

## Briefing Paper

# United Kingdom Constitution: Is the Supremacy of Parliament Still Relevant Today?

**November 2012**

Is The Supremacy of Parliament still as relevant and evident today as it was when A. V. Dicey wrote 'the Law of the Constitution' in 1885? In discussing this statement we must look at the way in which the governing bodies within the United Kingdom operate in particular parliament and the developments that have occurred within and around our constitution such as: developments by statute, cases that have influenced the conventions and traditions of the United Kingdom (UK) constitution and the influence European Union (EU) law holds over parliament and its decision.

It has long been one of the central ideals of the United Kingdom constitution that parliament is a sovereign body with supremacy to create law in the United Kingdom and by the same virtue revoke any laws it has passed in an earlier period.

As the United Kingdom is governed by an 'unwritten' constitution that is in no single formalised documents and merely a grouping of conventions, traditions and with few actual written parts to it, the United Kingdom parliament is allowed to be much more flexible in law making and its operations than its counterparts in Germany or the USA.

No one person or body including the judiciary can question an Act of Parliament. Therefore, Courts must apply the latest Act of Parliament<sup>1</sup> to law by convention and this is still the case today.

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<sup>1</sup> HWR Wade, The Basis of Legal Sovereignty, [1955] Cambridge Law Journal 177, p186-89

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In the famous case of *Pickin v British Railways Board*<sup>2</sup> the British Railways Act 1968 was challenged as it was claimed that the bill had been passed with the wrong procedure. The House of Lords concluded that it did not have the constitutional power to enquire further with this claim.

The Human Rights Act 1998 S3 has now outlined that all primary and secondary legislation about to be passed can be looked over to see that procedure is followed.

Judicial Review is a way of reviewing a decision or the rationale behind a decision and therefore, can be used to question, if an application is made to the court. It is a way of any one person questioning the rationale of a decision made using a statute by any given body.

It is also part of the United Kingdom constitution that Parliament cannot bind a later Parliament, as Craig and de Búrca tell us; 'Parliament has the power to do anything other than to bind itself for the future'<sup>3</sup> as any later Parliament has the right to repeal or amend any statute previously enacted.

A repeal of a constitutional statute must be expressly repealed by a new Parliament Act. Implied repeal of an act is unbinding. Therefore, express repeal must be used expressing the parliament's intention to repeal or amend the former act expressly and leaving no room for misinterpretation. An example of this is *Thorburn v Sunderland City Council*<sup>4</sup>

However, the doctrine of implied repeal is binding in such cases, as *Vauxhall Estates v Liverpool Corporation*<sup>5</sup> where two parliamentary acts were disputed over. It was held that as the later act repealed by implication the earlier act it was binding.

Yet, at the time Dicey wrote 'the Law of the Constitution', Parliament exercised supreme authority over the laws of the United Kingdom without rival. There have, however, since 1885 been some of the largest changes to our constitution since 'The Glorious Revolution of 1688'<sup>6</sup> and the Bill of Rights of 1689.

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<sup>2</sup> [1994] AC 765

<sup>3</sup> Craig, P.P., de Búrca, G. (2003), *European Union Law: Text, Cases and Materials*, Oxford University Press, 1<sup>st</sup> Edn, p301

<sup>4</sup> [2002] 3 W.L.R

<sup>5</sup> [1932] 1 KB 733

<sup>6</sup> Carroll, A. (2007), *Constitutional and Administrative Law*, Pearson Longman Press, 4<sup>th</sup> Edn, p71

Many of these developments have reduced the power of the parliament sitting at Westminster meaning that parliament is no longer the supreme law making body within the United Kingdom.

These changes include events such as entry to the European Union in 1972<sup>7</sup> and through acts put into place by parliament itself, such as; the Human Rights Act 1998 and Devolution of powers in 1999. This has reduced the powers of the Westminster Parliament allowing Scotland to hold a national Parliament along with Wales and Northern Ireland to hold their own national Assemblies.

In the future there are also further changes to the United Kingdom's system planned with the decision to establish a United Kingdom supreme court in 2009 that will terminate the House of Lords' role as the final court of appeal.

