

Exploring the Dilemma: Analyzing the Contrast between Dicey's Notion of Parliamentary Sovereignty and the Actuality of Constitutional Governance



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Abstract: *The abstract delves into the enduring conundrum between A.V. Dicey's notion of parliamentary sovereignty and the nuanced complexities of contemporary constitutional reality within the British context. It elucidates how Dicey's tripartite definition of parliamentary supremacy encounters challenges from constitutional conventions, judicial activism, devolution, and European Union integration. These factors collectively erode the traditional understanding of absolute parliamentary sovereignty, as conventions impose constraints, judicial activism scrutinizes legislative acts, devolution disperses power, and EU integration subordinates domestic legislation. The abstract underscores the ongoing tension between theoretical principles and practical governance, emphasizing the perpetual struggle to reconcile Dicey's conceptual framework with the evolving dynamics of modern constitutionalism.*

Keywords: Parliamentary sovereignty, Constitutional reality, judicial activism, Legislative autonomy

Introduction

The concept of parliamentary sovereignty, as elucidated by A.V. Dicey, has long been regarded as a foundational principle within the British constitutional framework. According to Dicey's seminal work, parliamentary sovereignty denotes the absolute legislative authority vested in the British Parliament, allowing it to enact, amend, or repeal any law without constraint. However, the evolving dynamics of constitutional reality have posed significant challenges to the simplistic narrative of absolute parliamentary supremacy. In contemporary legal and political discourse, the reconciliation between Dicey's theoretical framework and constitutional reality has become increasingly complex and multifaceted. Dicey's concept of parliamentary sovereignty rests on three key pillars: legislative supremacy, absence

of legal limitations, and the absence of any authority higher than Parliament. Historically, this conceptualization has served as a guiding principle, emphasizing the primacy of elected representatives in making and amending laws on behalf of the people. (Eleftheriadis, 2009) However, the practical application of parliamentary sovereignty has encountered formidable obstacles, including the emergence of constitutional conventions, judicial activism, devolution, and supranational integration.

Constitutional conventions, though not legally enforceable, exert significant influence over the exercise of parliamentary authority, prescribing acceptable behaviors and curbing arbitrary exercises of power. Judicial activism has empowered the judiciary to scrutinize legislative actions, ensuring conformity with constitutional principles and challenging the notion of

unchecked parliamentary supremacy. Moreover, the devolution of powers to regional bodies and the United Kingdom's membership in the European Union have fragmented traditional notions of sovereignty, dispersing legislative authority beyond Westminster and subjecting domestic legislation to supranational legal norms. In light of these complexities, the understanding between Dicey's concept of parliamentary sovereignty and constitutional reality requires a nuanced and contextualized approach. While Dicey's principles continue to inform legal and political discourse, their application must be reconciled with contemporary realities to ensure the effective functioning of the British constitutional framework. (Gordon, 2015) Thus, the quest to navigate the conundrum between parliamentary sovereignty and constitutional reality represents an ongoing intellectual and practical endeavor, crucial for the preservation of democratic governance, the rule of law, and national autonomy in the 21st century and beyond.

Dicey's thesis of parliamentary sovereignty, positing that Parliament has the supreme power to promulgate and modify legislation, has encountered obstacles in relation to the functioning of the constitution. The extent of Parliament's unrestricted power has been limited due to the emergence of supranational entities like the EU and the integration of foreign treaties into domestic legislation. An example of this is the Factortame case, which established the supremacy of EU law over UK law, allowing people to challenge and perhaps override British laws. One further constraint on the power of Parliament is the concept of immutable constitutional laws, as established in the Thoburn case, is another constraint on Parliament's power. Furthermore, the United Kingdom has seen a further dilution of the idea of parliamentary sovereignty as a result of the devolution of powers to regional legislatures. (de Montpensier, 1965) Nevertheless, Parliament retains significant authority to enact legislation. Since the enactment of the 1688 Settlement Act, Parliament's legislative capacity has rooted the foundation of the legal framework in the United Kingdom. Is legislation established

the rights of Parliament and imposed restrictions on the powers of the king.

