

The Erosion of British Parliamentary Sovereignty Principle in Recent Years' Constitutional Reform

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Abstract: In recent years, Britain has advanced a series of reform measures in politics and justice, and has had a significant impact on the important principles of the British Constitution --the principle of parliamentary sovereignty. The Human Rights Act gives the judiciary the right to review parliamentary legislation, and the establishment of the Supreme Court has shifted the constitutional power of interpretation in the hands of parliament to the Supreme Court. The British tend to hand over the most important constitutional issues to the judiciary, not the parliament. Although the current constitution of the United Kingdom, the parliamentary sovereignty is still important, but with the British Constitution changes, this fundamental principle has been eroded.

Keywords: Parliamentary sovereignty; British constitution; Human rights supreme court

1. Introduction

The Labor Party came to power to promote a series of important reforms in the UK's political and judicial fields since the year 1997. These reforms have had a great impact on the British constitution. After these reforms, the judicial power has become very active. The judiciary has more power than before. The Human Rights Act 1998 brings the European Convention on Human Rights into the United Kingdom. The British judiciary had to comply with higher levels of law. The changes in the Supreme Judiciary, especially the establishment of the Supreme Court of UK, transferred the interpretation of the British Constitution from the hands of Parliament to the hands of the judiciary. Was deprived of the power to interpret the constitution, the parliament is no longer in any sense "supreme power". The influence of judicial power and the judiciary has had a great influence on the principles of the British Parliament's sovereignty.

There are several aspects of parliamentary sovereignty. As far as the legislation itself is concerned, parliamentary sovereignty means the following: There is no restriction on parliamentary legislation. Second: there is no law that cannot be changed by Parliament in the future. Third, the court cannot examine whether parliamentary legislation is effective. In terms of politics, parliamentary sovereignty means that parliament is dominant in the whole constitutional system, and that legislative power is above judicial power and executive power. In the interpretation of the Constitution, the parliament is the ultimate explanation Bureau, is unchallengeable. Human Rights Act 1998 changed this situation.

2. The Impact of Human Rights Act 1998 on the Principle of Parliamentary Sovereignty

Britain is the world's first constitutional state, but also a country of extreme importance to the protection of human rights. The United Kingdom has traditionally no bill of rights to protect the rights of minorities. The human rights of the United Kingdom "are not derived from the Constitution, but from the parliament and the judge"[1]In recent years, with the diversification of British social culture, the protection of minority rights is even more necessary[2]. The rights of many minorities cannot be guaranteed through elections, as evidenced by the recent refugee crisis and counter terrorism situation in Europe.

The British are also beginning to realize that it is not enough to rely solely on parliament to protect human rights. The British community began to discuss how to improve the level of human rights protection in the UK. After a lot of controversy. The British Parliament finally decided to incorporate the European Convention on Human Rights into the domestic law of the United Kingdom in the form of a Bill of Rights. Human rights Act does not create new rights, but rather confirms the rights that the original government has committed. There are three main points of the Bill of Rights: First, the Cabinet submits to the Parliament to examine whether it is consistent with the European Convention on Human Rights; secondly, for the courts, all legislation is interpreted in accordance with the content consistent with the Convention; Third, if it cannot make a consistent explanation, the Higher Court can issue a notice.

This legislation is clearly a great influence on the sovereignty of the British parliament. The bill does not give the task of guaranteeing human rights to the court. It is clear, however, that the court has once again gained the right to review parliamentary legislation. And the intensity of this review is greater. This is in the traditional theory, it is almost impossible.

First, in the area of legislation, the legislature can no longer "legislate any law", and all laws that violate human rights will be denied in the cabinet's proposal. Second, any idea of repealing this law would be questioned. Former British Prime Minister David Cameron has claimed to abolish the bill, has been widely criticized.[3] Thirdly, the court was given the power to review parliamentary legislation. Although the parliamentary legislation was declared inconsistent by the court, it continued to be effective and continued to bind the parties, but the council had to pay attention to those laws. To proceed with revision. Of course, the British Parliament can disregard the court's inconsistency. However, the court's powerful power of interpretation is already a force that cannot be ignored. From the relevant statistics, almost all of the laws that have been declared inconsistent with human rights conventions have been amended. Fourth, after the implementation of the Human Rights Act, the parliament is no longer in the whole constitutional system in the dominant parliament, had to succumb to a "fundamental law", the status of judicial power has increased significantly. The parliamentary legislation is subject to court scrutiny, which is a big limitation for parliament. In the common law system, the judge can make the law, but the council can modify the legislation to deny the judge's explanation. In the case of human rights, Parliament cannot create a law that violates human rights after it has been declared inconsistent by the court. To sum up, the implementation of human rights law has allowed the British Parliament to successfully limit itself and its successors, and is a major erosion of the British Parliament's sovereignty principle.

3. The Effect of Establishment of UK Supreme Court on the Principle of Parliamentary Sovereignty

The establishment of the Supreme Court of United Kingdom has had a significant impact on the British Constitution. The impact of the establishment of the Supreme Court in the United Kingdom is mainly in the form of formal, but in practice, there are also very substantial impact.

