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Redefining Parliamentary Sovereignty: We Do Not Believe in Fairy Tales Anymore

Marc Johnson* and Samson Jose**

Abstract

This article re-examines the orthodox Diceyan conception of parliamentary sovereignty in light of contemporary constitutional principle and practice in the United Kingdom. It argues that the traditional claim that Parliament may legislate without legal limitation remains doctrinally influential but is no longer an adequate account of legislative authority within a constitutional order committed to the rule of law. The article contends that sovereignty should not be understood as an inherent or absolute attribute of Parliament, but as a contingent and legally mediated form of authority, sustained through recognition within the legal order and bounded by the constitutional requirements of legality, accountability, and access to justice. Rather than treating Parliament as a monolithic constitutional actor, the article analyses legislation as the product of individual parliamentarians acting within structures of party discipline, executive dominance, and electoral distortion. On that basis, it argues that the language of sovereign Parliament obscures the reality that law-making power is exercised by identifiable political actors whose authority requires legal constraint. It develops this claim through public law doctrine and constitutional theory, including the rule of recognition, the *grundnorm*, social contract thought, and contemporary jurisprudence on legality and ouster clauses. The article concludes that the better view is not that the rule of law bends to parliamentary sovereignty, but that Parliament's legislative authority is itself conditioned by the rule of law and by the constitutional limits necessary to secure democratic legitimacy. In that sense, the article advances a redefined account of parliamentary sovereignty suited to the modern constitutional framework of the United Kingdom.

I. Introduction

In 2020, Marc Johnson wrote that the UK has failed to break free from the untenable orthodox view of parliamentary sovereignty, because many remain unwilling to

relinquish a former ideal that has no place in modern society.[1] Parliamentarians make law, and we propose here that there is no justification for those individuals possessing effectively unrestricted law-making powers simply because they are democratically elected. While many constitutional and political theorists may largely agree with our assertions, recent judicial decisions clearly demonstrate that the orthodox definition of parliamentary sovereignty, as propounded by Albert Venn Dicey,[2] continues to persist and influence the judiciary. This continued influence was expressly affirmed by the Supreme Court in *R (Miller) v Secretary of State for Exiting the European Union* (2017), where the Court stated that parliamentary sovereignty means that 'Parliament has "the right to make or unmake any law whatsoever; and further, no person or body is recognised by the law as having a right to override or set aside the legislation of Parliament"',[3] citing Dicey directly. This affirmation has been reiterated in various later cases. For instance, in *In the Matter of an Application by JR80 for Judicial Review* (2019), the Court of Appeal in Northern Ireland held that '[t]he sovereignty of the Westminster Parliament in constitutional law means that the courts in this country have no power to declare enacted law to be invalid',[4] expressly denying that a common law limit on parliamentary sovereignty currently exists.[5] Similarly, in *Ragbir Singh, Lal Kaur, Bhupinder Singh Khalsa v Secretary of State for the Home Department,* (2025), the Court of Session referred to *Miller* and reiterated the point that Diceyan parliamentary sovereignty remains the prevailing legal position.[6]

In most other states, democratically elected legislators must still make laws that comply with fundamental legal principles, such as the rule of law.[7] In support of this point, and as an example of the prevalence of the rule of law, at its 106th plenary meeting in 2016, the Venice Commission adopted the Rule of Law Checklist, produced by a panel of experts that it had convened.[8] The Introduction to the Checklist outlines the rule of law as 'a concept of universal validity', which had been 'endorsed by all Member States of the United Nations' and had even been enshrined in key international instruments such as the Treaty on European Union.[9] According to the Checklist, several core elements are common to the rule of law, *Rechtsstaat*, and *État de droit*, namely: that laws are enacted through a transparent, accountable, and democratic process; that legal norms are clear, stable, and foreseeable; that public powers are exercised in accordance with law and free from arbitrariness; that access to justice is ensured through independent and impartial courts, with provision for

* Senior Teaching Fellow, University of Southampton.
** Lecturer in Law, University of the West of England.
[1] Marc Johnson, 'Legislative Sovereignty: moving from jurisprudence towards metaphysics' (2020) 11(3) Jurisprudence 360.
[2] Albert Venn Dicey, *Introduction to the Study of the Constitution* (8th edn, Macmillan 1915) 37-38.
[3] *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5 [43].
[4] *In the Matter of an Application by JR80 for Judicial Review* [2019] NICA 58 [110].
[5] ibid. '…At paragraphs [52] and [53] we have summarised the obiter comments as to whether there is a limit to Parliamentary sovereignty at common law. There is no decided authority for such a limit.'
[6] *Ragbir Singh, Lal Kaur, Bhupinder Singh Khalsa v The Secretary of State for the Home Department* [2025] CSIH 4.
[7] While we refer throughout to the rule of law as a foundational constitutional principle, a detailed treatment of its many dimensions, from formal to substantive conceptions, lies beyond the scope of this article. For authoritative accounts, see Lon L. Fuller, *The Morality of Law* (rev edn, Yale University Press 1969), especially chapters II to IV; Joseph Raz, 'The Rule of Law and Its Virtue' (1977) 93 Law Quarterly Review 195; Paul Craig, 'Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework' [1997] Public Law 467; and Tom Bingham, *The Rule of Law* (Penguin 2010).
[8] European Commission for Democracy Through Law, 'The Rule of Law Checklist' (Council of Europe 2016).
[9] ibid [9].

judicial review of executive actions; that human rights are respected; and that all persons are treated equally before the law without discrimination.[10] These are expressed as operational standards that provide the legal infrastructure for any functioning constitutional democracy. They are conditions of both form and substance, albeit to a degree. Amongst these is the guarantee of judicial oversight, without which the exercise of power cannot meaningfully be held to account. As the Checklist further states:

> 'The exercise of legislative and executive power should be reviewable for its constitutionality and legality by an independent and impartial judiciary. A well-functioning judiciary, whose decisions are effectively implemented, is of the highest importance for the maintenance and enhancement of the Rule of Law.'[11]

The Constitutional Reform Act 2005 makes explicit reference to the rule of law as a component of the UK constitution, although it does not define the concept, which is less helpful given its myriad of possible connotations, from purely formal, to substantive, to procedural, as well as nuanced versions of each of these.[12] However, the UK remains, at the time of writing, a member of the Council of Europe, and was actively involved in the endorsement of the Checklist through its participation in the Committee of Ministers, the Congress of Local and Regional Authorities, and the Parliamentary Assembly. Moreover, Sir Jeffrey Jowell, a UK constitutional scholar, was a contributing member of the panel which drafted both the 2016 Checklist and the earlier 2011 report upon which it builds.[13] Therefore, the Checklist is a useful and highly persuasive benchmark for specifying the institutional requirements ordinarily associated with the rule of law in contemporary constitutional democracies, including the United Kingdom. We do not treat it as legally binding domestic authority, but as an authoritative articulation of criteria against which claims of legally unreviewable legislative power can be evaluated. Given the concept's ubiquity and apparent universality, save for disagreements as to its precise content, the rule of law may plausibly be understood as supplying constitutional conditions with which any defensible account of legislative authority must be compatible. On that view, the question is not simply whether Parliament remains sovereign in an orthodox sense, but whether any such conception of sovereignty can be sustained consistently with the legal and institutional requirements of the rule of law.[14]

Given the rule of law's foundational role, it becomes evident that claims to sovereignty based on nostalgic reverence for an Imperial Parliament (as Dicey called it) are increasingly unsustainable bases for modern constitutional law. As Lord Reid said, albeit in relation to another issue, '… we do not believe in fairy tales any more'.[15] In this article, we argue that the orthodox idea of an excessively sovereign UK Parliament, capable of legislating without effective legal constraint, should no longer be treated as an adequate account of legislative authority. By this we do not mean to deny the existence or importance of political constraints on Parliament in practice, but to question the orthodox claim that such political limits are an adequate substitute for

[10] ibid [18].
[11] ibid [39].
[12] Constitutional Reform Act 2005, s 1.
[13] European Commission for Democracy Through Law, 'Report on The Rule of Law' (Adopted by the Venice Commission at its 86th plenary session in Venice on 25-26 March 2011, Council of Europe 2011).
[14] Johnson (n 1), see 'Model 3 – Unintended Constraints' and 'Sovereignty as a Metaphysical Concept'.
[15] Lord Reid, 'The Judge as Lawmaker' (1972) 12(1) Journal of the Society of Public Teachers of Law 22, 22.

legal constraint within a constitutional order committed to the rule of law. We argue that parliamentarians make law, and that all those who wield public power, however they acquire it, must remain accountable under the rule of law as a fundamental constitutional principle. The central question, therefore, is whether a constitutional order committed to legality, accountability, and independent adjudication can coherently treat legislative authority as legally uncontestable. This, in itself, is not a novel claim, but its practical implications remain highly relevant. For example, in the (now repealed) Safety of Rwanda (Asylum and Immigration) Act 2024, Parliament asserted the power to determine factual designations, such as declaring Rwanda a 'safe country',[16] despite contrary findings by the Supreme Court,[17] while simultaneously and explicitly excluding judicial oversight.[18] This Act is emblematic of the very concern that we raise: that power, even when democratically conferred, requires legal constraint. It demonstrates the danger of a sovereignty doctrine that permits Parliament to assert legal truths while excluding judicial scrutiny, treating legislative will as incontestable.