Despite encountering obstacles posed by supranational entities and the decentralization of authority, the Parliament continues to function as a precompetent institution with the capacity to adjust to evolving conditions and exert influence on the legislative framework that governs the United Kingdom. (Lennox, 2001) The historic case of *Entick v. Carrington* (1765) (Gilani, Khan, & Zahoor, 2021) serves as a compelling example of the significance of legal principles and constraints on political authority. The case established the principle that the rule of law bounds even the power of Parliament. The enactment of the Human Rights Act 1998 solidified this transformation by ensuring the law aligns with the ideals of human rights. The evolution of the legal system in the United Kingdom exemplifies the legislative power of Parliament, the principle of the rule of law, and the protection of individual rights. In the United Kingdom, notable court rulings, such as *Miller v. Secretary of State for Exiting the EU* (2017) and *Jackson v. Attorney General* (2005), pertain to legal matters. Highlight the significance of individual rights and the supremacy of legal principles. These instances exemplify the influence of case law in creating and enhancing the legal framework in the United Kingdom with the aim of safeguarding the principles of the rule of law and the rights of individuals. (Clarke, 2005)

AcWade argues that the political institutions of a nation, like Parliament, house the notion of sovereignty, not legal or constitutional frameworks. However, the following instances exemplify the manner in which the court construes and implements legislation, including constitutional principles, in order to mold the legal framework. The legislative branch assumes the primary responsibility of enacting legislation, while the judicial branch serves to prevent the legislative branch from exceeding its jurisdiction and encroaching upon individuals' rights by means of checks and balances. The *Anisminic* and *Jackson* cases demonstrate the significance of the British Court in upholding constitutional norms. (FRITZ) The House of

Lords developed the notion of *supra vires* in the *Anisminic* case to prevent government bodies from exceeding their power. is judicial decision has contributed to the progression of the legal framework by facilitating the examination and responsibility of administrative activities. The House of Lords in the *Jackson* case affirmed the principle of parliamentary sovereignty while also emphasizing the significance of EU legislation within the framework of UK law. The legal system plays a crucial role in shaping and enhancing the law, protecting individual rights, and upholding constitutional principles, as shown by these rulings.(Harden, 1991)

The case of *Donoghue v. Stevenson* serves as a notable illustration of how the judicial system modifies the common law framework. ThThis seminal ruling established the tort law doctrine of negligence, asserting that individuals bear responsibility for any harm they inflict upon others, based on their duty to exercise reasonable care. reover, Lord Steyn's statements in the *Jackson v. Attorney General* case established a novel avenue for judicial scrutiny and constitutional interpretation. In his controversial opinion, Lord Steyn said that the courts had the authority to examine and, if deemed appropriate, declare invalid legislation that infringed upon fundamental rights. This sparked a dispute among legislators and legal scholars, with individuals deliberating on the division of powers and the judiciary's responsibility in safeguarding individuals' rights. These discussions illuminate the court's role in defining legal standards and safeguarding basic rights. Furthermore, the removal of the House of Lords' veto power, as stipulated in the Parliament Acts of 1911 and 1949, undoubtedly disrupted the equilibrium of the constitution. (Dabrowska, 2010)

The understanding between A.V. Dicey's concept of parliamentary sovereignty and the intricate tapestry of constitutional reality presents a perennial challenge within the British political and legal landscape. Dicey's elucidation of parliamentary sovereignty, encapsulated in his tripartite definition emphasizing legislative supremacy, absence of legal limitations, and the absence of a higher authority than Parliament,