This is mainly manifested in three points, one in practice, the Supreme Court of the judges have a greater emboldened to develop the rule of law, resistance to parliamentary inappropriate legislation. The senior judges before the Supreme Court were so, and when they were independent of the parliamentary court, they would have

more courage. Second, the decentralization of affairs into the jurisdiction of the Supreme Court. Indicating that in some parts of the United Kingdom, the authority of Parliament has been handed over to the newly established Supreme Court. Third, The British politicians and the judiciary tend to hand over the most important constitutional issues to the Supreme Court of United Kingdom. Such as "exit the EU", the relationship between the interpretation of the British Constitution, and this has a significant impact on the case by the British Supreme Court. "Britain exit EU case" in a sense can be seen as the British version of the "Marbury v. Madison case." In this respect, the establishment of the UK Supreme Court for the original British original sovereign principle is a great impact.

Before the establishment of the Supreme Court of United Kingdom, the common law judges of the United Kingdom were interested in using the common law to construct the British constitutional framework. Such as the early years before the Kirk Justice. The tradition of common law, follow the tradition of precedent, allows British judges, especially senior judges, to create new theories that reinterpret and develop the original theory of parliamentary sovereignty. And even the judge put forward the judge is the ultimate recognition of the rules of the interpreter theory. It can be seen that the influence of this power of justice on the principle of parliamentary sovereignty. The judges of the common law made historic judgments in the case of Anisminic Ltd. V. Foreigning commission and another. The theoretical basis of the creative interpretation of the court is a series of principles of common law, such as natural justice, ineffectiveness and so on. These basic legal principles are almost a powerful weapon to restrict parliamentary sovereignty.

The common practice of the British common law, in addition to the development of the British judges in addition to the above mentioned many principles, but also further developed a number of new concepts, such as "senior law" or "constitutional law" and "constitutional rights". These concepts further challenge the sovereignty of the British parliament. In some cases, the judges reinterpreted what is called "parliamentary legislation" theory. In the opinion of these judges, parliamentary sovereignty is created by judges of common law. Rather than wearing snow in the long history of the formation.

Prior to the establishment of the Supreme Court of the United Kingdom, senior judges had a different view of parliamentary sovereignty than the traditional view. After the establishment of the UK Supreme Court, with the personnel, institutions, financial aspects are independent of the parliament. The judges of the Supreme Court of the United Kingdom may be more radical.

Decentralization matters included in the jurisdiction of the Supreme Court of the United Kingdom is a major challenge to the sovereignty of parliament. The power of

Parliament is redefined by decentralization. In the non-England region of the United Kingdom, the Parliament passed the Scottish Parliament, the Welsh National Assembly and the Northern Ireland Autonomous Government, respectively, through the Scottish Act, the Welsh Act and the Northern Ireland Act respectively. The governments of these decentralized areas are not "local governments", but the central government's local presence. In other words, the decision of the Scottish Parliament and the Northern Irish government represents the decision of the British Parliament. Under the Constitutional Reform Act 2005, the affairs of the decentralized areas are governed by the Supreme Court of the United Kingdom, and the laws enacted by these bodies are subject to the constitutional review of the courts. This means that part of the will of sovereignty is subject to judicial review. In these areas, de facto parliamentary sovereignty has been replaced by judicial sovereignty. In decentralized areas, it can be said that the Supreme Court of England has gained the power to review parliamentary legislation.

On the most important constitutional issues, the British public, who in fact politics or the final adjudication handed over to the newly established Supreme Court. The Brexit case is a typical. In 2016 the United Kingdom held a referendum on whether to exit from the EU issue, the results of most voters agreed to leave from the EU. The government and a citizen named Miller are in dispute when the government can unilaterally withdraw from the EU or pass a parliamentary vote to exit from the EU. The government believes that this issue is royal privilege, the government can unilaterally start the Lisbon Treaty 50, out of the EU. While Miller and other citizens believe that under the British Constitution, the govern-

ment has no right to exit from the EU unilaterally. The case eventually appealed to the Supreme Court of United Kingdom, and the final 11 judges of the Supreme Court of the United Kingdom ruled that the government had lost on 8: 3.[6] This case demonstrates the important role of the UK Supreme Court in the British Constitution. On the most important constitutional controversy by the court to determine, in this sense, the Supreme Court has some kind of interpretation of the constitutional privilege. In this sense, the establishment of the Supreme Court of United Kingdom has a far-reaching impact on the constitutional principles of the United Kingdom.

4 . Conclusions

The constitutional process of Britain in recent years, especially in the field of justice, has largely reconstructed parliamentary sovereignty. Although this series of bills is proposed and adopted by parliament, the council can cancel these reforms at any time and return to the original system, but this proposal can only stay in theory. In the context of human rights protection, that is no different from the historical trend of the move, will be a strong protest at home and abroad. In this sense, the British constitutional reform in recent years has the original constitutional principles - parliamentary sovereignty eroded.

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