

# [Parliamentary derives from dicey’s, his perspectives of parliament](https://assignbuster.com/parliamentary-derives-from-diceys-his-perspectives-of-parliament/)

Parliamentary sovereignty is the most critical pieceof the UK constitution.

It was imagined amid the time of William III and Mary IIwho came to position of royalty through sacrificing their own power and givingit to parliament, as a result, the monarch’s power of royal prerogative isright under parliament in the late 17th and early 18th century. 1 This condition can be found in the Bill of Rights 1688, which expressed laws must be made or revoked by Parliament and not by theMonarch alone2. Custom perspectivesof parliamentary sovereignty derives from Dicey’s, his perspectives of parliamentare the following; the first being that parliament is the ultimate law-makinginstitution and may sanction any law, the second being is that no parliament isto  be bound by a forerunner nor bind afuture successor and the remainder of Diceys principles is that no individualor body may inquire the validity and legitimacy of law3. This essay will discuss whether these views remainaccurate. In the R (on the application of Evans) v AttorneyGeneral 2015 UKSC 21, the Attorney General, whom is a GovernmentMinister, exercised his entitlement to veto a Tribunal ruling under s. 53 (2) ofthe Freedom of information Act 2000.

Judicial review took place and it upheldthe veto, 4 at this point the issue proceeded to the SupremeCourt (SP) which overrode the judicial review5. It was then stated there was no grounds for the vetoand that Section 53(2) was contrary with EU law. 6The significanceof the R v Attorney General is that thisjudgment gives is an idea to the degree to which it is lawfully and legitimatefor a court practicing forces of judicial review to strike down a GovernmentMinister’s decision made under the powers allowed by Parliament to overturn atribunal’s judgment. 7 Since the SP overrode the judicial review and decidedthat the Minister had no ground to exercise his power of veto, it means that islegitimate for a court to deny parliaments will, this will being Parliamentallowing this to use the power of veto. It can be argued that Diceyan doctrine isnot accurate as the courts used their power to deny a government minister hispower that was expressly given by an act of parliament, and so the courtsquestioned the validity of an act of parliament.

Furhermore, Jackson v Attorney Generalcontained  thought from judges acting intheir official boundary, that courts may have the power to strike down an Actof Parliament in the event of a violation of constitutional principles. 8 Therefore a body such as a court can question thelegitimacy of laws passed by Parliament. In this case, three law lordssuggested that that courts had the power to strike down legislation. 9 One example is Lord Steyn said “ It (parliamentarysupremacy) is a construct of the common law. The judges created this principle. If that is so, it is not unthinkable that circumstances could arise where thecourts may have to qualify a principle established on a different hypothesis ofconstitutionalism.

In exceptional circumstances involving an attempt to abolishjudicial review or the ordinary role of the courts”. 10  This suggeststhat the courts do have the ability to question parliament and the laws itmakes revolving around the Judiciary. And so bothcases reference above resulted in a challenge to the customary perspective ofparliamentary sovereignty, this being that no person or body such as a court orinstitution may question the validity of law. However, although it may seem as if the court decisions are going against sovereigntyand the Diceyan doctrine, the case R (Onthe Application of Miller) v Secretary of State for Exiting the European Union2017 UKSC 5 shows that the court’s decision upheld the Diceyan Doctrine. In the R v Secretary of State for Exiting theEuropean Union, there was an issue that the Government utilisingprerogative powers to trigger article 50 and whether this could be utilised totrigger article 50. 11 The Supreme Court recognised that there was anessential guidline of the UK’s constitution, this being that Parliament issovereign and can make and unmake laws, and that, the ECA 1972 it is anentrenched rule that the government cannot supersede using prerogative powers.

Itwas held that Parliament must Trigger article 50 as the ECA 1972 is anindependent source of law, and so parliament may only choose when to rejectthis independent source of law. 12   In additionto this, it was held that the EU provided citizens with certain rights, andtherefore only Parliament is authorised to revoke this. 13 The is a crucial case as this case is new, theSupreme Court making a decision in 2017 that upheld the Diceyan Doctrine, beingthat Parliament is supreme law making body and only it can make and unmakelaws. However, wemust consider the position of parliament before the EU referendum and R v Secretary of State for Exiting theEuropean Union .

during this situation, the Diceyan Doctrine remainedinaccurate through being the European Communities Act 1972 (ECA).  The ECA  allowed United Kingdom to become a member ofthe European Union.  It also gave way to toEU law superseding UK and therefore, takes precedence over national law. 14 This meansthat parliament is no longer the supreme law-making body as the EU now makeslaw that Parliament cannot supersede. An example that shows Diceyan doctrinebeing inaccurate,  this account beingthat parliament is supreme law-making body and that no person or body such as acourt can question the validity of law is the factor tame case. In R (Factortame Ltd) v Secretary of State forTransport, the European Court of Justice (ECJ) addressed the legitimacy ofthe Merchant Shipping Act (MSA) 1988, which was announced to protect Britishfishermen.

