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TUTORIAL 2

PARLIAMENTARY SOVEREIGNTY – ORTHODOX THEORIES

The first few of our tutorial sessions are geared towards revisiting and consolidating the material that we have looked at in lectures. We will move towards more demanding classes later in the year, but for the present it is important that you build a reasonably firm foundation of knowledge on which we can build. In today's class we consider again the theories about 'sovereignty' associated with the work of Professor Dicey. You will find excerpts of the cases below in the on-line casebook. Please note that some of these excerpts are very brief. For you to get a fuller picture of the case, they should be read in conjunction with the textbook. Ideally you should read some of the cases in their entirety.
There are (at least) 2 designedly inadequate questions on this reading list. See if you can spot them.

Aims and objectives

a) to introduce student to the demands in preparation made by tutorial sessions

b) to familiarize students with the need to prioritise reading material

c) to revisit material covered in lectures on this topic

d) to introduce students to the skill of applying lecture derived material to cases not addressed in lectures

e) to introduce students to the skill of producing brief written summaries and analysis of cases

f) to begin to expose students to the demands of advancing summaries and analysis of legal principles in oral form

Learning outcomes

Well prepared and attentive students should have acquired by the end of this class:

a) a deeper understanding of orthodox and radical theories of parliamentary sovereignty

b) a preliminary awareness of the distinction between summary and analysis of legal material

c) an appreciation of the time demands imposed by preparation for tutorials

d) an initial awareness of the challenges posed by the need to participate in effective class discussion

Before looking at the questions in 1 and 2 below, give some thought to these issues.

(a) What do we mean by the notion of a 'sovereign' lawmaker ?

(b) Can a society have more than one 'sovereign' lawmaker?

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(c) What do we mean by the notion of a 'non-sovereign' lawmaker ?

1. The Diceyan theory

[O] Dicey (1915 8th ed - 1982 reprint) *An introduction to the study of the law of the constitution* chs.1-2.

[E/O] Loveland (2018) *Constitutional law*….. ch. 2, pp 19-30.

[E/O] Munro (1997 2nd ed) *Studies in constitutional law* ch. 5.

Make sure you have read at least one of the above sources.

Questions

What are the various elements of the orthodox Diceyan theory of parliamentary sovereignty? What is 'Parliament' for this purpose?

When and why did this theory emerge ?

What are the advantages, and to who do they accrue, of the doctrine that Parliament can pass legislation to achieve any objective it sees fit? What are the disadvantages - and who is adversely affected?

Why did the American revolutionaries not create Congress as a sovereign lawmaker? To who (or what) did the Americans give sovereign lawmaking power?

Is it satisfactory that Parliament should be the ultimate source of legal authority in 2018? Was it satisfactory in 1688? Has anything changed in the interim to affect the validity of this position?

So, if Dicey is right, what is the one thing that Parliament supposedly cannot do?

2. The enrolled bill rule

[E] *Edinburgh and Dalkeith Railway v Wauchope* (1842) 8 ER 279.

[E] *Pickin v British Railways Board* [1974] AC 765.

Questions

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Why should the courts not intervene when it appears an Act has been improperly or fraudulently passed?

Were Mr Wauchope and Mr Pickin left without a remedy? If they had a remedy, how 'effective' was it?

3. The doctrine of implied repeal

[O] *Vauxhall Estates, Ltd v Liverpool Corporation* [1932] 1 KB 733

[E] *Ellen Street Estates Ltd v Minister of Health* [1934] 1 KB 590.

Questions

Why might it be acceptable for a court to accept that it could strike down a statute that did not **expressly** repeal a previous, inconsistent Act?

Does it become any more acceptable for the court to do so if the earlier Act includes a provision saying it can only be amended by **express** provision?

What might the significance be, in terms of democratic principle, between express and implied terms in a statute?

4. Inconsistency with international law?

[E] *Mortenson v Peters* (1906) 14 SLT 227.

[O] *Cheney v Conn* [1968] 1 All ER 779.

Questions

Is there any point in the United Kingdom signing Treaties or accepting international obligations if they do not automatically have a superior status to statute?

What notice should the courts take of Treaties when applying British law?

5. A problem question – involving some fictitious Acts

The Electoral Franchise Act 1865 provides that the right to vote in parliamentary elections is to be given to:

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"..any male subject of her Majesty over the age of 18 years and possessed of freehold land to the value of £100 or more…"

The University Degrees Reform Act 1880 provides that:

"any person awarded a university degree shall have the right the vote in parliamentary election in the constituency where the University awarding the degree is located"

Eleanor Blofeld is a 17 year old scholastic prodigy, who has a law a degree from the University of Aberdeen awarded in June 1899. She does not own any freehold land. Is she entitled to vote in the August 1899 parliamentary election?

Would your answer be different if:

(a) Eleanor was 21; and/or

(b) Eleanor owned £10,000 of freehold land; or

(c) She is 17 in 1919, was awarded her degree in June 1919, and wants to vote in the August 1919 election?

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