THE VOICE OF THE PEOPLE IS STILL SUPREME

In 1649 John Sadler wrote... if I may not grant, yet I cannot deny, original power to the commons, judicial to the lords, executive to the king.[1]

[1] M.J.C Vile, *Constitutionalism and the separation of power*, Oxford university press, 1967. Pg 31

In January 1649 the commons resolved: *'that the commons of England, in Parliament assembled, do declare, that the people are, under God, the original of all just power' and indeed that the commons 'being chosen by, and representing the people, have the supreme power in this Nation' and again 'that whatever is enacted or declared for law, by the commons, in Parliament assembled, hath the force of law; and all the people of this Nation are concluded thereby although the consent and concurrence of King, or house of peers be not therein to.* [2] The primacy of law-making in the United Kingdom has been held with the legislature and in particular Parliament for over 460 years. It is founded in the twin doctrines of Parliamentary supremacy and separation of powers. Although today there are many scholars and other authorities which have questioned the clear distinction in the roles of the executive, the legislative and the judiciary, and their roles in law making with regards to their primacy and function; despite all the criticisms, changes and amendments, it can be argued that the Parliament still bears the primary responsibility to make laws with the contribution of the other arms of Government.

There are a few fundamental issues that will be addressed before discussing the main question of law making and that is to first identify what are laws and what sources of law are recognised in the United Kingdom, secondly what makes up the Parliament and the other branches of government and finally why does Parliament have the envisaged primacy of law making responsibility.

Laws are identifiable in that they are in a format which distinguishes them from other types of regulation or social convention. The format tells us that they are from a source which we recognise of having the power to create law. It is only these laws which we understand to be binding on ourselves and the state[3]. In the United Kingdom there are three major institutions which are recognised as being authorised sources of binding law, being the Parliament, the courts and the European Union, though the European Convention on Human Rights is becoming more recognised as a further source of Law[4].

Along with the requirement to understand what are laws and what laws are recognised in the United Kingdom, it is also important to understand that the system operated under what is termed the rule of law and that is that there are checks and balances on the powers of the Government and its law-making powers and the understanding that everyone is equal before the courts and that no one is above the law. In *X Ltd*, Lord Bridge observed that: The maintenance of the rule of law is in every way as important in a free society as the democratic franchise. In our society the rule of law rests upon the twin foundations of the Queen in Parliament in making the law and the sovereignty of the Queen's courts in interpreting and applying the law[5].

Parliament is the largest provider of laws and produces the most important sources of modern law being statute law. Secondly it is able to give law-making power to such bodies as Government Departments, Local Councils and other designated authorities through delegated or secondary

[2] J P Kenyon *The Stuart Constitution; documents and commentary*, Cambridge university press, 1966. P 324
[3] James Holland and Julian Webb*, Learning Legal Rules* 7th edn OUP, Oxford 2010, pg 7
[4] Ibid pg 7
[5] X Ltd v Morgan-Grampian Ltd [1991] 1 AC 1, pg 6

legislation. It can also create informal rules which operate within the guidelines of formal rules created by statute.[6]

Common law is the name given to the collective rulings from courts that has been gathered over at least the last 800 years principally since the times of William the Conqueror who brought together the best of the Anglo Saxon laws and promulgated the best decisions. Notwithstanding the growth of statute law, English law is still recognised worldwide in common law terms. This is still the way we categorise law and generally think of law and is still the prime source of influence in determining problems in such areas as tort and contract law[7].

In 1972 with the ascension of the United Kingdom to the E.E.C (the European Economic Community) or now known as the European Union (EU), the nation was required to divest some of its supremacy to the EU and ensure that it abided by community rules, regulations, directives and decisions made by agreed law-making institutions[8]. S 2(1), European Communities Act 1972 states:

All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for by or under the Treaties, as in accordance with the Treaties are without further enactment to be given legal effect or used in the United Kingdom shall be recognised and available in law, and be enforced, allowed and followed accordingly; and the expression 'enforceable Community right' and similar expressions shall be read as referring to one to which this subsection applies[9].