This raises a broader constitutional question: how should legislative authority be defined and delimited in accordance with these principles? As previously outlined, the rule of law entails specific structural requirements that constrain the exercise of public power, including legality, legal certainty, and access to justice through an independent and impartial judiciary. These are not abstract ideals; rather, they are concrete safeguards that structure how public power is exercised. Of particular importance is the insistence that legislative and executive action must be subject to judicial review for legality and constitutionality. Without such mechanisms, the rule of law cannot be said to function in any meaningful sense. Where oversight is deliberately excluded, as in the Safety of Rwanda (Asylum and Immigration) Act 2024, the result is a profound erosion of legal accountability. Such departures from foundational constitutional safeguards call into question whether legislative action of that kind can be reconciled with a constitutional order committed to the rule of law. Where judicial scrutiny is deliberately displaced, the issue is not merely one of institutional preference, but of the legal conditions under which public power may properly be exercised.

Our claim is therefore both analytical and normative. Analytically, we show how orthodox sovereignty discourse sustains itself through legal theory and institutional practice, even where it obscures the individual agency that produces legislation. Normatively, we argue that a constitutional order committed to the rule of law cannot treat legislative will as legally incontestable where doing so disables judicial scrutiny and undermines core constitutional safeguards.

To understand how such a model of sovereignty remains operative despite its dangers, it is necessary to examine the legal theory that sustains it. For a century or so, theorists and lawyers have been trying to square the circle; that is, make sense of the orthodox view of parliamentary sovereignty in operation. As previously noted, this orthodoxy is most closely associated with Dicey's formulation, which held that Parliament can make any law it wishes, that no Parliament can bind a successor, and that no person can set aside an Act of Parliament. Strictly understood, this creates a paradox; namely, if Parliament can make any law that it wants, it can make a law that permanently

[16] Safety of Rwanda (Asylum and Immigration) Act 2024, s 1(2).
[17] *R (on the application of AAA (Syria)) v Secretary of State for the Home Department* [2023] UKSC 42.
[18] (n 16) s 2.

disbands Parliament, so that it no longer exists.[19] In doing so, there would be no future Parliaments, so it would, in effect, bind itself. Even Dicey appeared to later recognise the extremes of such a position. In *Introduction to the Study of the Law of the Constitution*, Dicey uses Leslie Stephen's hypothetical scenario from *The Science of Ethics*, stating that Parliament could pass a law banning smoking on the streets of Paris or putting all blue-eyed babies to death.[20] Dicey went on to quote Stephen in saying that 'legislators must go mad before they could pass such a law, and subjects be idiotic before they could submit to it'.[21] Since then, lawyers and theorists have proffered a multiplicity of justifications for suggesting that Parliament has no legal limit to its power, but instead that limits are political.[22] By dividing sovereignty into legal and political realms, many have attempted to retain the idea that Parliament is legally unrestrained and that any constraint on its power to legislate is purely political.

This Diceyan orthodoxy is not merely a historical curiosity; it is a legal fiction that continues to shape how power is framed, exercised, and justified in the UK. We refer to it as a legal fiction because it is a doctrine maintained in law despite its disconnection from modern constitutional realities and the difficulty of justifying it on principled grounds. While legal fictions can serve important functions in sustaining coherence and predictability in legal systems, this one preserves a model of power that remains influential in practice even though its conceptual and normative foundations are increasingly unstable. In this article, we apply the principles of methodological individualism to parliamentary sovereignty. This approach holds that social and political institutions should be analysed by examining the actions and motivations of individual agents rather than abstract collectives. In doing so, we bring into focus the fact that behind this fiction are individual parliamentarians, each driven by personal and political motives.[23] This understanding significantly undermines traditional justifications for parliamentary sovereignty by demonstrating that legislative power is exercised not by an abstract collective but by individuals whose authority requires explicit legal constraints.

In what follows, we advance three connected arguments. First, that the orthodox Diceyan conception of parliamentary sovereignty persists in UK law as a legal fiction, notwithstanding its tension with contemporary constitutional realities. Second, that methodological individualism exposes how legislative power is exercised by identifiable actors within Parliament, thereby weakening the claim that sovereignty can coherently be attributed to Parliament as an abstract collective. Third, that this model of sovereignty, when combined with the UK's uncodified constitution and majoritarian electoral system, creates conditions in which democratic distortion and

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[19] Johnson (n 1) 372; Marc Johnson, 'Models of Parliamentary Sovereignty' (University of Bristol Law School Blog, 4 December 2017) <https://legalresearch.blogs.bris.ac.uk/2017/12/the-models-of-parliamentary-sovereignty/> accessed 16 February 2026.

[20] Dicey (n 2) 79; Leslie Stephen, *The Science of Ethics* (Smith, Elder, and Co 1882) 143.

[21] Dicey (n 2) 79.

[22] For instance, see Sir W. Ivor Jennings, *The Law and the Constitution* (5th edn, University of London Press 1959).

[23] Public Choice Theory shares some analytical ground with our argument in that it treats legislators as self-interested actors rather than disinterested agents of the public good. See, for example, James M. Buchanan and Gordon Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (University of Michigan Press 1962); Dennis C Mueller, *Public Choice III* (Cambridge University Press 2003). However, our approach diverges from the economic focus of PCT by foregrounding the ethical implications of concentrated legislative power and the normative case for legal constraint. Methodological individualism is here deployed not merely as a descriptive tool, but as part of a broader argument for structural accountability in constitutional design.

institutional fragility become constitutionally salient. Taken together, these arguments support a more realistic and principled account of legislative authority, one constrained by legal norms, grounded in the rule of law, and informed by how power is exercised in practice. In pursuance of the first argument, it is necessary to examine the prevailing conceptions of parliamentary sovereignty in order to demonstrate how they continue to dominate constitutional thinking despite their many shortcomings. The arguments proceed as follows. Section 2 sets out the principal models of parliamentary sovereignty and explains why the orthodox Diceyan account remains influential in doctrine despite its conceptual and practical shortcomings. Section 3 then applies methodological individualism to the exercise of legislative authority, before Sections 4 and 5 develop the implications for democratic legitimacy and institutional fragility, including the risks created by majoritarian electoral outcomes in an uncodified constitutional order.

II. Models of Parliamentary Sovereignty

Previously, Johnson has outlined three models that the disparate body of work on parliamentary sovereignty can be loosely collected under.[24] We will not repeat that lengthy review here; however, for the sake of understanding and clarity, we have provided an applied summary, along with additional points of clarity and support, pertinent to this article's arguments, prior to considering the impact of methodological individualism. To begin with, it is necessary to state that the starting point for discussing the ontology of parliamentary sovereignty is to turn to Dicey. We stress a dissatisfaction with this due to the manner in which parts of Dicey's work are presented. For example, in 2003, Rivka Weill rather notably contended that 'Dicey was not Diceyan'.[25] Weill argued that Dicey recognised that constitutional law in the UK possessed a particular significance and status, and that constitutional change could only be brought about with the sustained and explicit approval of the people, not the government or even a small majority in Parliament.[26] Weill explains that Dicey appears to assert that Parliament is comprised of four key elements as opposed to the three with which we are commonly familiar. The House of Commons, the House of Lords, and the Monarch are accompanied by the People, without whom it is not possible to effect constitutional change.[27] In his later writing, Dicey argued that constitutional change in the UK should be legitimised through a referendum of the people.[28] Therefore, the trope that is often returned to and ascribed to Dicey, namely that Parliament is the ultimate lawmaker having authority to make law on anything it chooses, that no one can set aside an Act of Parliament, and that no Parliament may bind its successors, is a limited review of Dicey's position, as it evolved on the matter.

The 'continuing sovereignty' model of parliamentary sovereignty is the closest to that espoused by Dicey in part of his work. It appears as an orthodox model taking a particularly stringent approach to expressing the law-making powers of Parliament. The continuing sovereignty model appears to suggest that Parliament holds absolute legislative authority, unbound by its predecessors and capable of legislating on any matter. However, this model faces criticism for its anachronistic stance in a world where legal and societal evolutions have introduced complexities beyond its purview.

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[24] Johnson (n 1) 363-381.
[25] Rivka Weill, 'Dicey was not Diceyan' (2003) 62(2) The Cambridge Law Journal 474, 475-476.
[26] Richard A. Cosgrove, *The Rule of Law: Albert Venn Dicey, Victorian Jurist* (University of North Carolina Press 1980) 161.
[27] Weill (n 25) 477.
[28] ibid 484.

