

# Parliamentary sovereignty

## Introduction

### US revolution

Madison – Federalist 10

### Fundamental law

Some values too important for ordinary politics  
'Entrenched values' protected versus small majorities

### English natural divine/law theory

*Dr Bonham's case* (1610)

## 1. Domestic orthodoxy

Dicey – *Law of the Constitution*

positive limb

negative limb

1688 revolution

no fundamental law

3 part structure of Parliament

### Cases 1 – enrolled bill rule

*Wauchope* (1843)

*Lee v Bude* (187)

*Pickin v British Rail* (1974) (CoA and HoL)

**Cases 2 – implied repeal**

**E**llen Street Estates (1934)

Acquisition of Land Act 1919 s.7

**Cases 3 – international law**

**M**ortensen v Peters (1906)

Statute overrides international law

**C**heney v Conn (196 )

Herring Fisheries (Scotland) Act 1899

Income tax/nuclear weapons

**2. Domestic heresy**

**Jennings**

'Rule of recognition' – 3 steps

**Cases 1 – manner and form**

**T**rethowan (1932 - New South Wales)

procedural entrenchment?

**H**arris 1 (1952 - South Africa)

abolition of second chamber

non-white voting rights

**W**ade (1955) Cambridge LJ

'ultimate political fact'

**H**arris 2 (1953)

'High Court of Parliament'

**H**arris 3/Collins (1956)

Packing court and senate

**Cases 2 – Treaty of Union**

substantive entrenchment?

**M**McCormick (1953)

1688 revolution English not British

### 3. Impact of EC law

#### Cases 1 - ECJ

*Van Gend en Loos* (1962)

direct effect vs negative limb

*Costa v ENEL* (1964)

precedence vs positive limb

**ECA 1972 s.2(1); s2(4); s.3**

#### Cases 2 – UK courts

*McCarthy* (1979 - Lord Denning)

statutory interpretation; implied repeal

*Garland* (1983 - Lord Diplock)

statutory interpretation; 'however wide'

*Factortame 2* (1991 - Lord Bridge)

disapplication

Can the UK leave the EC

substantive or procedural entrenchment?

### Conclusion

Dicey (1883) *Intro to.*

distinguish legal and political sovereignty

Wade (1996) *LQR*

ECA 1972 as revolution

Craig (1992) *YEL*

purposive basis (> Blackstone)

*Countryside Alliance*

dicta of Baroness Hale

### Links

Statutory interpretation

*Anisminic* (1969)

*Liversidge* (1972)

Human Rights Act s.3

Government dominance of Commons and Lords