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The essay will critically discuss the traditional definition given by Dicey of Parliamentary supremacy, its current relevance in the modern UK and its significance as a general principle of the UK constitution.

The common law doctrine of Parliamentary supremacy was defined by Professor AV Dicey as the unlimited and exclusive law making competence of Parliament, which no other body can override. Dicey viewed Parliamentary supremacy as important as the rule of law in supporting the UK and guarantee protection to individual rights and freedoms, as these are not laid out in a single written document which can be called The UK Constitution. It could be argued that the unlimited power of Parliament is therefore justified. Parliamentary supremacy is not created by statute, but 'rests on judicial interpretation of the unwritten constitution: a higher-order law confers it, and must of necessity limit it'.

However, overtime, some limitations to this absolute power of Parliament have been identified. In the UK, international law has effect only by virtue of an act of Parliament, so in theory, Parliamentary supremacy implies Parliament has the power to override international law. Yet, in practice, Parliament's intention is not to legislate against principles of International Law. International law is also given effect by statutory interpretation, but if a provision of an act of Parliament is unclear or ambiguous, the act will prevail and be given effect nonetheless, thereby asserting the supremacy of Parliamentary.

Parliament can also override constitutional conventions. Yet, as conventions are designed to control the use of power by government and to underpin the legal mechanism of government, it is presumed that Parliament will not legislate against a convention and risk a constitutional crisis.

The unlimited competence of Parliament includes making retrospective law; an example of this is the War Damage Act 1965 which reversed the decision in Burmah Oil Co. v Lord Advocate. However, it is assumed that Parliament will not legislate with retrospective effect, as doing so would be contrary to the rule of law and unconstitutional, yet not unlawful.

Also, the power to make any law extends to passing or repealing acts considered of Constitutional importance. For example, the Act of Settlement 1701 established a new way of succession to the throne, The Acts of Union 1707 and 1800 integrated the territories of Scotland and Ireland into the United Kingdom. Parliament Act 1911 and 1949, and more recently, the European Communities Act 1972 incorporating the UK in the EU, and recognising the influence of EU law in the UK, as well as setting out the relationship between both.

It has also been recognised by academics that the sovereignty of Parliament is further asserted by virtue of the Human Rights Act 1998 which incorporates the European Convention on Human Rights into UK law, by conferring Parliament the same power to override the Convention. Additionally, the Act establishes that legislation both primary and subordinate should be interpreted in accordance with convention rights, ensuring Parliament maintains its role as guardian of convention rights.

Further, when the courts interpret legislation in line with convention rights, they are under an obligation to apply the incompatible legislation and raise a declaration of incompatibility, but the incompatible legislation remains valid until repealed or amended by Parliament, as law making is an exclusive competence of Parliament.

Despite evidence supporting Dicey's theory and justification of the unlimited competence of Parliament, his views have been challenged by fellow academics who dispute the extent of the supremacy of Parliament. For example, the doctrine of implied repeal will not allow Parliament to bind successive Parliaments. This means that if a provision of an Act of Parliament is incompatible with an older Act, by virtue of the doctrine of implied repeal, the later Act impliedly repeals the earlier one to the extent of the incompatibility. The later Act is accepted as Parliament's true intention.

Devolution of legislative powers to Scotland can also be considered as eroding the supremacy of Parliament. The Scottish Parliament has power to legislate albeit in

limited fields, this power is however, extended by Westminster Parliament itself by virtue of the Scotland Act 1998, so in theory, Parliament could repeal the act and make legislating for Scotland its exclusive jurisdiction. It could be argued that, although a limit in practical and political terms, devolution does not constitute a full legal limit.

Memberships of the European Union is arguably another restrain of the supremacy of Parliament. It is a well-established principle that "the community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights". Meaning that by virtue of membership of the EU, member states and therefore their law making bodies, surrender sovereignty to a higher order in order to fulfil the overall objectives of the EU. In addition, by virtue of the doctrine of direct effect, individuals can bring and defend a claim in the national courts in boking EU Law, and provided the provisions of the EU law involved are 'clear, precise and unconditional', the courts in the UK are required to apply it even if national law was passed to implement EU law. This may be conductive of conflict as both EU and statute can be apply. However, in such case EU prevail over national law. Yet, the supremacy of Parliament is asserted by the fact that EU law is only applicable in the UK solely by the will of Parliament declared as an Act of Parliament (1972 Act), and Parliament could, should it wish to, repeal the Act, take the UK out of the EU as such, EU law would not be valid in the UK anymore.