It has previously been argued that the continuing sovereignty model is difficult to reconcile with the practical constraints imposed by international obligations, human rights laws, and the political realities that inherently limit Parliament's legislative omnipotence.[29] While international obligations, human rights commitments, and political processes undoubtedly constrain what Parliament is likely to do in practice, orthodox accounts of parliamentary sovereignty typically rely on precisely these political checks to justify the absence of legally enforceable limits.[30] The difficulty, which this article examines in more detail below, is that such reliance is contingent and increasingly fragile, particularly in conditions of strong party discipline and executive dominance. Often, conservative benches and judgments are cited as the bastions of this position. Cases such as *Madzimbamuto v Lardner-Burke* (1969),[31] *British Railways Board v Pickin* (1974),[32] and *Manuel v Attorney General* (1983)[33] are examples of the courts asserting that it is their duty to follow the will of Parliament as expressed in an Act of Parliament. In *R (Jackson) v Attorney General* (2005),[34] Lady Hale said, '[t]he concept of parliamentary sovereignty which has been fundamental to the constitution of England and Wales since the 17th century [...] means that Parliament can do anything'.[35]

The second model of concern here has widely become known as the 'manner and form theory', and concerns the limits that exist on Parliament's law-making powers.[36] Parliament may, according to the content that we find under this model, develop or change the way in which it makes laws.[37] A notable example of this which is often given is the transfer of power within Parliament following the enactment of the Parliament Acts 1911 and 1949. This model recognises that those changes in the way that Parliament operates have a tangible impact on the notion of absolute sovereignty. For example, Lord Hope of Craighead stated in *R (Jackson) v Attorney General* that '[i]t is no longer right to say that its freedom to legislate admits of no qualification whatever. Step by step, gradually but surely, the English principle of the absolute legislative sovereignty of Parliament which Dicey derived from Coke and Blackstone is being qualified'.[38] This model falls short of recognising a right of, for example, the judiciary to review the compatibility of Acts of Parliament with the constitution (Human Rights Act 1998, s 3 excepted,[39] as always); however, it does allow for constitutional Acts to gather status as beyond implied repeal, in an attempt to prevent the situation arising where a constitutional matter is overturned by accident or through lack of foresight. Michael Gordon suggested that this approach, representing a practical and reality-focussed theory, is now 'the new orthodoxy of parliamentary sovereignty',[40] given that it is widely accepted as descriptive of the actual operation of Parliament. One of the many criticisms of this model is seen in the work of H. W. R. Wade, who suggested that this reality would continue for as long as the judiciary saw

[29] Johnson (n 1) 374-375.
[30] Jeffrey Goldsworthy, *The Sovereignty of Parliament: History and Philosophy* (Oxford University Press 1999) 232-235.
[31] *Madzimbamuto v Lardner-Burke* [1969] 1 AC 645.
[32] *British Railways Board v Pickin* [1974] AC 765.
[33] *Manuel v Attorney General* [1983] Ch 77.
[34] *R (Jackson) v Attorney General* [2005] UKHL 56.
[35] ibid [159].
[36] Johnson (n 1) 375-378.
[37] Jennings (n 22) 152–153.
[38] *R (Jackson)* (n 34) [104].
[39] Human Rights Act 1998, s 3.
[40] Michael Gordon, 'Referendums in the UK Constitution: Authority, Sovereignty and Democracy after Brexit' (2020) 16 European Constitutional Law Review 213, 229.

that this approach was a reflection of the constitution in operation.[41] The rule of recognition is discussed later; however, beyond this, we suggest that this theory appears to be retrospective on this basis, seeking to describe what is happening with hindsight. Given this, it is difficult to see how this retrospective nature could comply with the notion of prospectivity found in even the most formal definition of the rule of law,[42] if its content merely describes what has happened previous to the current state of affairs. This model is the first where it would be more appropriate to use the term parliamentary supremacy as opposed to parliamentary sovereignty as there is a recognition of the ability of Parliament to change or limit its own power. This terminological distinction is contestable, in that the manner and form theory is often viewed as a refined expression of parliamentary sovereignty, understood as preserving sovereignty by reconceptualising how legislative authority may be exercised, rather than denying its existence altogether. Our use of the term parliamentary supremacy signals a conceptual and normative distinction between claims of legally unlimited authority and interpretations that accept the possibility of legally structured self-limitation.[43]

Jeffrey Goldsworthy's recent defence of parliamentary sovereignty is useful here.[44] He treats the Supreme Court's affirmations in *R (Miller) v Secretary of State for Exiting the European Union* (2017) and *R (Miller) v Prime Minister* (2019) as confirmation that the doctrine remains 'well and truly alive',[45] and he rejects Nicholas Barber's claim that it was killed by the European Communities Act 1972 as applied in *R v Secretary of State for Transport, ex parte Factortame Ltd (No 2)* (1991).[46] Goldsworthy argues that *Factortame* is best explained through a manner and form interpretation. On his preferred reading, the disapplication of parts of the Merchant Shipping Act 1988 follows from the interpretive effect of s 2(4) of the 1972 Act, which required later legislation to take effect subject to European Community law unless Parliament made an express choice to depart from that arrangement. The consequence, according to Goldsworthy, is merely a requirement that Parliament must speak unambiguously if it wishes to override the earlier settlement, rather than a substantive surrender of legislative authority. Goldsworthy's point is that, understood in that way, *Factortame* preserves parliamentary sovereignty and even strengthens it, because it enables Parliament to protect continuing commitments against unintentional amendment or repeal.

Barber, however, offers a different perspective on the constitutional significance of *Factortame*.[47] Barber rejects the manner and form explanation, arguing instead that the UK's membership of the European Union entailed a genuine substantive limitation of parliamentary sovereignty for as long as that constitutional settlement remained in place. That account is, in our view, more persuasive. Parliament did not merely

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[41] Henry William Rawson Wade, 'The Basis of Legal Sovereignty' (1955) 13(2) Cambridge Law Journal 172, 187–188.
[42] Raz (n 7).
[43] See Michael Gordon, *Parliamentary Sovereignty in the UK Constitution: Process, Politics and Democracy* (Hart Publishing 2015); Goldsworthy (n 30); Jeffrey Goldsworthy, 'Is Parliamentary Sovereignty Alive, Dying or Dead?' (2023) Public Law 126.
[44] Goldsworthy (n 43).
[45] ibid 127; *R (Miller)* (n 3); *R (Miller) v Prime Minister* [2019] UKSC 41.
[46] Nicholas William Barber, *The United Kingdom Constitution: An Introduction* (Oxford: Oxford University Press, 2021*); R v Secretary of State for Transport, ex parte Factortame Ltd (No 2)* [1991] 1 AC 603 (HL).
[47] Nicholas William Barber, 'The Afterlife of Parliamentary Sovereignty' (2011) 9(1) International Journal of Constitutional Law 144, 149-153.

regulate the form in which its legislative authority could be exercised, but accepted a substantive legal constraint on its legislative capacity. While the European Communities Act 1972 remained in force, Parliament's authority to legislate was legally conditioned, and could be restored only by first removing that statutory framework. On that analysis, parliamentary sovereignty in the Diceyan sense of continuing legal omnipotence was not preserved intact during EU membership, but operated within a legally structured settlement that qualified its exercise. Barber's argument is important not because it alone resolves the wider debate, but because it demonstrates that the orthodox account cannot easily explain periods in which Parliament's law-making authority has functioned under accepted legal conditions.

This leaves the third model, which approaches the matter in a different way. On this view, Parliament, like legislatures in states with codified constitutions, operates within a constitutional order rather than above it.[48] The mere fact that the UK's constitution is not codified into a single document does not mean that the UK lacks a constitution or that the supreme lawmaker has, as a rule in the constitution, unbridled authority to disregard any other constitutional rule. This may appear to be a newer or radical approach to the matter; however, it is not. It reflects a longstanding line of thought that treats constitutional principle as capable of structuring, and in some circumstances limiting, the exercise of legislative power. For example, could Parliament repeal the Statute of Westminster 1931, which granted independence to self-governing Dominions, and begin making laws on their behalf once more? It may be argued that, as a matter of abstract legal theory, Parliament could, but that the political constitution would constrain it from doing so. The difficulty with that response is that it preserves an account of legal omnipotence at the price of detaching it from constitutional reality. The problem, in other words, is not merely that the proposition is politically implausible, but that its explanatory value becomes increasingly weak once constitutional practice is taken seriously. That difficulty has long been recognised judicially. In *British Coal Corporation v R* (1935), Viscount Sankey LC said:

> 'It is doubtless true that the power of the Imperial Parliament to pass on its own initiative any legislation that it thought fit extending to Canada remains in theory unimpaired: indeed, the Imperial Parliament could, as a matter of abstract law, repeal or disregard s. 4 of the Statute. But that is theory and has no relation to realities.'[49]

The common law rule of implied repeal, which grants life to the notion that the courts will follow the most recent expression of Parliament's will expressed in their Act, was held not to apply to constitutional statutes in *Thoburn v Sunderland City Council* (2002).[50] Steyn LJ has recognised that the traditional account of Parliament's sovereign law-making powers in the orthodox sense is 'out of place in the modern United Kingdom'.[51] He goes on to say that the idea of Parliament's sovereignty is a

[48] Johnson (n 1) 378-381.
[49] *British Coal Corporation and others v R* [1935] AC 500, 520
[50] *Thoburn v Sunderland City Council* [2002] EWHC 195 (Admin).
[51] *R (Jackson)* (n 34) [102]. The full extract here is: 'The judges created this principle [parliamentary sovereignty]. 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. In exceptional circumstances involving an attempt to abolish judicial review or the ordinary role of the courts, the Appellate Committee of the House of Lords or a new Supreme Court may have to consider whether this is constitutional fundamental which even a sovereign Parliament acting at the behest of a complaisant House of Commons cannot abolish.'

