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)
2. Domestic heresy

Jennings

'Rule of recognition' – 3 steps

2. Domestic heresy

Cases 2 – implied repeal

*Ellen Street Estates* (1934)  
Acquisition of Land Act 1919 s.7

Cases 3 – international law  
Statute overrides international law

*Mortensen v Peters* (1906)  
Herring Fisheries (Scotland) Act 1899

*Cheney v Conn* (196)  
Income tax/nuclear weapons

Cases 1 – manner and form  
procedural entrenchment?

*Trethowan* (1932 - New South Wales)  
abolition of second chamber

*Harris 1* (1952 - South Africa)  
non-white voting rights

*Wade (1955) Cambridge LJ*  
'ultimate political fact'

*Harris 2* (1953)  
'High Court of Parliament'

*Harris 3/Collins* (1956)  
Packing court and senate

Cases 2 – *Treaty of Union*  
substantive entrenchment?

*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

*McCarthys (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