The secondary area of explanation is the doctrine of the Separation of Powers which is generally accepted as the source of the three arms of government being the executive, the legislature and the judiciary. Professor Vile explains the system as to ensure that there is maintenance of political liberty that the government need to be divided into three branches and each is required to have a recognised function. Each branch is required to be confined to the function of its own arena and must not be able to encroach on the responsibilities of the other arms[10]. In the modern context the doctrine was summed up by Lord Mustill in the *fire Brigade Union* case as "It is a feature of the peculiarly British conception of the separation of powers that Parliament, the executive and the courts have each their distinct and largely exclusive domain. Parliament has a legally unchallengeable right to make whatever laws it thinks fit. The executive carries on the administration of the country in accordance with the powers conferred on it by law. The courts interpret the laws, and see that they are obeyed"[11].

The final major area of explanation is the doctrine of Parliamentary Supremacy. Dicey explains this as "The principle of Parliamentary sovereignty means neither more nor less than this, namely, that Parliament thus defined has, under the English constitution, the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament.[12]". The doctrine of Parliamentary supremacy

[6] Holland and Webb pg 7
[7] Ibid pg 13
[8] John N. Adams and Roger Brownsword*, Understanding law*, 4th edn, sweet and Maxwell, 2006 pg 4
[9] Section 2(1) of the European Communities Act 1972
[10] M.J.C Vile, *Constitutionalism and the separation of power*, OUP, 1967, pg 13
[11] Lord Mustill, in the Fire Brigades Union case [1995] 2 AC 513, 567 at 115
[12] A.V. Dicey*, Introduction to the Study of the Law of the Constitution*, 8th edn, Macmillan, 1915, pp.37-38.

has been assumed since the Bill of Rights was secured in 1689. James Bryce, the constitutional expert, expanded on the concept and it acceptance in the United Kingdom in 1886 in an address to the House of Commons when he stated: "[There] is no principle more universally admitted by constitutional jurists than the absolute omnipotence of Parliament. This exists because there is nothing beyond Parliament or behind Parliament. . . [Parliament represents] the whole British nation, which has committed to us the plenitude of its authority, and has provided no method of national action except through the vote[13]. What Parliamentary sovereignty means in the most basic form can be expressed in four major components. Firstly Parliament is the supreme Law-making body in the United Kingdom. Its law have precedence over other forms of law. Statutes or Acts of Parliament prevail over any other sources of law. They are superior to delegated legislation and can also override common law rules that have been made by judges. It means that even if primary legislation is out of date and is subsequently highlighted by judges in later cases, the legislation will remain as the law until it is repealed either expressly or implied[14]. Secondly Parliament can make any laws that it wants. Lord Reid in *Madzimbamuto* expressed with his customary clarity the accepted principle governing the powers of Parliament:

"It is often said that it would be unconstitutional for the United Kingdom Parliament to do certain things, meaning that the moral, political and other reasons against doing them are so strong that most people would regard it as highly improper if Parliament did these things. But that does not mean that it is beyond the power of Parliament to do such things. If Parliament chose to do any of them the courts could not hold the Act of Parliament invalid[15]."

Thirdly, Parliament cannot bind its successors i.e. no Parliament can make laws that will restrict future Parliament from making or changing law, which permits freedom in law-making. Fourthly, as Parliament is of a superior status to the courts, it has been held that the judiciary cannot question or challenge Acts of Parliament[16].

With looking at the fundamental question as that Parliament bears the responsibility of law making with contributions from the other branches, we will look at each branch and it function and role in law making. General speaking the three branches are Legislature, the Executive and the Judiciary. Generally speaking Parliament is the supreme law-maker. The Executive carries on the business of the country. The Judiciary adjudicates on disputes between the state and individuals, and between individuals and corporations.[17]

The best understanding of the term legislature in the United Kingdom is to understand it as being the Parliament which comprises the House of Commons, the house of Lord and the Crown. The English Parliament origins were as a court of common pleas, where the people could express their grievances and served as a link between the governed and the government. The expansion of its role firstly to a deliberating forum and then as being authoritive in areas of taxation and legislation along with the recognition of Parliamentary supremacy was expanded and become enacted in the

[13] Hansard (3rd ser.), vol. 305, 1218 – 19 (1886) cited in Goldsworthy (1999) at 228.
[14] Dicey, pp. 39-40
[15] Lord Reid in Madzimbamuto v Lardner-Burke [1969] 1 AC 645 , 723
[16] Dicey, pg 105
[17] Lord Steyn, *Democracy, the rule of law and the role of judges*, E.H.R.L.R. 2006, 3, 243-253

reign of William and Mary [18]and began the recognition of the government needs to listen to the people.