'construct of the common law' and that, in exceptional circumstances where Parliament tries to act in an unconstitutional manner, 'it is not unthinkable that circumstances could arise where the courts may have to qualify a principle established on a different hypothesis of constitutionalism'.[52] Furthermore, Sir Stephen Sedley suggested that the constitutional paradigm was 'no longer of Dicey's supreme parliament to whose will the rule of law must finally bend'.[53] In addition to the abovementioned points, Lord Woolf has also expressed a view on the judiciary limiting Parliament's power:

> '[I]f Parliament did the unthinkable, then I would say that the courts would also be required to act in a manner which would be without precedent. Some judges might choose to do so by saying that it was an unrebuttable presumption that Parliament could never intend such a result. I myself would consider there were advantages in making it clear that ultimately there are even limits on the supremacy of Parliament which it is the courts' inalienable responsibility to identify and uphold. They are limits of the most modest dimensions which I believe any democrat would accept. They are no more than are necessary to enable the rule of law to be preserved.'[54]

As we have said above, the rule of law is pervasive in character; it is not subject to the whims of a lawmaker, and it is not constrained by modern geographical boundaries. It appears many have long suggested that where Parliament threatens to act in a manner that is contrary to the other elements of the constitution, that the courts would need to resist in order to uphold the rule of law. On this point, Lord Kenneth Clarke of Nottingham said exactly this on 29 January 2024 when debating what was then the Safety of Rwanda (Asylum and Immigration) Bill:

> 'As time goes by in my career, I always fear echoes of the warnings that Quintin Hailsham used to give us all about the risks of moving towards an elected dictatorship in this country. The sovereignty of Parliament has its limits, which are the limits of the rule of law, the separation of powers and what ought to be the constitutional limits on any branch of government in a liberal democratic society such as ours.'[55]

That warning is reflected in judicial practice, most clearly in the modern jurisprudence on the principle of legality and, in particular, ouster clauses. Although courts continue to recite parliamentary sovereignty in orthodox terms, the way legality now operates reveals a constitutional practice that cannot be squared with Diceyan sovereignty. Recent case law demonstrates a clear judicial refusal to treat fundamental constitutional principles as readily defeasible by broadly framed statutory language, even where that language appears clear on its face. As Jason Varuhas has persuasively shown, the contemporary principle of legality cannot be understood simply as a requirement that Parliament speak clearly when legislating in a manner that interferes with fundamental rights or constitutional principles.[56] In cases engaging core constitutional principles, legality has evolved into a set of interpretative techniques through which the courts actively shape the legal consequences of statutory powers. The focus is no longer confined to avoiding inadvertent rights infringements. Instead, legality is increasingly deployed to ensure that access to justice, the binding force of

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[52] ibid.
[53] Sir Stephen Sedley, 'Human Rights: A Twenty-First Century Agenda' (1995) Public Law 386, 389.
[54] Lord Woolf, 'Droit Public – English Style' (1995) (Spr) Public Law 57, 69.
[55] House of Lords Debate, 29 January 2024, vol 835, column 1033.
[56] Jason N. E. Varuhas, 'The Principle of Legality' (2020) 79(3) Cambridge Law Journal 578.

judicial decisions, and the courts' supervisory jurisdiction are not weakened by legislative design. This shift is most stark in the courts' treatment of ouster clauses, where formal affirmations of parliamentary supremacy coexist with judicial techniques that substantially neutralise the practical effect of statutory exclusions.

The starting point is *Anisminic Ltd v Foreign Compensation Commission* (1969), where the statutory language could scarcely have been clearer.[57] Determinations of the Foreign Compensation Commission were declared not to be questioned in any court, but the House of Lords refused to accept that Parliament had succeeded in insulating the Commission from legal control. By treating decisions infected by an error of law as nullities rather than determinations at all, the Court preserved judicial supervision, despite language that, on any ordinary reading, was designed to exclude it. Whatever the formal rhetoric of intention, the decision marked a clear judicial unwillingness to accept that Parliament could, through general words, place executive decision-making beyond the reach of the law.

That judicial stance has been reinforced in subsequent cases. In *R (Privacy International) v Investigatory Powers Tribunal* (2019), the Supreme Court confronted statutory wording that expressly excluded review of decisions of the Investigatory Powers Tribunal.[58] The majority again declined to give the provision its apparent effect. Relying on the principle of legality, the Court held that Parliament would have to confront the exclusion of judicial review in the clearest and most explicit terms before the courts would accept that such a fundamental constitutional safeguard had been displaced. While stopping short of declaring that supervisory jurisdiction was legally unassailable, the judgments made clear that ordinary statutory language, however pointed, would not lightly be taken to authorise a constitutional rupture of this kind. The practical message was unmistakable: that legislative supremacy would not be permitted to hollow out the rule of law by stealth.

The same judicial approach is visible beyond ouster clauses, and has been adopted to protect other core constitutional principles. In *R (UNISON) v Lord Chancellor* (2017), the Supreme Court struck down a tribunal fees regime introduced under a broadly framed statutory power, not on the basis that Parliament lacked authority to permit fees, but because the scheme had the practical effect of preventing access to justice.[59] The Court treated access to the courts as a constitutional condition shaping the scope of what could be authorised under general legislative language, and refused to read the statute as permitting measures that rendered legal rights unenforceable in practice.

A similar approach was adopted in *R (Evans) v Attorney General* (2015).[60] There, a ministerial veto provision that appeared, on its face, to authorise the executive to override a binding tribunal decision was read down so as to preserve the finality and authority of judicial determinations. The majority refused to read the provision as authorising the executive to overturn a judicial decision simply because it took a different view, in the absence of clear and unequivocal statutory language. The courts continue to affirm that Parliament may legislate as it chooses, yet their interpretative practice shows a sustained resistance to giving effect to legislation that would undermine core constitutional principles. Legality here does not function as a mere aid to discerning the intention of Parliament. Rather, it operates as a mechanism

[57] *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147 (HL).
[58] *R (Privacy International) v Investigatory Powers Tribunal* [2019] UKSC 22.
[59] *R (UNISON) v Lord Chancellor* [2017] UKSC 51.
[60] *R (Evans) v Attorney General* [2015] UKSC 21.

through which the courts ensure that constitutional principles retain practical force, even in the face of apparently clear statutory language.

Taken together, these authorities do not establish that orthodox parliamentary sovereignty has been formally abandoned. They do, however, reveal a constitutional practice increasingly difficult to reconcile with any strong Diceyan account of legally unqualified legislative authority. What they show is that the courts have become unwilling to treat core constitutional principles as subject to displacement even by apparently clear statutory language. In that sense, contemporary law already proceeds on the basis that legislative power is exercised within a constitutional order structured by other fundamental principles, and that those principles may have decisive interpretative force in the courts.

If that is right, the more fruitful question is not whether orthodox formulations of unlimited power can still be maintained, but how far legislative authority can be exercised consistently with the rule of law, the separation of powers, and the ordinary constitutional limits of a liberal democracy. The doctrinal significance of the recent case law lies not in a definitive judicial renunciation of sovereignty language, but in the increasing candour with which courts preserve constitutional fundamentals in practice.[61]

This doctrinal picture is reinforced, though not exhausted, by H. L. A. Hart's account of the rule of recognition.[62] Here, the rule of recognition can explain legislative validity as a matter of institutional acceptance by legal officials, instead of a self-sustaining attribute of Parliament. Every legal system has a rule of recognition that identifies the criteria by which legal acts are treated as valid. In many jurisdictions, that role is performed by a codified constitution. In the UK, by contrast, the authority of Acts of Parliament depends upon their recognition within legal practice, including, centrally, by the courts. On that view, parliamentary authority is better understood as a function of an accepted legal order in which officials treat Acts of Parliament as valid sources of law, rather than as a metaphysical fact about sovereignty. Hart does not by himself resolve the constitutional question addressed in this article. He does, however, help to explain why legislative authority may properly be understood as contingent, recognised, and therefore constitutionally structured.