15 It was said by the High court and later raised to theECJ, that MSA dishonoured the Treaty of Rome 1957 which created the EuropeanEconomic Community . 16  Here is a caseof how the EU a prevented parliamentary act from having an impact, and so itdemonstrates  that parliament is not the preeminentlaw making body as the MSA  was announcedincompatible with EU law, thus the MSA should be negated. It indicates how acourt, in this case, the European court of justice, can questioned the validityof an MSA act introduced by Parliament.

Therefore, this shows Dicey account ofparliament being inaccurate. However, one may argue that Parliament consented to this dominion and could easilyrepeal the ECA 1972, and so Parliaments sovereignty is not lost and Diceyaccount would thereafter be accurate. This is currently happening, the EuropeanUnion (Withdrawal) Bill which would repeal the ECA.

17 Once this Bill receives royal assent, the UK will nolonger be subjugated to EU law and the European court of justice and so, parliament will once more be the supreme law making body and no institution canquestion the validly of law. Therefore, Diceyan doctrine remains accurate. The Human RightsAct 1988 does not have an entrenched status and, can be amend or repealed basedon a parliamentary majority, thus it can be considered not to be destruvitve toParliamentary sovereignty.

18 However,  Section 4 of the Act, allows the issuing of  a declaration of incompatibility to act ofParliament in relation to human rights from the higher courts. 19 This allows courts to consider that the terms of astatute, acts of public authority that Parliamenthas passed, and decide whetherit is incompatible with the UK’s commitments under the Human Rights Act 1998. 20 So this suggests that the Diceyan Doctrine is notaccurate as is goes against the idea that no person or body such as a court canquestion the validity of an act Parliament.

However interms of declaration of incompatibility, it simply demonstrates the act ofParliament  is contrary with the EuropeanConvention of Human Rights, it does not negate the statute as Parliament mustdecide whether it wishes to amend the act. 21To illistarate this point further, under Section 10 ofthe Human Right Act, a Minister of the Crown may make such amendment to primarylegislation as are viewed as important to withdraw the incompatibility. 22 Therefore it can be argued that the courts cannotstrike down an Act of Parliament as Parliament has a legal right to fix theissue and so the Diceyan doctrine is still accurate. Asindicated by the Diceyan Doctrine, Parliament may not be bound by itspredecessors or bind its successors. This is mostly shown through the Doctrineof implied Repeal. This is when an Act of Parliament conflicts with an earlieract, the later Act takes precedence, it is judges who give effect to this.

. Through this, it has guaranteed that no parliament is bound or bind. inVauxhall homes ltd v Liverpool Corporation, the court held that the Housing Act1925 impliedly repealed the clashing provision in the Acquisition of land act1919. This shows the supremacy of parliament, this being that no parliament canbind a future parliament. Therefore, the Diceyan Doctrine remains accurate. Inconclusion, the doctrine of Parliamentary sovereignty appears to have come fullcircle since Dicey first characterised it. The Diceyan doctrine has been aseries of challenges such as the EU. However, there has also been a series ofacceptance of the Diceyan Doctrine, such as the Miller case.

Yet, in practicethe three elements that Diceyan doctrine have held up extraordinarily well. 1 AlisdairGillespie and Siobahn Weare, The English legal System, (6th Edn, OUP 2015)2 JeffreyGoldsworth, The Sovereignty of Parliament: History and Philosophy (first ed1999)3 Ibidn14Teresa Lucaelli  “ The ConstitutionalAspect” in Evans v Attorney General5 Alison. Young, ‘ R (Evans) v Attorney General 2015 UKSC 21 – the Anisminic of the 21stCentury?’ U. K. Const.

L. Blog (31st Mar 2015)6 PublicLaw for Everyone: Professor Mark Elliott7 KarrenMcCullagh, “ A tangled web of access to information: reflections on R (onthe application of Evans) and another v Her Majesty’s Attorney General”,(2015)8Tom Mullen (2007). “ Reflections on Jackson v Attorney General: questioningsovereignty”, Volume 21, Issue 1 9 TheEU Bill and Parliamentary Sovereignty – European Scrutiny Committee: Divergent opinionon the scope of Parliamentary sovereignty 10 R (Jackson) v Attorney General  2006 1 AC (262), (102)11 R (On the Application of Miller) v Secretaryof State for Exiting the European Union 2017 UKSC 512Ibid13Ibid 14Alisdair Gillespie and Siobahn Weare, The English legal System, (6th Edn, OUP2015) 15NickBarber International Journal of Constitutional Law, The afterlife ofParliamentary sovereignty, Volume 9, Issue 1, 1 January 2011, 16R (Factortame Ltd) v Secretary of State for Transport 2003 Q.

B. 381 2002 3W. L. R.

1104         17  William James, Michael Holden,  ‘ Charming Bastard’ David Davis to lead Brexittalks, Reuters 201718Mark Elliot & Robert Thomas, Public law (3rd Edn, OUP, 2017) 19 NickBarber International Journal of Constitutional Law, The afterlife ofParliamentary sovereignty, Volume 9, Issue 1, 1 January 201120Ibid21HumbertoÁvila, Certainty in Law, 1st ed, 22Ibid n 19