The executive branch as it is being understood in the political system of the United Kingdom consists of the Government and the Sovereign. It is the function of the executive to carry out the functions of the administration and control of the country. To do this, Parliament has given wide-ranging powers in the form of secondary or delegated legislation and there is a far greater body of law-making which is carried out by Government Ministers, amongst others. While secondary delegation is reliant on primary legislation, there is far more of it produced than Acts of Parliament. However secondary legislation does not enjoy the same privileges as primary legislation and can be examined and challenged by the judiciary if it is determined to be 'Ultra Vives' [19] "If a body acts beyond the powers that are delegated to it by its parent act, then the delegated legislation can be declared void by the courts. The body is said to have acted ultra vives by exceeding its powers."[20] Lord Denning said in the price commission case with regards the powers of secondary legislation stated: "A public body which is entrusted by Parliament with the exercise of powers for the public good cannot fetter itself in the exercise of them. It cannot be estopped from doing its public duty. But that is subject to the qualification that it must not misuse its powers: and it is a misuse of power for it to act unfairly or unjustly towards a private citizen when there is no overriding public interest to warrant it".[21]

The third arm of power is the judiciary. The role of the judiciary is to be "An independent, impartial, honest and competent judiciary is integral to upholding the rule of law, gendering public confidence and dispensing justice. The function of the judiciary is to interpret and apply national constitutions and legislation, consistent with international human rights conventions and international law, to the extent permitted by the domestic law of each Commonwealth country'[22]. The common law has been in a state of continuing development or evolution for over 800 years. It has been growing and changing to meet the ever-changing needs and demands of society. From time to time, it has been codified, modified or displaced by statute. Yet vast areas of general law remain unregulated by statute - parts of the criminal law, the law of contracts, the law of torts and equity, historically, a great deal of our law is and always has been case law, made by judicial decisions. Contract and tort law are still largely judge –made[23] .

From this, it can be seen that primary legislation which is the providence of Parliament is the authorative form of law and with the assistance of law in the form of delegated legislation from the executive and scrutiny and case law from the judiciary for the predominant forms of law making in the United Kingdom. However there are many authorative bodies, scholars and persons who claim that the role of the Parliament as the prime responsible law maker in the United Kingdom is now flawed and inaccurate. There are five major issues which are commented on that appear to detract from Parliament as the predominant law maker in the United Kingdom, firstly, delegated legislation is currently the most produced form of law in this county. Secondly and in connection with the first

[18] The Bill of Rights (1689)
[19] Latin – literally outside their powers
[20] Commissioners of Customs and Excise v Cure & Deeley Ltd [1962] 1 Qb 340 (DC) and R v Secretary of State for Social Security, ex parte Joint Council for the Welfare of Immigrants [1997] 1 WLR 275 (CA).
[21] HTV Ltd v Price Commission (1976)
[22] Commonwealth principles on the accountability of and the relationship between the three branches of Government
[23] Law School, University of Hull, Legal System 2012/13, Pearson 2012, pg 19

argument, is that the executive has become more powerful and the cabinet is now the main proponent of law and that the Parliament is just a rubber stamp for the party which controls the majority in the house of commons. Thirdly it is claimed since the United Kingdom ascension into the European Union, the supremacy of law making has become the responsibility of Europe and now Europe is the dominant law maker in many areas of policy. Fourthly law must be compatible with the European Convention of Human Rights. Also with devolution, it is claimed that many law making facilities have been divested to the varying assemblies or Parliaments in Wales, Scotland or Northern Ireland, once again taking away the primacy of law making with the Parliament of the United Kingdom.