Hart's account is not the only jurisprudential framework relevant to the source of parliamentary authority. Hans Kelsen's concept of the basic norm is also instructive, although we do not attempt to resolve the broader debate about the relationship between Hart's rule of recognition and Kelsen's *grundnorm* here.[63] For present purposes, the essential point is this. The concept of the basic norm, or *grundnorm*, was developed by Kelsen in his seminal work, *Pure Theory of Law*.[64] Kelsen argued that norms derive their validity from a 'higher' norm that authorises the creation of subsequent norms.[65] For instance, a by-law created by a local authority may have been given validity by an enabling measure of the national legislature, which, in turn, may

[61] See Jeffrey Goldsworthy, 'Abdicating and Limiting Parliament's Sovereignty' (2006) 17 King's College Law Journal 255.
[62] H. L. A. Hart, *The Concept of Law* (3rd edn, Joseph Raz and Penelope A. Bulloch eds, Oxford University Press 2012) 94-110.
[63] For example, see Brian Bix, 'Kelsen, Hart, and Legal Normativity' (2018) 34 Revus 25.
[64] Hans Kelsen, *Pure Theory of Law: Translation from the Second German Edition* (Max Knight tr, first published 1967, The Lawbook Exchange 2005).
[65] Hans Kelsen, *General Theory of Law and State* (Anders Wedberg tr, first published 1945, Russell & Russell 1961) 110-111; Joseph Raz, 'Kelsen's Theory of The Basic Norm' in Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Clarendon Press 1979).

have derived its validity from the constitution of that state. In this manner, there is a hierarchy of norms.[66] If this were the full extent of his theory, however, it would lead to an infinite regression of norms. This can only be solved, according to Kelsen, by presupposing the legal validity of the highest norm. This basic norm is the ultimate, fundamental norm that gives validity to all the other norms in a legal system. As Kelsen explained, this is why, when 'one presupposes a new basic norm, no longer the basic norm delegating law-making authority to the monarch, but a basic norm delegating authority to the revolutionary government', the legal order follows the new source of authority.[67] One might argue that the principle of absolute and orthodox parliamentary sovereignty is beyond law and is, therefore, the basic norm from which law derives its authority. However, we find this to be a weak argument because that principle only has an existence if it is given effect by law officers. In the present context, that matters because it further weakens the idea that orthodox parliamentary sovereignty can simply be treated as the ultimate source of legal authority. Even if one were to argue that parliamentary sovereignty occupies such a foundational role, that argument remains vulnerable to the objection that its practical force depends upon recognition and effect within legal institutions. On either account, the authority of Parliament appears less as an inherent and unlimited property of the institution, and more as a contingent feature of a wider legal order.[68]

These jurisprudential accounts do not, by themselves, settle the practical operation of legislative authority, but they do help to show that legislative authority depends upon wider legal structures of recognition rather than upon any self-sustaining sovereignty of Parliament. The three models above disagree about how far orthodox doctrine can accommodate legal limits, but they share a tendency to speak as if 'Parliament' itself acts. That way of speaking matters, because it encourages the idea that legislative authority is monolithic, impersonal, and therefore insulated from ordinary demands of accountability. The next step is to change the unit of analysis and ask what follows once we treat legislation as the product of individual action within institutional structures.

III. Methodological Individualism, the Rule of Law, and Parliamentary Sovereignty

The early development of methodological individualism is largely attributed to Max Weber and his book *Economy and Society*.[69] In his book, Weber sets out some of the fundamental elements that make up what we now consider to be methodological individualism. He says that social phenomena, such as 'states, associations, business corporations, foundations',[70] are often spoken about as if they have their own personality. For example, we talk about the artificial legal personality that an organisation possesses when it becomes a limited company, and that this personality

[66] For more on the concept of the hierarchy of norms, see H. L. A. Hart, *The Concept of Law* (2nd edn, Clarendon Press 1997).
[67] Hans Kelsen, *Introduction to the Problems of Legal Theory: A Translation of the First Edition of the Reine Rechtslehre or Pure Theory of Law* (Bonnie Litschewski Paulson and Stanley L. Paulson trs, Clarendon Press 1992) 59.
[68] We accept here that this example will not be satisfactory to many. For a Quietist's perspective on this point, see Michael Steven Green, 'Kelsen, Quietism, and the Rule of Recognition' in Matthew Adler, Kenneth Einar Himma (eds), *The Rule of Recognition and the US Constitution* (Oxford University Press 2009).
[69] Max Weber, *Economy and Society* (first published 1922, Guenther Roth and Claus Wittich eds, University of California Press 1978). See also, Peter J. Boettke and Christopher J. Coyne, *The Oxford Handbook of Austrian Economics* (Oxford University Press 2015) 549-550.
[70] Weber (n 69) 13.

is distinct and separate from the directors who run the company.[71] Likewise, we talk of states and the component elements of those states, such as the legislature, the executive, and the judiciary, as having a distinct personality or function. Methodological individualism encourages us to consider the social constructs as discrete acts of individuals and asks us how this alters our view on the construct and the outcome. Weber says that '[a]ction in the sense of subjectively understandable orientation of behaviour exists only as the behaviour of one or more *individual* human beings'.[72] In relation to parliamentary sovereignty, we may see that, from a methodological individualist's perspective, it is the members of the Houses of Parliament whose actions bring about law. By the actions of individuals, laws are passed which impact on the citizenry. Individuals possess the authority that we attribute to the social construct that is Parliament as a legislator. Weber suggests that it is the actions of the individual alone that can be understood and rationalised.[73] It is the 'competent individual', or a group thereof, that brings about an action, not the impetus of a competent collective acting solely as a single entity.[74] It is this action-centric approach to conceptualising outcomes that we will use to analyse parliamentary sovereignty, by moving beyond collectivist framing and exposing the authority and power of individual actions. It should be noted here that the goal of methodological individualism is not to attempt to ignore the collective or to discredit it in some form. Rather, it is to give rise to a privilege of the actions of individuals over the mere and superficial impetus of a collective, as a whole, as being the source of action. This field is an exercise in the changing of one's focus, and, as Jacques Derrida would suggest, the privileging of individualism over collectivism as a means to understanding action. Derrida explains, albeit not in relation to methodological individualism, that our way of reasoning is tarnished by privileging one thing over another: [75] be that one form of knowledge over another,[76] one mode of signifying over another,[77] or one mode of reasoning over another.[78] He states that we should be alive to the possibility of flipping that privilege on its head and assessing what impact it has on the outcome. More accurately, Derrida says that we should consider bringing 'low what was high'.[79] Applied here, this is not an abstract stylistic preference. It is a methodological device that exposes how the language of 'sovereign Parliament' can mask responsibility for the choices that generate legal effects, and it helps to reframe the constitutional question as one of legally constrained power exercised by identifiable decision-makers. Here, we suggest that the privilege that we can see present when discussing the concept of parliamentary sovereignty is the propensity to treat (and the inference that one should treat) Parliament as a singular collective. By treating Acts of Parliament as the product of individual action, the notion of parliamentary sovereignty loses some of its abstract and impersonal character, and it becomes more difficult to maintain the orthodox absolutist position.

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[71] *Salomon v A Salomon & Co Ltd* [1896] UKHL 1.
[72] Weber (n 69) 13 (emphasis in original text).
[73] ibid.
[74] ibid 15.
[75] Jacques Derrida, *Dissemination* (Barbara Johnson tr, The Athlone Press 1981) 4-6.
[76] ibid.
[77] Jacques Derrida, *Of Grammatology* (Gayatri Chakravorty Spivak tr, The Johns Hopkins University Press 1976), see pt I, ch 2: 'Linguistics and Grammatology' 27-65.
[78] Derrida (n 75) 4-6.
[79] Jacques Derrida, *Positions* (Alan Bas tr, University of Chicago Press 1982) 42. See also, David J. Gunkel, 'Deconstruction: Critical Interventions for the 21st Century and Beyond' (2022) 58 (2) Studia Philosophiae Christianae 89.

