

# Is parliament still sovereign



Law on any matter<sup>1</sup>. Parliament's right to make law on any matter has been subject of debate in recent years, particularly parliament's right to make retrospective laws and to reform itself<sup>2</sup>. The War Crimes Act 1991 gave British courts right to try people who became British Citizens after 1990 for crimes they committed in Nazi-occupied Europe<sup>3</sup>.

Opponents feared evidence relating to events that occurred half a century ago could be robust (only 1 person tried under act)<sup>4</sup>. Parliament act 1911 = prime example of parliament's right to reform itself<sup>5</sup>. It said that House of Lords could no longer block bills approved by House of Commons but could only delay for 2 years — > then reduced to 1 year by parliament act 1949<sup>6</sup>. Parliamentary sovereignty effectively meant = sovereignty of Commons<sup>7</sup>.

Validity of 1949 act challenged by opponents of fox hunting? argued that Hunting Act 2004 = invalid b/c it passed using parliament act 1949 which itself had been enacted under parliament act 1911 Legislative supremacy<sup>1</sup>. Second element of parliamentary sovereignty = legislative supremacy<sup>2</sup>. In many liberal democracies, a constitutional court has power to declare legislation to be unconstitutional and annul it, but not the case in Britain<sup>3</sup>. As parliament enjoys legislative supremacy, courts cannot strike down statute law on grounds that its unconstitutional or simple majority votes in parliament<sup>4</sup>.

Since no parliament may bind its successors all law = equal status<sup>5</sup>. Law that brings about major constitutional change = same status as animal welfare law<sup>6</sup>. Some experts argue that law of such constitutional significance should be considered to be de facto higher law<sup>7</sup>. Although parliament retains legal right to repeal the Scotland Land Act 1978, it is politically unthinkable that it would

do so against the wishes of the Scottish prlmnt and peopleKey

challengesThere have been 4 major contemporary challenges to prlmntary sovereignty: 1. EU membership2. The Human Rights Act3.

Devolution4. ReferendumsEuropean Union Membership1. Britain's membership of EU provides the most significant challenges to the traditional view of prlmntary sovereignty2. The Eurpean Communities Act 1972 gave future community law (now EU law) legal force in the UK and denied effectiveness to national leg that conflicts with it3. EU law has primacy over domestic law4.

In cases of confluct, British law must be amended so that it complies with EU leg5. The key example was provided in the 1990/91 Factortame case which resulted in Merchant Shipping Act 1998 being disapplied because its provisions restricting the non-british fishing boats as British were contrary to Community law6. Recognition by British Courts of the primacy of EU law fits uneasily with the legislative supremacy of prlmnt7. But prlmntary sovereignty has not been rendered entirely meaningless8. Prlmnt retains right to repeal the European Communities Act 1972, although this would present political difficulties such as negotiating the terms of withdrawalThe Human Rights Act1.

The rule of law provides a defence against the abuse of power by the state, but it lacked the constitutional protection common in other liberal democracies until Human Rights Act 19982. This incorporated the rights set out in Articles 2 to 12 and Article 14 of the European Convention on Human Rights (ECHR) into UK statute law3. All new leg must now be declared

compatible with these rights by gov lawyers and the British courts decide cases brought under ECHR<sup>4</sup>. Strictly speaking, parliamentary sovereignty is preserved, because courts cannot automatically strike down laws<sup>5</sup>. If leg is found to be incompatible with the ECHR, it is for prlmnt to decide whether or not to amend the law through a fast track process or launch an appeal<sup>6</sup>. In reality, prlmnt finds its hands tied, because law deemed contrary to HR will lack moral authority and will be subject to further legal challenge<sup>7</sup>.

Judicial concern about state of power is evident in other areas<sup>8</sup>. Incidences of judicial review, by which judges rule that ministers have acted unlawfully have risen<sup>9</sup>. An independent Supreme Court will take over judicial role of the H o L from 2009<sup>10</sup>. This court will not be able to strike down acts of Parliament, so parliamentary sovereignty is preserved.

But the court may be called upon to clarify its meaning and limits<sup>11</sup>. Devolution<sup>1</sup>. Devolution means that in many policy areas, Westminster no longer makes laws applicable across the whole of the UK<sup>2</sup>. The Scottish prlmnt and NI Ass have primary leg authority: they have sole responsibility for making laws on devolved matters such as education<sup>3</sup>. Westminster continues to make primary leg for Wales, but the Welsh Ass makes secondary leg<sup>4</sup>. Westminster has chosen not to exercise any longer its right to make law on devolved matters, but it retains leg suprem<sup>5</sup>. It has sole authority over 'reserved matters' such as the UK economy, social security, and the constitution<sup>6</sup>.

The UK prlmnt can also abolish the devolved Assemblies and decide to legislate on Scottish, Welsh, and Northern Irish matters, but it would be

politically difficult to do so in the face of elite and public opposition<sup>7</sup>.

Relations between the UK gov and devolved administrations have been cordial to date, but strains might become apparent now that a Scottish National Party minority gov is in office in Edinburgh<sup>1</sup>.

Referendums have emerged as a popular option for the gov on major constitutional issues<sup>2</sup>. Only one UK wide referendum has been held, 1975 vote in favour of continued membership of the European community<sup>3</sup>. But the devolved assemblies in Scotland, Wales, and NI were all approved in refs in their respective nations<sup>4</sup>. The Blair gov proposed refs on the European single currency and the EU constitution abonded them when first, it decided against joining the euro and second, following negative verdicts on the EU constitution in France and the Netherlands, shelved plans for a referendum on ratifying the constitution