has long been regarded as fundamental to the British constitutional framework. However, as constitutional norms have evolved and political dynamics have shifted, the simplistic narrative of absolute parliamentary supremacy has encountered formidable obstacles. One such challenge arises from the emergence and entrenchment of constitutional conventions, which though lacking legal enforceability, impose significant constraints on parliamentary authority by prescribing acceptable behaviors and curbing arbitrary exercise of power. (Willis, 2014) Moreover, the phenomenon of judicial activism has further complicated the traditional understanding of parliamentary sovereignty, as the judiciary assumes a pivotal role in scrutinizing legislative acts for conformity with constitutional principles, thereby subjecting parliamentary decisions to judicial review. This erosion of absolute parliamentary supremacy is also evidenced by the incorporation of human rights legislation, notably through the Human Rights Act 1998, which empowers courts to strike down legislation incompatible with fundamental rights, thus rebalancing the traditional equation of power between Parliament and the judiciary. (Gilani, Ali, & Zahoor, 2023)

The devolution of powers to regional bodies in Scotland, Wales, and Northern Ireland constitutes another facet of constitutional reality that challenges Dicey's conception of parliamentary sovereignty. By granting legislative autonomy to these devolved institutions, the unitary nature of the British state is undermined, and traditional notions of sovereignty are fragmented as power disperses beyond the confines of Westminster. Furthermore, the United Kingdom's membership in the European Union introduced a novel dimension to the discourse on parliamentary sovereignty, as the doctrine of supremacy held EU law as paramount over domestic legislation, thus subjugating parliamentary sovereignty to supranational legal norms. However, the Brexit referendum and subsequent withdrawal from the EU have reignited debates over parliamentary sovereignty, with proponents advocating for the

restoration of legislative autonomy from European institutions. In conclusion, while Dicey's concept of parliamentary sovereignty remains a foundational principle within the British constitutional tradition, its compatibility with constitutional reality is continually tested by the evolving complexities of governance, judicial interventions, devolutionary settlements, and supranational integration. As such, the reconciliation of Dicey's theoretical framework with the multifaceted realities of modern constitutionalism represents an ongoing intellectual and practical challenge for scholars, jurists, and policymakers alike. (Matteucci, 2015)

Historically, the House of Lords possessed significant jurisdiction to examine and potentially reject legislation that the House of Commons passed. This authority exercised oversight over the government and ensured that legislation underwent comprehensive scrutiny. Following the removal of this veto right, there are claims that the administration now has more power, undermining constitutional democracy. The case of *Jackson v. Attorney General* (2005) serves as a relevant legal precedent that substantiates this stance. While several individuals see the removal of the veto as an endeavor to consolidate authority within the executive branch, advocates of parliamentary sovereignty argue that it is vital for enhancing the efficiency of the legislative process. The understanding and analysis of constitutional concepts in modern governance provide the basis for the enduring essence of sovereignty. One significant determinant impacting its dynamics is the concept of self-acceptance and implicit revocation. In the *Cheney v. Conn* case, future legislation addressing limitations on coal mining effectively nullified a prior one, illustrating how implied repeal allows for flexibility in response to societal shifts and evolving conditions. (Dimelow, 2017) The court's ruling in the *Case of Proclamations* from 1610 established that the monarch lacked the authority to alter legislation via his proclamations. This ruling underscored the significance of maintaining a delicate equilibrium between administrative power and

constitutional rights and powers. Scholars such as Allan and Crag have posited the significance of the legislative and judicial branches in safeguarding individual rights and upholding the principles of the rule of law. In democratic countries, the legislature has the authority to originate and modify laws, emphasizing the importance of legislative supremacy. Judicial review serves the objective of ensuring that legislation conforms to basic rights and constitutional principles. The meta rule regulates the relationship between legislative and judicial power, further guiding their interactions and individual task execution. Chief Justice John Marshall upheld the power of judicial review in the *Marbury v. Madison* decision in 1803. The Supreme Court challenged traditional marriage laws in the *Obergefell v. Hodges* 2015 ruling. Both of these instances provide illustrations of the metacriterion. The aforementioned instances illustrate how the meta rule facilitates the equilibrium of government branches and fosters democratic governance. (Dimelow, 2017)

The reconciliation of A.V. Dicey's concept of parliamentary sovereignty with the complexities of constitutional reality presents a formidable challenge that demands critical analysis. Dicey's tripartite definition of parliamentary sovereignty, emphasizing legislative supremacy, absence of legal limitations, and the absence of a higher authority than Parliament, has long been foundational to British constitutional thought. However, contemporary legal developments and political dynamics have exposed inherent tensions and limitations within Dicey's framework.