Methodological individualism is often seen as a form of atomism, which is an approach to investigation that separates a single investigative subject into its component parts and deals with them *seriatim*.[80] We acknowledge that this is not a universally accepted position and that some have found the difference between methodological individualism and atomism to be difficult to articulate.[81] Notwithstanding this, it is the (albeit rather reductionist) approach taken by John Watkins and Karl Popper that we adopt for the purpose of redirecting attention from abstract, collective framings to the specific actions of individuals.[82]

Parliamentary sovereignty, when treated as a unified, impersonal doctrine, encourages us to consider the actions of Parliament as those of a single collective, and therefore beyond scrutiny, for the sake of historical narratives that, as we contend, have acquired disproportionate prominence in legal discourse. The process of making law in Parliament is undoubtedly reliant on several people acting together. For example, a Bill must secure more than half of the votes cast in the House in which it starts before it can progress. However, contrary to the thought experiment in Italo Calvino's *Invisible Cities*, where Marco Polo asks Kublai Khan which particular stone is supporting an arched stone bridge,[83] George Simmel says that, in '[g]roping for the tangible, we find only individuals; and between them, only a vacuum, as it were'.[84] Whether parliamentarians are motivated by altruism, individual aspirations, promises of progression in their political careers in exchange for supporting party lines, or any other factor, they still act based on a personal rationalisation of the factors that influence each of them individually. If one Member of Parliament votes for a government Bill because they have been promised a portfolio in exchange for that vote, or another votes for the same Bill because they want to see the subject of the Bill manifest, the votes may be the same, but the motivation is personal. Even if a member of either of the Houses of Parliament is acting in a purely altruistic way, this is still an individual motivation that guides the use of votes. The outcome, therefore, is that the action of the collective, that is, Parliament, can only really be understood through the motivations and actions of individuals. It is on this basis that methodological individualism breaks down the veil that shrouds the working of Parliament behind the collective.[85] Therefore, those with votes should be accountable for their vote and the outcome of its use. Whatever the means by which parliamentarians seek to deploy the vote that they possess, or even if parliamentarians choose to abstain from voting for whatever their reason, the connection between such a vote and the reason behind its use always remains, even if that reason is never aired. Bills can stand and fall by one single vote, and, unlike Marco Polo's thought experiment, a Bill is not supported by an inanimate stone arch distributing and collectively bearing its own weight and that of those who pass over it, but by a collective of individuals with individual motives or

[80] Charles Taylor, 'Atomism' in Charles Taylor (ed), *Philosophical Papers Volume 2: Philosophy and the Human Sciences* (Cambridge University Press 1985) 187. Also, J. David Lewis and Andrew J. Weigert, 'Social Atomism, Holism, and Trust' (1985) 26 The Sociological Quarterly 455. cf Steven Lukes, 'Methodological Individualism Reconsidered' (1968) 19(2) The British Journal of Sociology 119; Lars Udehn, *Methodological Individualism* (Routledge 2001).

[81] Geoffrey Hodgson, 'Meanings of Methodological Individualism' (2007) 14 Journal of Economic Methodology 211, 214.

[82] John Watkins, 'Methodological Individualism: A Reply' (1955) 22(1) Philosophy of Science 58; Karl Popper, *The Poverty of Historicism* (Routledge 2012).

[83] Italo Calvino, *Invisible Cities* (William Weaver tr, Vintage Books 1972) 74.

[84] Kurt H Wolff (ed), *The Sociology of Georg Simmel* (The Free Press 1950) 11.

[85] Edward Lui, 'Piercing the Parliamentary Veil against Judicial Review: The Case against Parliamentary Privilege' (2022) 42(3) Oxford Journal of Legal Studies 918.

objectives who have rationalised to deploy their vote, or abstain from voting, to manifest a personal motivation. Even where a voting member of the Houses of Parliament is voting for the good of their party or any other collective, the motive and impetus is still an individual one. There are no single votes of the collective in Parliament; votes are individual and, therefore, they are deployed in furtherance of the individual's objectives, including where that objective is to comply with, or form part of, a collective. The process of weighing one's options, setting objectives that one wishes to achieve, and rationalising burdens and benefits, even where it may be influenced by another or by a group, whether by the promise of honey in the future, or through the avoidance of a threat, is ultimately a strictly individual process, derived from the autonomous nature that each person is entitled to exercise to the greatest extent of their ability. Parliament acts through the actions of individuals, and it is, therefore, individuals who ultimately hold the power that parliamentarians assert that Parliament possesses.

The rule of law, even in the formal sense according to Joseph Raz, requires that those who use power are subject to it.[86] Accountability for the use of power is often seen as being relevant when the use of power exceeds the legal limit of that power. However, we contend that it also exists in such places as accountability for actions *intra vires*, where those actions are permitted by a constitutional convention or principle. The use of voting power in Parliament is a privilege associated with the office held by the particular parliamentarian and, given that the power is associated with an office, its use, or lack thereof, is subject to accountability. Therefore, parliamentarians derive their voting power from the offices that they occupy. Those offices are individual, as are the votes and the parliamentarians that occupy them. Whatever reason, altruistic or otherwise, that a parliamentarian may have for voting in a particular manner, their vote directly contributes to the passage or hindrance of laws, and parliamentary power is ultimately exercised by the people in Parliament. It is on this basis that we caution that law-making powers constrained only politically create conditions in which serious constitutional abuse becomes more likely. Sections 4 and 5 of this article develop that risk in two directions. We first examine how majoritarian dynamics can legitimise rights-limiting law as 'democratic' even where it conflicts with rule of law requirements, and then how minority rule can arise through institutional design and executive dominance, producing democratic distortion notwithstanding electoral formalities. However, for this section we argue that, if political careers and objectives are the only effective limits on law-making, the use of law to advance personal or partisan ends remains a live possibility.

If parliamentary sovereignty is not the foundation of the constitution, as we have suggested above, but is instead contingent on it, where is the UK constitution grounded? In metaphysics, grounding relates to the ontological constitution of a thing and attempts to explore its cause or origin.[87] Generally, there are two delineations of grounding: unionism explains that one fact is contingent upon another, whereas separatism aims to determine relations. This, albeit very simplistic summary, would see us describe unionist grounding as an explanation of fact begetting fact and separatist grounding as fact causing fact. It is, in part, a combination of the former and latter definitions that we will look at in order to establish that parliamentary sovereignty is a contingent element of the constitution, but that the rule of law is the

[86] Raz (n 7). See also, Friedrich August von Hayek, *The Road to Serfdom* (first published 1944, Routledge Classics 2001) 75.
[87] Michael J. Raven, 'Ground' (2015) 10(5) Philosophy Compass 322.

cause of the constitution and, as such, that both the constitution and parliamentary sovereignty are grounded in, and subject to, the rule of law. Subsequently, the rule of law is, at least, *primus inter pares*, though it may, in fact, be *parens omnium* if we are correct. Barber suggests that the rule of law gives effect to the constitution and, without it, the basis for a constitution would cease to exist, unravelling the nature of the state itself. He says:

> 'The rule of law requires that law makes the differences it purports to make; that it is effective as an instrument of government. Where the rule of law is absent, constitutions are meaningless. Without the rule of law, constitutional institutions cannot be formed, laws cannot be produced or applied; in short, the state is unable to act, or even constitute itself'.[88]

Parliamentary sovereignty appears to be invoked as a shield to conceal the inescapable truth that laws are made by people: people who are fallible and tainted by political or personal biases or motives. Therefore, the assertion that parliamentary sovereignty is the cornerstone of the UK constitution, that it is *primus inter pares,* and that all other elements of the constitution are subject to it are, at best, a historical account unfit for the modern state or, at worst, a vain attempt to conceal the use of power behind the veil of democratic mandate. The latter may go some way to explaining why Parliamentary law-making is asserted to have unimpeachable authority, whereas democratically initiated law-making in other democracies does not enjoy such an absolutist position beyond reproach. The principle of parliamentary sovereignty, when examined, betrays a vagueness, an ill-defined premise that is cloaked in legal mystique and the appeal to nostalgia. Appeals to historical legal principles rely on the notion that what was said in antiquity was correct and that, somehow, 'the password has been muddled along the way to the modern day'.[89] This is a culmination of three informal logical fallacies. First, the *ad verecundiam* fallacy where one appeals to some assertion of authority or expertise as the basis of their argument.[90] This alone is not particularly contentious in law as this approach to legal argumentation is common practice. However, when we add to this fallacy the *ad populum* fallacy, that is the assertion that something is correct because it is a popular opinion or one that is commonly held or asserted,[91] it becomes evident that there is a route to misuse of legal opinion. On this very point, Arthur Schopenhauer once said that, '[t]here is no opinion, however absurd, which men will not readily embrace as soon as they can be brought to the conviction that it is generally adopted'.[92] Finally, by adding to this boiling pot of fallacies *argumentum ad antiquitatem*, that is, the appeal to tradition, history, and habit,[93] we now see an issue where fallacies combine in the field. By asserting that eminent lawyers of old were correct in their evaluation of parliamentary sovereignty, that the position is popular or commonly cited, and that we should continue to uphold that position *ad infinitum*, it is being asserted that the pinnacle of understanding of parliamentary sovereignty was achieved in the past and that we have either not