It is argued that today the largest percentage of law-making is carried out by Government Ministers, amongst others; in the form of delegated legislation and the Parliamentary controls over it are relatively limited. However, there are two major points with regards to delegated legislation, firstly secondary legislation has been authorised by primary legislation and can be seen as only fulfilling the role and function that has been given to it and is thus an extension of the primary legislation. Secondly the judicial scrutiny function with regard to the executive is to ensure that any delegated legislation is consistent with the scope of power granted by Parliament and to ensure the legality of government action and the actions of other public bodies. On the application of an individual, judicial review is a procedure through which the courts may question lawfulness of actions by public bodies[24]. Through this, though delegated legislation is the most abundant form of law making, it is still controlled by firstly primary legislation from Parliament and secondly under judicial control and as such it is a contribution to law making rather than primacy of law making.

With the increase in majority led government, it is claimed that the executive gets its laws passed according to its own agenda and thus rendering the Parliament as little more than a rubber stamp for its policies and legislation. This idea of the executive controlling the legislature is according to Montesquieu writing in 1748 on the separation of power, 'When the legislative and executive powers are united in the same person, …, there can be no liberty…' [25] In 2000 a House of Commons research paper looked at the relationship between the executive and the legislature with regards to the relationship and in terms of law making, believed that the United Kingdom had a unique form of the separation of power and definition of legislature and Parliament in that "The legislative role is generally regarded as primary, so much so that 'legislature' is nowadays all but a synonym for a Parliament. Modern societies are so complex and the reach of public policy so pervasive that Parliaments nowadays do not engage significantly in policy-making or policy-implementing. These are regarded as the functions of the executive arm of government. As Griffith and Ryle succinctly put it, 'Parliamentary government' means "not government by Parliament, but government through Parliament." Parliament acts as a forum, providing the essential, legitimising link between government and governed.[26] Lord Steyn in *Jackson* stated with regards to attempts for the executive to abuse its power to state 'While Parliamentary sovereignty may well continue to be the "general principle of our constitution", he argued, unchecked executive power does not hold such sway. As a result, an attempt by Parliament to render specific exercises of governmental power non-justiciable

[24] The Separation of Powers Standard Note: SN/PC/06053

[25] Montesquieu, Charles de Secondat, baron de, *The Sprit of Laws (c.1748),* Translated and edited by Anne Cohler, Basia Miller, Harold Stone. (New York: Cambridge University Press, 1989)

[26] Barry K Winetrobe , *Shifting Control? Aspects Of The Executive-Parliamentary Relationship*, ,House Of Commons Library Http://www.Parliament.Uk

may be rejected by the judges[27]. This was confirmed in *Bancoult* by Lord Hoffman who was sceptical of the executive being able to implement legislative measures without Parliamentary supervision as 'The principle of the sovereignty of Parliament … is founded upon the unique authority Parliament derives from its representative character. An exercise of the prerogative lacks this quality, although it may be legislative in character, it is still an exercise of power by the executive alone[28].

The major argument regarding the loss of primacy of law making in the United Kingdom is according to many scholars in the ascension of the United Kingdom and its acceptance of section 2(1) of the European Communities Act 1972 which required that European Law became supreme in all member states. This has led to at least two major cases where Acts of Parliament have been ruled to be incompatible with European Law. The cases have been Factortame and Equal Opportunities Commission[29]. However many judges and scholars do not regard these as the loss of sovereignty of Parliament and two important statements by distinguished judges Lord Bridge and Baroness Hale have stated their understanding of this situation. In *Factortame*, Lord Bridge stated:

'Whatever limitation of its sovereignty Parliament accepted … it was entirely voluntary … when decisions of the Court of Justice have exposed areas of United Kingdom law which failed to implement Council Directives, Parliament has always loyally accepted the obligation to make appropriate and prompt amendments. Thus there is nothing in any way novel in according supremacy to rules of Community [Union] law[30].'

As Baroness Hale put it in Jackson, 'Parliament has . . . for the time being at least, limited its own powers by the European Communities Act 1972. And the proposed Sovereignty clause in the European Bill firmly shows how the Parliament sees its understanding of European law implementation in the United Kingdom. 'It is only by virtue of an Act of Parliament that directly applicable or directly effective EU law (that is, the rights, powers, liabilities, obligations, restrictions, remedies and procedures referred to in section 2(1) of the European Communities Act 1972) falls to be recognised and available in law in the United Kingdom'[31].

