Parliamentary Sovereignty: The Orthodox Doctrine

Historical Origins

1. The idea that what the Queen enacts in parliament is law. It's the legislative supremacy of parliament

Key Historical Moments:

1.Magna Carta 1215= signalled the creation of the world's first human rights document. Also this is where the origins of parliament come from.

17th Century upheaval crucial period in England as this saw parliament changing continuously. Examples- English Civil War, Glorious Revolution and Bill of Rights etc

Diceyan Orthodoxy

Dicey's Rule:parliament has, under the English constitution the right to make or unmake any law... no person or body is recognized by the law of England as having a right to override or set aside the legislation of Parliament

Positive Aspect:

1. Legislature has the power to alter any law.

Cheyney v Conn 1968= what the statute itself enacts cannot be unlawful, because what the statute says and provides is itself the law... it is not for the court to say that a parliamentary enactment, the highest law in this country is illegal.-Ungoed-Thomas J

2. No Parliament can bind its successors. (doctrine of implied repeal

Ellen Street Estates v Minister of Health 1934- the legislature cannot bind itself as the form of subsequent legislation... impossible for parliament to enact that in a subsequent statute dealing with the same subject matter there can be no implied repeal.

Negative Aspect:

1. no person or body has the right to set aside or disregard an Act of Parliament

Wauchope 1842= all that court of justice can do is to look to the parliamentary roll: if from that it should appear that a bill has passed both houses and received the Royal assent, no court of justice can inquire into the mode in which it was introduced into Parliament, nor into what was done previous to its introduction, or what passed in Parliament during its various stages through both houses

-THIS IS CALLED THE ENROLLED BILL RULE. (applied in Jackson v Attorney General)

2. No questioning internal proceedings

BRB v Pickin 1974= the respondent alleged that a previous Act of Parliament had been passed only after Parliament had been misled by the appellant. Court upheld the validity of the Act, stating that it would be for Parliament itself to investigate any defects in procedure.

Manner and Form or the New view

The New View:'On this view a sovereign legislature may validly reformulate what shall count as legislation for particular purposes. ...Unfortunately ...the 'new view' is far from being a unanimous view.' Geoffrey Marshall, Constitutional Theory (OUP 1971) p.43.

-No parliament can bind its successors.

Manner and Form legislation means- if parliament is really sovereign it can take decisions to limit its own supremacy. If parliament wanted to adopt constitution of procedure about how it makes laws in the future it should be able to do so

origin of the expression= s5 Colonial Laws Validity Act 1865

Commonwealth case law seems to be the only authority for the contention that P may be bound by such special provision regulating the 'manner and form' of future legislation, providing partial entrenchment by the likes of a referendum or special majorities in each house for any amendment or repeal.

-Harris v Minister of the Interior 1952= The Union Parliament was bound in the manner and form of its legislation, despite its legal independence from Britain. The legislature wasn't supreme as its power was granted by Britain

AG for New South Wales vTrethowan 1932= the provision that Bills of the nature stated must be approved by the electors before being presented was a provision as to "manner and form" within the meaning of the proviso; and accordingly that the Bills could not lawfully be presented unless and until they had been approved by a majority of the electors voting.

Bribery Comr v Ranasinghe 1965=A legislature has no power to ignore the conditions of lawmaking that are imposed by the instrument which itself regulates its power to make law. [...]. A legislature has not, however, some inherent power derived from the mere fact of its establishment to make a valid law by the resolution of a bare majority which its own constitutional instrument has said shall not be valid unless made by a different type of majority or by a different legislative process

What is the source of Parliamentary Sovereignty?

The doctrine is regarded by most as a rule of recognition:
HLA Hart, The Concept of Law. The rule of recognition is the ultimate legal rule (p.107) that derives its authority not from the validity of other rules, but from its being accepted and enforced by the officials in a legal system.

Common Law rule: the doctrine of parliamentary sovereignty is a matter of judge-made common law. The judges can therefore modify or repudiate the doctrine, so as to limit or extinguish Parliament's authority. (believed by Jennings, RFV Heuston, Lord Steyn in Jackson; Lord Hope in Jackson.
Lord Steyn, Jackson: '[T]he supremacy of Parliament is still the general principle of our constitution. The judges created this principle. IF that is so, it is not unthinkable that circumstances could arise where the courts may have to qualify a principle established on a different hypothesis of constitutionalism.'
maybe the courts may refuse to follow an act of parliament

Political practice/custom of official consensus: The rule of parliamentary sovereignty has its authority because there is an official consensus between senior officials of all branches of government. On this view, it was not fixed by judges alone, and it is not maintained by judge's

Political Appeal of the Doctrine

A.Parliamentary Sovereignty and Democracy

'The principle of the sovereignty of Parliament, as it has been developed by the courts over the past 350 years, is founded upon the unique authority Parliament derives from its representative character.' (R (Bancoult) v SS for Foreign and Commonwealth Affairs (no 2)) [2008] UKHL 61 [35] (per Lord Hoffmann)).
First Great Reform Act (1832): Before this act came into effect, only 11 percent of adult men had the right to vote. This extended the franchise. Gradual extension of the franchise