



Parliamentary Book Shelf

The Sovereignty of Parliament: History and Philosophy by Jeffrey Goldsworthy, Oxford: Clarendon Press, 1999

Ever since Lord Bryce published 'The Decline of Legislatures' in 1921, the law-making function of parliaments has been largely ignored by academics, if not belittled. This has resulted in an inadequate understanding of the importance of the parliamentary system and the meaning of such fundamental concepts as the sovereignty of parliament. Jeffrey Goldsworthy, an Associate Professor of Law at Australia's Monash University, in this well-researched and readable book, tries to reverse this trend by providing a very comprehensive analysis of the nature and source of this doctrine which is still at core of the legal systems in the United Kingdom, Australia and New Zealand. He traces its evolution in England from the earliest beginnings of Parliament to the nineteenth century and provides a thoughtful discussion on how parliamentary authority relates to the common law, to the judiciary and to the moral duty to disobey, and how parliamentary sovereignty relates to popular sovereignty and the right of resistance.

While his approach is primarily historical, it is also philosophical and works of all the great English philosophers from medieval to early modern to modern are referred to, for example Sir Thomas More, Fortescue, Coke, Hobbes, Locke, Blackstone, Burke, Adam Smith, Bagehot, Dicey, Austin, H.L.A. Hart and Dworkin. This sur-

vey of thinkers on Parliament and the law is a helpful introductory or refresher course for students of parliament although invariably (and understandably) he has given short shrift to the contributions made to the discussion by some of the giants, such as Jeremy Bentham and John Stuart Mill.

For Goldsworthy, the doctrine of parliamentary sovereignty maintains that Parliament has the ultimate authority to determine what the law shall be. Judges can declare what the law is but are bound to accept every Act of Parliament as valid law. He attacks the historical myths which surround the concept, such as that the omnipotence of Parliament was 'inspired by Hobbes and invented by Blackstone'. He convincingly points to historical evidence that the legal power of Parliament was recognised as supreme and absolute well before the sixteenth century. He also challenges recent thinking put forward by such critics of the doctrine as Trevor Allen and Michael Detmold that judges only obey statutes because they are required to do so by principles of justice, the rule of law and equal citizenship and therefore Parliament's law-making authority is limited by those principles. Goldsworthy examines the historical record and concludes this is not so. He believes the doctrine is clear that Parliament has the legal authority to enact statutes and that judges have the legal duty to enforce them but not that judges would be morally justified in enforcing them. Legal validity and authority are not

the same as moral validity and authority.

The book explores interesting questions. Did Parliament's powers derive from the King's since Parliament was part of the King's High Court or did it have its own legal legitimacy and authority independent of the King? Is Parliament's law-making authority still limited today by the 1707 Scottish Act of Union whose terms were to be 'unalterable'? What was the significance of the proceedings of *Stockdale v Hansard* (1839) with respect to the existence and extent of the privileges of the House of Commons? Such questions challenge our knowledge of parliamentary history and his excellent bibliography allows us to follow up on them in more detail.

Goldsworthy has given us a convincing portrayal of the rationale and benefits of the doctrine as it applies to the English context. Unquestionably, the placing of unlimited law-making power in a single, democratic institution reflecting the collective wisdom of the community has brought relative stability there since 1689. His analysis helps us understand why Britain has always shown a preference for pragmatic, incremental adaptation of customary institutions. However, one wonders if this doctrine which has grown out of and been defined by the specific historical circumstances of England and traced so lucidly by Goldsworthy can be successfully transplanted elsewhere. While this approach to law-making has been successful in the United Kingdom, it has not always