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[88] Barber (n 46) 3.
[89] We have knowingly recycled the words of Lord Reid here from Reid, 'The Judge as Lawmaker' (1972) 12 Journal of the Society of Public Teachers of Law 22.
[90] John Locke, *An Essay Concerning Human Understanding: Book IV – Of knowledge and opinion* (first published 1690, Kenneth P. Winkler ed, Hackett Publishing Company 1996), chapter 17 in Locke's work, and 312-323 in the publication cited here.
[91] Isaac Watts, *Logic: or, the Right Use of Reason in the Inquiry After Truth* (6th edn, West, Richardson & Lord 1819) 243.
[92] Authur Schopenhauer, *Art of Controversy and Other Posthumous Papers* (Swan Sonnenschein & Company 1896) 37.
[93] William Trufant Foster, *Argumentation and Debating* (Houghton Mifflin 1917) 205.

progressed past this understanding or that we have regressed and should show deference to the historical statement. The inference is that we must better understand what was once articulated or understood, and not continually challenge the veracity of the statement. Furthermore, where that position is asserted by the orthodoxy in the field and, more importantly, by members of both Houses of Parliament themselves (recalling that their position affords them considerable 'airtime'), the perfect storm is achieved where a large group of voices with a monopoly on political discourse in the media insist that we should all adopt a position espoused in history by an eminent lawyer. Notwithstanding this point, there is an insidious connected point that deserves to be exposed to sunlight also. By asserting that Parliament is the sovereign lawmaker, members of the Houses of Parliament are, in fact, asserting that they are themselves the sovereign lawmaker. Asserting that one has unbridled law-making power purely because one was democratically elected is authoritarian in its very nature. It is an assertion that by majority vote (which will be discussed below), a group of individuals should obtain unlimited law-making powers.

The suggestion that parliamentary sovereignty, as the ultimate law-making power, is derived from the democratic mandate obtained in a general election is weak. Every state with a codified constitution is one whose democratically elected legislator, in making laws, is confined by the constitution, as interpreted and applied by the judiciary. The suggestion that Parliament's law-making powers cannot be curtailed because there is no codified constitution in the UK is exceptionalist, viz., the UK is an exception to the general rule and that exception grants unbridled law-making powers to politically motivated individuals. This is an authoritarian structure and potentially tyrannical. We suggest that the UK constitution is, in fact, grounded in the rule of law. The rule of law, in ensuring that laws are at the very least applied equally, fairly, and consistently, provides a counterbalance to the potential for arbitrary power that parliamentary sovereignty might wield.[94] It insists on accountability, transparency, and the protection of individual rights against the backdrop of collective decision-making processes, thereby reinforcing the constitution's relevance and resilience in the face of societal change.[95] Moreover, the rule of law's primacy suggests a constitutional architecture where sovereignty is dispersed rather than centralised, acknowledging the importance and necessity of judicial review, the separation of powers, and the role of regional and international legal norms in resisting the fall into a tyrannical regime. This conclusion is also consistent with the notion of a 'living constitution', one that evolves over time through judicial interpretation, legislative amendments, and shifts in societal values, rather than being anchored in an immutable historical document or principle.[96] In essence, while parliamentary sovereignty has historically been celebrated as a symbol of ultimate law-making

[94] We say 'at least' here because a substantive or thick conception of the rule of law would further bolster this control by ensuring protection at that foundational level for fundamental human rights.

[95] We accept that we have included a substantive or thick element of the rule of law here, which would be a cause for concern to those who adopt a strictly formal definition. However, we do not adopt such a position without qualification. See, Jeremy Waldron, 'From Form and Procedure to Substance in the Rule of Law' (2023) New York University School of Law Public Law Research Paper 24-02 <http://dx.doi.org/10.2139/ssrn.4538570> accessed 30 March 2026. Though we also recognise the veracity advanced by alternative approaches, such as Jørgen Møller and Svend-Erik Skaaning, 'Systematizing Thin and Thick Conceptions of the Rule of Law' (2012) 33(2) Justice System Journal 136, and A. W. Bedner, 'An Elementary Approach to the Rule of Law' (2010) 2(1) Hague Journal on the Rule Of Law 48.

[96] Here we refer in part to Marc Jonson, 'Bermuda's Domestic Partnership Act 2018: from "living tree" to broken branches?' (2018) 4 European Human Rights Law Review 367.

authority, the modern constitutional landscape demands a re-evaluation of its role, positioning the rule of law as the true guardian of democracy and rights, and as the foundation of good governance. This paradigm shift not only acknowledges the complexities of contemporary governance but also champions a more equitable, just, and adaptable constitutional framework, ensuring that the state remains responsive to the needs and rights of its citizens and never becomes too complacent in the use of its law-making power. Notwithstanding this, we have above alluded to some issues that arise when applying methodological individualism to the process of making law in the UK Parliament; foremost of concern to us here is the risk that such power wielded individually without legal constraint can be tyrannical in nature.

IV. Tyranny of the Majority and Parliamentary Sovereignty

Hitherto, we have referred to authoritarianism and tyranny, and there is a need to explore this further for the fullness of understanding and to appreciate its relevance to a methodological individualist perspective on parliamentary sovereignty. Throughout what follows, 'tyranny' is used in a constitutional sense, not as a slogan. We mean the exercise of public power in a manner that treats some persons as politically or legally expendable, whether by disabling effective accountability, eroding access to justice, or permitting the systematic disregard of fundamental rights. On this understanding, the critical question is not whether a measure can be traced to a formal electoral mandate, but whether it is compatible with the rule of law constraints that make democratic authority legitimate. In her lecture to the U.S. Supreme Court Historical Society in 2015, Lady Hale said:

> On the other hand, important though the appeal to ancient history is, the framers of the Constitution were looking to create a new model of government. Magna Carta had at least three defects from their point of view: it was a grant from the King, rather than the work of the people; it could be overridden by a sovereign Parliament; and it limited only the operations of government, not of the legislature. For the framers, it was the people, not Parliament, still less the King-in-Parliament, who were sovereign, and invested the Constitution which they adopted with its authority. They were soon persuaded that it was also necessary to enshrine their freedoms in a Bill of Rights, in order to protect them from the potential tyranny of the majority.[97]

Lady Hale's reflections on the U.S. Constitution vis-à-vis the Magna Carta offer a useful lens through which to examine the principles underpinning democratic governance. These reflections are valuable here not because the United States provides a direct constitutional model for the United Kingdom, but because they expose a problem common to democratic orders more generally: the risk that electoral majorities may seek to translate political preference into legally unqualified power. Her account, therefore, sharpens the issue raised by parliamentary sovereignty in the UK context. The constitutional question is not simply whether a measure reflects the will of a majority, but whether the legal order contains sufficiently robust constraints to prevent that majority from treating others as politically or legally expendable. Her analysis prompts us to reconsider how legal and constitutional systems can evolve to better reflect the ideals of democracy, sovereignty, and human rights. However, it also raises questions about the extent to which modern democracies have succeeded in

[97] Lady Hale, 'Magna Carta: Our Shared Heritage' (Supreme Court Historical Society Annual Lecture 2015, UK Supreme Court 2015) 9.

fully realising these ideals. The ongoing challenges of ensuring broad-based participation, protecting minority rights, and balancing the powers of different branches of government expose the complexity of translating democratic principles into practice. Moreover, Lady Hale appears to invite further exploration of how contemporary legal systems, including those in the UK, might continue to evolve in response to changing societal needs and global challenges whilst not giving in to the pressures of the majority to circumvent the rights of minority groups.

Johnson has similarly argued that the will of the majority is not, by itself, a sufficient justification for interference with the fundamental rights of others.[98] He says that the will of the majority, be it expressed in a general election, referendum, or by other means, is not a valid basis for making law. Doing so could lead to the legitimised mistreatment of any part of society not conforming with the will, behaviour, or appearance of the majority. Adorno's concept of 'identity thinking' offers a pertinent framework for this discussion and in explaining why this matters.[99] It captures the tendency of dominant groups to treat conformity as a condition of belonging, thereby marginalising those who do not reflect the preferences, values, or appearance of the majority. In legal terms, the danger is that legislation may come to reflect not a neutral public will, but the preferences of a socially or politically dominant group at the expense of minority rights and interests. Lady Hale made the same constitutional point in *Ghaidan v Godin-Mendoza* (2004) when she observed that 'democracy values everyone equally even if the majority does not'.[100]

We now turn briefly to the philosophical roots of democratic governance, which can be traced back to the ideas of social contract theorists like John Locke and Jean-Jacques Rousseau. Locke and Rousseau each, in different ways, connect legitimate government to the consent of the governed, but neither treats majority preference as sufficient, without more, to justify the exercise of public power. Locke's conception of government, as articulated in his *Two Treatises of Government*,[101] posits that legitimate political power is derived from the consent of those that are governed, i.e., the citizenry.[102] Whereas, in *The Social Contract*,[103] Rousseau similarly argues for a form of government that is reflective of the general will, an aggregate of the citizens' preferences. These foundational philosophies embed the notion that a government's legitimacy is intrinsically tied to its representation of the public's interests and opinions. Both Locke and Rousseau also argued that measures must be taken in order to reduce the power of the majority and prevent them from disenfranchising minority groups. However, whereas Locke advocated for revolution to change oppressive governments, Rousseau suggested that the most efficient safeguard against tyranny of the majority can be achieved through the creation of a constitution.[104] In further supporting this need for limits on power in response to the threat of tyranny of the majority, John Stuart Mill suggested that the structure of a state brings with it the risk