The other major issue regarding European influence on law making in the United Kingdom is the European Convention of Human Rights and the enacting of the Human Rights Act 1998. The Act gave the courts the power to rule Acts of Parliament incompatible with the convention but unlike European law, it could not repeal the law. However this has caused controversy throughout the United Kingdom with outburst such as in 2009 with the then Conservative's Shadow Justice Secretary, Dominic Grieve QC, (who has supported the 1998 Act50) argued that "an increasing trend toward judicial legislation, under the Human Rights Act, has created tension with elected lawmakers in Parliament.[32]" Even in 2012, after a negative decision prompted the Prime Minister to vow that a Bill of Rights commission would be "established imminently because … it's about time we started making sure decisions are made in … Parliament rather than in the courts." Nevertheless, the Government has moved to implement the Supreme Court's judgment by means of the Sexual

[27] Jackson and Others v. Her Majesty's Attorney-General [2005] UKHL 56; [2006] 1 AC 262, para. 159
[28] R (on the application of Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs [2008] UKHL
[29] R v Secretary of State for Transport, ex p. Equal Opportunities Commission [1995] 1 AC 1.
[30] R v Secretary of State for Transport, ex parte Factortame Ltd (No 2) [1990] 2 AC 85
[31] House of Commons, European Scrutiny Committee; The EU Bill and Parliamentary sovereignty; Tenth Report of Session 2010–11
[32] 51 The Times, *"Shadow minister calls for power to be given back to the people"*, 9 July 2009

Offences Act 2003 (Remedial) Order 2012[33]. And in conclusion with regards Parliament and the Human Rights act, in *Simms,* Lord Hoffmann said:

"Parliamentary sovereignty means that Parliament can, if it chooses, legislate contrary to fundamental principles of human rights. The Human Rights Act 1998 will not detract from this power. The constraints upon its exercise by Parliament are ultimately political, not legal. But the principle of legality means that Parliament must squarely confront what it is doing and accept the political cost…. In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual[34]".

And a final note against the judiciary acting in a control over Parliament, Jeremy Bentham advocated that 'Judicial control over legislation conflicts with legislative 'Omni-competence' and the latter principle is paramount. The people themselves are left to remove and, if necessary, initiate the legal punishment of members of the legislature who support anti-constitutional offences'[35].

The final issue that relates to the primacy of Parliament for law making in the United Kingdom, is the increasing devolution of power to the legislatures of Wales, Scotland and Northern Ireland. However it is recognised that "The UK Parliament retains the power to legislate for Scotland on all matters, including those matters that are now within the legislative competence of the Scottish Parliament….However the Sewel convention has given the understanding that the UK government will not legislate in matters that have been devolved to the devolved legislatures within the UK, without the agreement of the devolved legislature[36]. Thus it can be see that devolution does not detract from Parliament as the primacy source of law in the United Kingdom.

Though the primacy of law making in the United kingdom being vested within Parliament with contributions from the executive and the judiciary has been criticised and has undertaken many changes from its original form and function, it can be seen that through, the ascension into the European Union and the requisite Supremacy of European law, the implementation of the Human rights Act and its provisions for incompatibility and review, the devolution of some aspects of Parliamentary law making along with the rise of delegated legislation, have changed the current theories of Parliamentary supremacy. However, this essay has shown that throughout these changes, the Parliament has maintained its role as bearing the responsibility for law making in the United Kingdom with the contribution from the executive and the judiciary.