One critical aspect to consider is the evolution of constitutional conventions, which, though not legally enforceable, exert significant influence over the exercise of parliamentary authority. These conventions, such as the requirement for the monarch to grant royal assent to legislation passed by Parliament, effectively constrain the exercise of legislative power and challenge the notion of unchecked sovereignty. Furthermore, judicial activism has emerged as a crucial mechanism for scrutinizing parliamentary actions and upholding constitutional principles,

thereby subjecting legislative decisions to judicial review and challenging the traditional notion of parliamentary supremacy. (de Campos-Rudinsky, 2022) Moreover, the advent of devolution, exemplified by the establishment of devolved institutions in Scotland, Wales, and Northern Ireland, has fragmented the unitary nature of the British state and redistributed legislative authority beyond Westminster. This devolutionary settlement challenges Dicey's conception of an omnipotent Parliament by dispersing power to regional bodies and diluting traditional notions of sovereignty. Similarly, the United Kingdom's membership in the European Union introduced a new layer of complexity to the understanding of parliamentary sovereignty. The principle of supremacy of EU law meant that domestic legislation could be overridden by European legal norms, thereby subordinating parliamentary sovereignty to supranational authority. The Brexit referendum and subsequent debates underscored the tension between national sovereignty and European integration, prompting a reevaluation of the primacy of parliamentary authority in the context of international legal obligations. In light of these critical analyses, it becomes evident that the understanding between Dicey's concept of parliamentary sovereignty and constitutional reality is fraught with challenges. The evolving dynamics of governance, legal pluralism, and supranational integration necessitate a nuanced and contextualized interpretation of parliamentary authority. While Dicey's principles continue to inform legal discourse, their application must be reconciled with contemporary constitutional realities to ensure the effective functioning of the British constitutional framework. (Loveland, 2018)

Parliamentary sovereignty refers to the ultimate authority of Parliament to enact or revoke legislation. However, democratic principles, human rights, and the rule of law constrain this authority, making it not absolute. The interrelationship between legislative authorities and the judiciary plays a crucial role in upholding these principles and resolving conflicts. Due to its enduring role as the cornerstone of the legal framework in the United

Kingdom, Parliament retains a substantial degree of legislative jurisdiction. In significant decisions such as *Entick v. Carrington*, *Miller v. Secretary of State for Exiting the EU*, and *Jackson v. Attorney General*, the court has influenced the legal structure to ensure the supremacy of the rule of law and the protection of individual rights. The current argument among academics, including P.P. Craig and T.R.S. Allan, revolves around the intricate equilibrium between legislative and judicial power within the framework of parliamentary sovereignty. The authors contend that it is important for the judiciary to demonstrate self-control and deference towards elected officials while concurrently emphasizing the significance of judicial review in protecting individual liberties and ensuring that legislation aligns with constitutional tenets. (Danchin, 2017)

Some philosophers argue in favor of A.V. Dicey's concept of parliamentary sovereignty, it is essential to acknowledge the foundational role it has played in shaping the British constitutional tradition and the principles of democratic governance. Dicey's tripartite definition, emphasizing the absolute legislative authority vested in Parliament, has provided a clear and concise framework for understanding the nature of parliamentary power. This conceptualization has historically served as a pillar of stability, providing a solid foundation for legal and political institutions to operate within. Furthermore, Dicey's concept of parliamentary sovereignty aligns with democratic principles by emphasizing the supremacy of elected representatives in making and amending laws on behalf of the people. In a representative democracy, Parliament serves as the primary legislative body accountable to the electorate, embodying the will of the people through its legislative actions. By asserting the primacy of parliamentary authority, Dicey's framework reinforces the democratic legitimacy of the legislative process and safeguards against arbitrary exercises of power. (Judge, Leston-Bandeira, & Thompson, 2018)