In spite of these changes, the alterations to the supremacy of Parliament are not designed to undermine the parliamentary sovereignty, as, in theory Parliament could abolish any law these changes have instigated.

However, in joining the European Union the United Kingdom has relinquished parts of its parliamentary supremacy as was said in the case of *Costa v ENEL*<sup>8</sup>; 'the member states have limited their sovereign rights, albeit within limited fields, and have this created a body of law that binds both their nationals and themselves'<sup>9</sup>

This principle of European Community law being absolute was demonstrated in the case of *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratstelle für Getreide*<sup>10</sup> where the European Court of Justice made clear their position on the matter; 'the law stemming from the Treaty, an independent source of law, cannot by its very nature be overridden by rules of national law, however framed'<sup>11</sup>

Therefore, it must be accepted that on the basis the later *Factortame Case*<sup>12</sup> that European Union law now exists as a hierarchy of law that openly prevents the United Kingdom Parliament from overruling any European Union law, this is because, European Union law overrules any national laws from a member state.

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<sup>7</sup> Through the Brussels Treaty of Accession 1972

<sup>8</sup> [1964] ECR 585

<sup>9</sup> From the judgement in *Costa v ENEL* [1964] ECR 585

<sup>10</sup> [1970] ECR 1125

<sup>11</sup> Cited in Carroll, A. (2007), *Constitutional and Administrative Law*, Pearson Longman Press, 4<sup>th</sup> Edn, p108

<sup>12</sup> *Factortame v. Sec. of State for Transport (No.1)* [1989] 2 W.L.R. 997 (HL)

This case is an illustration that the United Kingdom courts are bound under s.2 (4) of the 1972 European Communities Act as they must interpret United Kingdom law in the light of European Union law and European Union law changes. This section of the Act shows a direct suggestion of how parliament aimed to lessen the possibility of conflict with European Law. As Carroll tells us:

*“Most judges were at least prepared to regard this section as imposing on them an obligation to construe words in domestic legislation in ways which accorded with the requirements of directly effective EC law and in this way to minimise the likelihood and incident of conflict”<sup>13</sup>*

After the enactment of the ECA 1972 it was clear that the United Kingdom had realised it had limitations to its Sovereign abilities. This position is directly in conflict with many of the views of constitutional commentators such as Dicey who believed in the direct Sovereignty of the Legislative.

Indeed, today the United Kingdom now recognises the courts of the European Union’s ability to override parliamentary acts as European Union law becomes more firmly entrenched into United Kingdom law and as the United Kingdom becomes politically closer to Europe as a whole.

This is in wide contrast to the views of Dicey in 1885 where he states:

‘No person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament’<sup>14</sup>

It can also be seen that the executive dominates parliament to a large extent, as the party with the majority in the commons tends to dictate power to the rest of the legislature. This means the overall power and sovereignty of parliament is much reduced as it falls into the hands of one party that is led by the Prime Minister and his Cabinet.

This withdraws power from the parliament as a whole. Other effects of the modern era such as the growing number of media watchdogs and political analysts put parliament into an awkward position.

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<sup>13</sup> Carroll, A. (2007), Constitutional and Administrative Law, Pearson Longman Press, 4<sup>th</sup> Edn, p109

<sup>14</sup> Dicey, A. V. (1959), Law of Constitution, 10<sup>th</sup> Edn, P40

The current media obsessed culture in the United Kingdom tends to reduce the powers and freedoms of many members of parliament, who are under close scrutiny and therefore fear losing support. This again reduces the parliament's sovereign status as a body that cannot be questioned.

Although, this type of questioning of parliamentary procedure and decisions is not put forward in a legal sense it is undermined to the very nature of the country's government.

Much has changed since Dicey wrote his Law of the Constitution and it is evident that the supremacy of parliament in many ways no longer stands as true today. This is because of many factors including European Union rules and changing cultural times.

However, it is still clear that Parliament survives as an adaptation of the former style of supreme power and now as a body that has changed as it must to the growing demands the United Kingdom and the outside world.

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