Word count 4286

[33]5 5. Hansard, HC, Vol.523, Col.955 (February 16, 2011). As cited in Mark Elliott, *After Brighton: between a rock and a hard place,*P.L. 619 P.L. 2012, Oct, 619-628

[34] R v Secretary of State for the Home Department, Ex p Simms [2000] 2 AC 115 at para 131

[35] Frederick Rosen*, Jeremy Bentham and Representative democracy: a study of the constitutional code*, Clarendon press, 1985 pg 34

[36] House of Commons "the Sewel Convention" (library standard note) (25 November 2205) SS/PC/2084. Cited in Emily finch and Stefan fafinski*, legal skills* 3rd edn OUP 2011 pg 15

BIBLIOGRAPHY:

Primary Sources

Cases:

British Railways Board v Pickin [1974] A.C. 765; [1974] 2 W.L.R. 208; [1974] 1 All E.R. 609; (1974) 118 S.J. 134
R. v. Secretary of State for Transport, ex p. Factortame Ltd (No. 2) [1991] 1 A.C. 603.
R v. Secretary of State for the Home Department, ex parte Simms [2000] 2 AC 115.
A v Secretary of State for the Home Department [2005] 2 WLR 87.
R v Secretary of State for the Home Department, Ex parte Fire Brigades Union [1995] 2 AC 513
Ghaidon v Godin Mendoza [2004] 2 AC 557
R. v Clegg (Lee William) [1995] 1 A.C. 482; [1995] 2 W.L.R. 80; [1995] 1 All E.R. 334; [1995] 1 Cr. App. R. 507;
Regina (Jackson and others) v Attorney General HL [2005] UKHL 56 [2006] 1 A.C. 262
R v A [2002] (No 2) (HL(E)) A HL Regina A (No 2) [2001] UKHL 25
A [House of Lords] Regina v. Secretary of State for the Home Department, ex parte Pierson 1995, 539 A.C
Edinburgh & Dalkeith Railways v Wauchope (1842) 8 cl & f 710
X Ltd v Morgan-Grampian Ltd [1991] 1 AC 1
Madzimbamuto v Lardner-Burke [1969] 1 AC 645
R (on the application of Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs [2008] UKHL

Statutes and Statutory Instruments:

The Magna Carta (1297)
Crown and Parliament Recognition Act 1689
The Bill of Rights (1689)
The Claim of Right (1689)
The Act of Settlement (1701)
The Acts of Union (1707)
The Acts of Union (1800)
The Parliament Acts (1911 and 1949)
The European Communities Act 1972
The Human Rights Act 1998
The Scotland Act 1998
The Northern Ireland Act 1998
The Constitutional Reform Act 2005
The Government of Wales Act 2006
European Union Act 2011
Fixed-term Parliaments Act 2011

Secondary Sources:

Books

Adams JN and Brownsword R, *Understanding law*,(4th edn, sweet and Maxwell 2006)

Cook, Creyke, Geddes & Holloway, *Laying down the Law* (5th edn, Butterworths 2001)

Dicey A.V, *An Introduction to the study of the law of the constitution,* (5th edn, Macmillan and co ltd 1897)

Finch E and Fafinski S*, Legal Skills*,(3rd edn Oxford University Press 2011)

Goldsworthy, J.D., *Legislative Intentions, Legislative Supremacy, and Legal Positivism, in Legal Interpretation in Democratic States*, (J. Goldsworthy and T. Campbell Eds, Ashgate/Dartmouth 2002)

Grant W, *Pressure Groups and British Politics*, (Macmillan press ltd 2000)

Holland J and Webb J, *Learning Legal Rules* ,(7th edn Oxford University Press 2010)

Hughes H*, National Sovereignty and judicial autonomy in the British Commonwealth of Nations* ,(P.S King and Sons, Ltd 1931)

Huxley-Binns R and Martin J, *unlocking the English legal system*, (3rd edn, Hodder Education 2010)

Jennings WI, *The Law and the Constitution*, (5th edn University of London Press 1959)

Locke J*, Two Treatises of Government*, (Peter laslett Ed, Cambridge University press, 2004)

Kenyon J.P, *The Stuart Constitution; documents and commentary*,(Cambridge university press 1966)

May E*, Treatise on the law, privileges, proceedings and the usage of Parliament*,(C.J Boulton Editor, 21st edn, Butterworths 1989)

Montesquieu C*, The Spirit of Laws (c.1748).* (Translated and edited by Anne Cohler, Basia Miller, Harold Stone, Cambridge University Press, 1989)

Norton P, T*he constitution in flux*, (Basil Blackwell 1988)

Rosen F, *Jeremy Bentham and Representative democracy: a study of the constitutional code*, (Clarendon press 1985)