However, it has been acknowledged that althought the doctrine remains a significant pillar of the UK constitution, its effect has been limited over the years. Lord Hope of Craighead in R (on the application of Jackson) V Attorney-General [2006] 1 AC 262, said that '…Parliamentary sovereignty is no longer, if it ever was, absolute … step by step, gradually but surely, the English principle… is being qualified … the rule of law enforced by the courts is the ultimate controlling factor on which our constitution is based.'

This erosion to the doctrine of supremacy of Parliament by application of EU law was acknowledged, and quickly counteracted by the European Union Act 2011. The main purpose of the act is to ensure that any new treaty or amendment to an existing treaty which grants transfer of power from the UK to the EU, must be subject to a referendum before the legislation is adopted. Parliamentary supremacy is therefore, protected and maintained by ensuring that only Parliament can give effect and allow EU law to apply in the UK, conserving and asserting its supremacy.

Arguably, the result of the Brexit referendum was a cry from the people of the UK to take back full control of the law-making mechanism and free Parliament from the interferences and impositions of the EU, evidencing the popular and pivotal role Parliament still has in modern Britain, and the extent to which it must be protected.

As background to the issue, the Lisbon Treaty, which amended the Treaty on EU and included article 50, was given effect in the UK by the European Union (Amendment) Act 2008. The effect of giving notice to the European Council of the UK's intention to leave the EU, as a result of the referendum approved by Parliament, is that once notification is given, the UK will cease to be a member of the EU.

Yet again, the courts acknowledged that the most fundamental rule of the UK's constitution is that Parliament is sovereign and can make and unmake any law, and that, as an aspect of the sovereignty of Parliament, it is a well-established principle that the government cannot override legislation enacted by Parliament by the exercise of the prerogative power, extended to them by the Crown to perform its duties. By triggering article 50 the government would be practically repealing the European Communities Act 1972, which was passed to adopt EU law in the UK.

Paradoxically, government claims to have sufficient powers under the royal prerogative to trigger article 50 without the approval of Parliament, and this was the question put forth to the courts in the Brexit case. The High Court held Parliament is supreme and article 50 cannot be triggered by government under the royal prerogative. The government appealed to this decision and the Supreme court is yet to rule. It is submitted in this essay that the decision is likely to uphold the supremacy of Parliament, and that only Parliament can authorise the government to trigger article 50.

In conclusion, the doctrine of Parliamentary supremacy seems to have come full circle since Dicey first defined it. The doctrine has been criticised, tested and subjected to practical limits over the years, yet the latest developments suggest that it has stood the test of time and continues to be a pivotal principle of the UK Constitution and relevant in modern UK as the only body with unlimited and exclusive law making competence.

Word count: 1510

BIBLIOGRAPHY:

Table of Statutes:

War Damage Act 1965

Act of Settlement 1701

European Communities Act 1972

The Acts of Union 1707 and 1800

Parliament Act 1911

Parliament Act 1949

Human Rights Act 1998

European Union Referendum Act 2015

Consolidated Version of the Treaty on European Union [2008] OJ C115/13

Table of Cases:

A (FC) and others v Secretary of state for the Home Department [2005] 2 AC 6

Blackburn v Attorney-General [1971] 2 All ER 1380

Burmah Oil Co v Lord Advocate [1965]AC 75

Case 26/62 van Gend en Loos v Nederlandse Administratie der Belastingen [1963] ECR 1

Case 6/64 Costa v ENEL [1964] ECR 585

Ghaidan v Godin-Mendoza [2004] 2 AC 557

Ellen Street Estates v Minister of Health [1934] 1 KB 590

Mortensen v Peters [1906] 14 SLT 227, Lord Kyllachy

Madzimbamuto v Lardner-Burke [1969] 1 AC 645

R v A [2002] 1 AC 45

R (on the application of Jackson) v Attorney-General [2006] 1 AC 262

R (on the application of Miller) v Secretary of State for Exiting the European Union [2016] EWHC 2768 (Admin)

Secondary sources:

A. V. Dicey, “Introduction to the study of the Law of the Constitution of 1885”

Lord Woolf of Barnes [1995] Public Law 57

Sir John Laws, ‘Law and Democracy’ [1995] Public Law