutional legitimacy. Parliament may possess unlimited legal authority, yet democratic accountability, judicial interpretation, international obligations, and constitutional conventions influence how that authority operates in practice.

Critical Evaluation

The modern constitution demonstrates that parliamentary sovereignty has evolved rather than disappeared.

Legally, Dicey's theory largely survives. Parliament remains capable of repealing constitutional statutes, withdrawing from international legal arrangements, and enacting legislation that courts cannot invalidate.

However, constitutional reality has become considerably more complex.

Judicial review has expanded significantly.

Human rights considerations influence statutory interpretation.

Constitutional statutes receive enhanced judicial protection.

Political conventions shape legislative behaviour.

International obligations continue to affect domestic policymaking.

These developments do not remove Parliament's legal authority but increase the constitutional costs of exercising it.

Consequently, sovereignty should no longer be understood as unlimited practical freedom but rather as ultimate legal competence exercised within an increasingly sophisticated constitutional framework.

Conclusion

Parliamentary sovereignty remains the defining principle of the United Kingdom's constitutional order. Parliament continues to possess the legal authority to enact or repeal any legislation, and no court may invalidate an Act of Parliament.

Nevertheless, modern constitutional developments have transformed the practical operation of this doctrine. European Union membership, the Human Rights Act 1998, devolution, constitutional statutes, judicial interpretation, and evolving constitutional conventions have introduced significant qualifications to the exercise of parliamentary power.

Brexit confirmed that Parliament retains ultimate legal authority by demonstrating its ability to repeal the European Communities Act and restore legislative independence. However, constitutional practice increasingly requires Parliament to operate within political, legal, and institutional constraints.

The doctrine of parliamentary sovereignty has therefore not disappeared but evolved. It remains legally supreme while functioning within a modern constitutional system that places greater emphasis on accountability, constitutional dialogue, and the rule of law.

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