The Hansard Society Commission*, Making the law: the report of the Hansard society commission on the legislative process*,(the Hansard society 1993)

Vile M.J.C, *Constitutionalism and the separation of power*, (Oxford university press 1967)

Wilson G, *Question & Answer: English Legal System*, (Pearson 2012)

Contributed to edited books

Bradley A, *the changing constitution*, (6th edn, Jeffrey Jowell and Dawn Oliver eds, Oxford university press 2007)

Elliott C and Quinn F, *Chapter1 Case law in Law School, University of Hull, Legal System 2012/13,*(Pearson 2012)

Elliott C and Quinn F,, *Chapter 2 Statute law in Law School, University of Hull, Legal System 2012/13*, (Pearson 2012)

Griffith J.A.G, *The constitution and the commons*,(Royal institute of public administration, Parliament and the executive, RIPA 1982.)

Online Journals

T.R.S. Allan, Legislative supremacy and legislative intention: interpretation, meaning and Authority *CLJUK 685 accessed at http://www.westlaw.co.uk as WLDoc 12-11-21 10_19 (PM)

Mark Elliott, The demise of Parliamentary sovereignty? The implications for justifying judicial review, L.Q.R. 1999, 115(Jan), 119-137 accessed at http://www.westlaw.co.uk as WLDoc 12-11-28 9_5 (PM)

Mark Elliot, After Brighton: between a rock and a hard place, P.L. 619 P.L. 2012, Oct, 619-628 accessed at http://www.westlaw.co.uk as WLDoc 12-11-28 6_33 (PM)

Matthew Flinders, Shifting the Balance? Parliament, the Executive and the British Constitution University of Sheffield, Political Studies: 2002 VOL 50, 23–42 accessed at http://onlinelibrary.wiley.com/doi/10.1111/1467-9248.00357/full on 4/12/12

Michael Gordon, The conceptual foundations of Parliamentary sovereignty: reconsidering Jennings and Wade, P.L. 2009, Jul, 519-543 accessed at http://www.westlaw.co.uk as WLDoc 12-11-28 8_4 (PM)

Jeffrey Jowell, Parliamentary sovereignty under the new constitutional hypothesis, P.L. 2006, Aut, 562-580, accessed at http://www.westlaw.co.uk as WLDoc 12-11-28 8_29 (PM)

The Hon. Sir Anthony Mason AC, KBE , The Judge as Law-maker (1972) The Journal of Public Teachers of law 1972, 22. http://www.austlii.edu.au/au/journals/JCULawRw/1996/2.pdf accessed 17/12/2012

Lorne Neudorf , The Supreme Court and the New Judicial Independence, DOI: 10.7574/CJICL.01.02.39 Cambridge Journal of International and Comparative Law (1)2: 25–43 (2012) accessed at www.cjicl.org.uk › Issue Archive › Volume 1, Issue 2 (2012) at 28/11/12

Lord Steyn, Deference: a tangled story P.L. 2005, Sum, 346-359 accessed at http://www.westlaw.co.uk as WLDoc 12-11-29 4_34 (PM)

Lord Steyn, Democracy, the rule of law and the role of judges, E.H.R.L.R. 2006, 3, 243-253 accessed at http://www.westlaw.co.uk as WLDoc 12-11-28 8_24 (PM)

H.W.R Wade, *Sovereignty - revolution or evolution?* L.Q.R. 1996, 112(Oct), 568-575 accessed at http://www.westlaw.co.uk as WLDoc 12-11-28 9_13 (PM)

Diana Woodhouse , *United Kingdom The Constitutional Reform Act 2005 — defending judicial independence the English way,* * Downloaded from http://icon.Oxfordjournals.org at University of Hull on November 25, 2012 154 I•CON January 2007 Vol. 5: 153

Command papers and law commission reports

Richard Benwell and Oonagh Gay ,The Separation of Powers, Standard Note: SN/PC/06053 Last updated: 15 August , Parliament and Constitution Centre 2010. Accessed at www.parliament.uk/briefing-papers/sn06053.pdf on 14/12/12