Moreover, the clarity and certainty provided by Dicey's concept of parliamentary sovereignty have facilitated the functioning of the legal

system and the administration of justice. By delineating the boundaries of parliamentary authority, Dicey's framework has enabled courts to interpret and apply the law consistently, ensuring legal certainty and predictability in judicial decisions. This stability is essential for maintaining public confidence in the legal system and upholding the rule of law. (McConalogue, 2019) Additionally, the principle of parliamentary sovereignty has historically served as a safeguard against external interference and the erosion of national sovereignty. In an increasingly interconnected world, the ability of Parliament to enact and repeal laws without external constraint is essential for protecting the sovereignty and autonomy of the state. By affirming the supremacy of domestic legislation over international treaties and agreements, Dicey's framework preserves the independence of the British legal system and safeguards against encroachments on national sovereignty.

In conclusion, A.V. Dicey's concept of parliamentary sovereignty provides a robust and principled foundation for understanding the nature of legislative authority in the British constitutional framework. By emphasizing the supremacy of Parliament, Dicey's framework reinforces democratic principles, ensures legal certainty, and safeguards national sovereignty. While challenges and complexities may arise in reconciling Dicey's theoretical framework with contemporary realities, the enduring value of parliamentary sovereignty as a cornerstone of democratic governance cannot be understated. The understanding between A.V. Dicey's concept of parliamentary sovereignty and constitutional reality encapsulates a dynamic interplay between foundational principles and evolving complexities within the British constitutional framework. Throughout history, Dicey's tripartite definition of parliamentary supremacy has provided a sturdy theoretical foundation, emphasizing the absolute legislative authority vested in Parliament. (Dicey, 2023) This conceptualization has served as a cornerstone of democratic governance, reinforcing the democratic legitimacy of legislative processes and providing clarity in

legal interpretation. However, the practical application of Dicey's concept has encountered challenges and nuances in contemporary constitutional reality. The emergence of constitutional conventions, judicial activism, devolution, and supranational integration has complicated the simplistic narrative of absolute parliamentary supremacy. Constitutional conventions, though not legally enforceable, exert significant influence over the exercise of parliamentary authority, imposing constraints and shaping acceptable behaviors. Judicial activism has empowered the judiciary to scrutinize legislative actions, ensuring conformity with constitutional principles and challenging the notion of unchecked parliamentary sovereignty. Moreover, devolutionary settlements and EU integration have fragmented traditional notions of sovereignty, dispersing legislative authority beyond Westminster and subjecting domestic legislation to supranational legal norms. (Judge, 2018) The Brexit referendum and subsequent debates have highlighted the tension between national sovereignty and European integration, prompting a reevaluation of the primacy of parliamentary authority in an increasingly interconnected world.

Despite these challenges, the enduring significance of parliamentary sovereignty as a foundational principle remains undeniable. It embodies the democratic principles of representative governance, legal certainty, and national autonomy. While reconciling Dicey's theoretical framework with contemporary realities may pose challenges, it is imperative to adapt and evolve the understanding of parliamentary sovereignty in response to the complexities of modern governance and legal pluralism. In navigating this conundrum, a nuanced approach is essential, one that recognizes the enduring value of Dicey's principles while embracing the complexities and nuances of constitutional reality. By engaging in critical analysis, legal scholarship, and democratic discourse, stakeholders can strive towards a more comprehensive understanding of parliamentary sovereignty that balances theoretical principles with practical governance

imperatives. Ultimately, the quest for an understanding between Dicey's concept of parliamentary sovereignty and constitutional reality represents an ongoing intellectual and practical endeavor, crucial for the effective functioning of the British constitutional framework in the 21st century and beyond.

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