Associate Professor Gerard Carney (Bond University) Australasian Study of Parliament Group (Queensland Chapter) Separation of Powers in the Westminster System 13 September 1993 Parliament House Brisbane, accessed at http://www.parliament.qld.gov.au/aspg/papers/930913.pdf on 22/12/12

Catherine Fairbairn , Same-sex marriage and civil partnerships: Standard Note:SN/HA/5882 Last updated: 14 August 2012 A Section Home Affairs Section, accessed at www.parliament.uk/briefing-papers/sn05882.pdf on 28/11/12

Alexander Horne , *The Changing Constitution: A Case For Judicial Confirmation Hearings?,* The Study of Parliament Group Paper No. 1 Home Affairs Research Section, House Of Commons , with a foreword by Sir Ross Cranston, study Of Parliament Group Paper No. 1 © 2010, accessed at http://www.studyofparliament.org.uk/spg-paper-1.pdf on 6/12/12

Barry K Winetrobe , *Shifting control? Aspects of the executive-Parliamentary relationship*, Research Paper 00/9212 December 2000 House Of Commons Library Parliament & Constitution Centre, House Of Commons Library accessed at www.parliament.uk/commons/lib/research/rp2000/rp00-092.pdf on 18/12/12

House of Commons European Scrutiny Committee, *The EU Bill and Parliamentary sovereignty Tenth Report of Session 2010–11 Volume I: Report, together with formal minutes* Volume II, 2010 HC 633-I House of Commons London: The Stationery Office Limited accessed at http://www.publications.parliament.uk/pa/cm201011/cmselect/cmeuleg/633/633i.pdf on 21/12/12

House of Commons European Scrutiny Committee Court of Justice of the European Union*: amendments to the Statute and Rules of Procedure Ninth Report of Session 2012-13 Documents considered by the Committee on 11 July 2012 Report, together with formal minutes Ordered by The House of Commons to be printed 11 July 2012,* HC 86-ix Published on 12 July 2012 by authority of the House of Commons London: The Stationery Office Limited, accessed at http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/86ix/86ix.pdf on 22/12/12

HOUSE OF Lords select Committee on the Constitution 6th Report of Session 2006–07 *Relations between the executive, the judiciary and Parliament Report with Evidence Ordered to be printed 11 July 2007 and published 26 July 2007,* Published by the Authority of the House of Lords London : The Stationery Office Limited HL Paper 151 http://www.Parliament.uk/hlconstitution as at 1/12/12

Commonwealth Principles On The Accountability Of And The Relationship Between The Three Branches Of Government: As agreed by Law Ministers and endorsed by the Commonwealth Heads of Government Meeting, Abuja, Nigeria, 2003 Relationship between branches of government booklet.qxd 10/05/2004 12:27 accessed at http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7BACC9270A-E929-4AE0-AEF9-4AAFEC68479C%7D_Latimer%20House%20Booklet%20130504.pdf on 10/12/12

Websites and blogs

Lord Phillips of Worth Maltravers, '*Judicial independence and accountability: a view from the Supreme Court',* Gustave Tuck Lecture, 8 February 2011 accessed at http://ukconstitutionallaw.org/2011/01/12/judicial-independence-accountability-a-view-from-the-supreme-court/ on 27/11/12

House of Lords: Separation of Powers HL Deb 17 February 1999 vol 597 cc710-39710 http://hansard.millbanksystems.com/lords/1999/feb/17/house-of-lords-separation-of-powers

Lord Neuberger Of Abbotsbury, Master of The Rolls, *Who Are The Masters Now?* Second Lord Alexander of Weedon Lecture 6 April 2011 accessed at http://www.judiciary.gov.uk/Resources/JCO/Documents/Speeches/mr-speech-weedon-lecture-110406.pdf on 6/12/12

Newspaper articles:

The Times, *"Shadow minister calls for power to be given back to the people",* 9 July 2009 accessed at http://www.thetimes.co.uk/tto/law/article2214566.ece on 19/12/12

Additional reading

Dietz Gottfreid, *two concepts of the rule of law* (Liberty Funds INC 1973)

John Hatchard and Peter Slin eds, *Parliamentary supremacy and judicial independence: a commonwealth approach,*(Cavendish publishing ltd 1999)