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[98] Johnson, 'Bermuda's Domestic Partnership Act 2018' (n 96) 373.
[99] Theodor Adorno, *Negative Dialectics* (first published 1966, E. B. Ashton tr, Routledge 1990) 149. Adorno said, 'dialectics seeks to say what something is, while identarian thinking says what something comes under, what it exemplifies or represents, and what, accordingly, it is not itself.'
[100] *Ghaidan v Godin-Mendoza* [2004] UKHL 30 [132] (Lady Hale).
[101] John Locke, *Two Treatises of Government* (first published 1689, Peter Laslett ed, Cambridge University Press 1988).
[102] ibid 1.92, 2.88, 2.95, 2.131, 2.147.
[103] Jean-Jacques Rousseau, *The Social Contract and Other Later Political Writings* (Victor Gourevitch ed tr, Cambridge University Press 1997).
[104] ibid 49-50; see also Annelien de Dijn, 'Rousseau and Republicanism' (2018) 46(1) Political Theory 59.

that a majority voice will assume the entire power of a state.[105] Here, it could be argued that a government's responsiveness to public opinion is made out by a system of representative democracy. This system forms the basis of many modern constitutions and establishes that elected officials are agents of the electorate, tasked with translating the electorate's views into public policy.[106] The constitutional point that we extract here is not that representative democracy is unimportant, but that electoral representation alone cannot exhaust the conditions of legitimate law-making.

The legitimacy of legal frameworks hinges on their alignment with the principles of justice and fairness as perceived by the society they govern.[107] This infers the importance of public opinion in governance, as it serves as a feedback mechanism for policy refinement. However, the complexity of distilling a coherent public opinion from a diverse populace and the risk of populist policies that might undermine minority rights or long-term interests are significant considerations that governments must navigate.[108] It is severally argued that the balance between majority rule and minority rights is a key element of the role of a state.[109] While democratic governance is predicated on majority rule, it must also safeguard individual liberties and minority interests, as failing to do so could lead to a tyrannical state of affairs where those who do not accord with the majority's homogeneity become collateral damage in the state's pursuit, overt or covert, of a hegemony. This delicate balancing act is central to the concept of liberal democracy, where the tyranny of the majority is restrained by constitutional safeguards and the rule of law.

Alexis de Tocqueville is often credited as the originator of the concept of tyranny of the majority following his systematic and analytical review of the political and legal system of governance in the United States of America.[110] In *De la Démocratie en Amérique*,[111] Tocqueville expresses his concern for the potential for a majority to impose its will on minorities, an issue he saw as inherent in democratic systems. He observed that while democracy is premised on the principle of majority rule, this can lead to a situation where the rights and interests of the minority are overlooked or oppressed.[112] This majoritarian issue is not one that democracy alone can address and, as such, there must be active steps beyond democracy that protect the individual from the excesses of the majority.[113] Some have argued that majority rule is the most effective way to protect the interests of the minority. This is the position that Anthony McGann

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[105] John Stuart Mill, *On liberty: with, The subjection of women; and, Chapters on Socialism* (first published 1879, Stefan Collini ed, Cambridge University Press 1989) 7-8. See also, Eric McGilvray, *The Invention of Market Freedom* (Cambridge University Press 2011) 157.
[106] François Guizot, *History of the Origin of Representative Government in Europe* (Andrew R Scoble tr, Henry G Bohn 1861) Lecture 8.
[107] Barry R. Weingast, 'The Political Foundations of Democracy and the Rule of the Law' (1997) 91(2) American Political Science Review 245.
[108] Nikolas Rose and Peter Miller, 'Political power beyond the State: problematics of government' (2010) 61(1) The British Journal of Sociology 271.
[109] Weingast (n 107).
[110] Donald J. Maletz, 'Tocqueville's Tyranny of the Majority Reconsidered' (2002) 64(3) The Journal of Politics 741.
[111] Alexis de Tocqueville, *De la Démocratie en Amérique, 4 vols., revue et corrigée, et augmenté d'un Avertissement et d'un Examen comparatif de la Démocratie aux États-Unis et en Suisse* (Pagnerre 1848).
[112] Benjamin F. Wright, 'Of Democracy in America' (2013) 40(1) American Political Science Review 52.
[113] Morton Horwitz said, 'the majority problem continued to be a persistent political issue from the beginning and, even today, a host of public questions revolves around the scope of majority rule' in Morton J. Horwitz, 'Tocqueville and the Tyranny of the Majority' (1966) 28(3) The Review of Politics 293.

adopted;[114] however, we are disinclined to adopt such a position. The examples that follow are invoked to illustrate the general vulnerability of minorities where majoritarian power is unconstrained, and to explain why constitutional safeguards are treated as structurally necessary in liberal democracy. They are not advanced to suggest any direct equivalence between the United Kingdom and the regimes in which such abuses occur. For present purposes, the more persuasive view is that constitutional democracy cannot rely upon majoritarian politics alone, but depends upon legal and institutional arrangements capable of restraining the excesses of majority power. That is the basis on which the following discussion proceeds.

It is harrowing to see that there are still parts of the world where some minority groups, such as members of the LGBT+ community, are treated in the most deplorable manner as they do not accord to the majority's ideals. Gay men have been thrown from buildings,[115] beheaded,[116] and stoned to death for merely being gay.[117] We accept that most states where these practices occur score poorly on the democracy indicators,[118] but we also assert that where power is granted to a representative of a majoritarian hegemony, enforcing compliance with the majority's position can be expected to impact disproportionately those who, by their nature, do not form part of the hegemony. The point is not that all majoritarian systems produce the same outcomes, nor that the United Kingdom is to be equated with regimes in which grave abuses occur. It is, rather, that where public power is structured so that a political majority can translate its preferences into law with insufficient legal constraint, those who do not form part of that majority are placed in a position of particular vulnerability. The constitutional significance of the problem lies in its structure: minorities are left to depend on the continuing goodwill of the majority, rather than being able to rely on institutional arrangements capable of preventing majoritarian preference from exhausting the content of legality.

In the UK, Parliament is dominated by a majority faction, as the largest party in the legislature forms the executive. If that party obtains more than half of the seats in Parliament, thereby becoming a majority government, it can push through legislation by relying on a combination of political persuasion, party whips, the Salisbury doctrine, and the Parliament Acts 1911 and 1949, effectively enforcing the will of the majority on all others, even when that may not, in fact, be the will of the majority of the electorate.[119] Given this, we contend that, where a government's majority is sufficient, the term 'governmental supremacy' is the more accurate description of primary law-making initiative and power within Parliament.[120] Some have contended

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[114] Anthony J. McGann, 'The Tyranny of the Supermajority: How Majority Rule Protects Minorities (2004) 16(1) Journal of Theoretical Politics 53.

[115] Bassem Mroue, 'Islamic State group targets gays with brutal public killings' *Associated Press* (New York 13 June 2016) <https://apnews.com/general-news-bc4cf13c2b41454b820d7297f50bbf08> accessed 30 March 2026.

[116] 'Gay Palestinian Ahmad Abu Marhia beheaded in West Bank' *BBC News* (London, 7 October 2022) <https://www.bbc.co.uk/news/world-middle-east-63174835> accessed 30 March 2026.

[117] Yvette Tan, 'Brunei implements stoning to death under anti-LGBT laws' *BBC News* (London, 3 April 2019 <https://www.bbc.co.uk/news/world-asia-47769964> accessed 30 March 2026.

[118] For more on this, see 'Democracy Index 2023' (*Our World in Data*, last updated 22 May 2024) <https://ourworldindata.org/grapher/democracy-index-eiu> accessed 30 March 2026.

[119] Discussed later.

[120] Stephen Tierney, 'The Legislative Supremacy of Government' (*UK Constitutional Law Association*, 3 July 2018) <https://ukconstitutionallaw.org/2018/07/03/stephen-tierney-the-legislative-supremacy-of-government/> accessed 30 March 2026. With regard to the constitutional bargain of delegated law-making, see Daniella Lock, Fiona de Londras, and Pablo Grez Hidalgo, 'Delegated

that it is the supremacy of the House of Commons; however, taking a more atomist view, and given what we have said above, it is more accurate to state that the government, through intra-party-political persuasion and the use of constitutional mechanisms, can bring about the laws desired by policy–setters in government. Tocqueville saw checks and balances in the framework of the state, the role of civic organisations, and the strength of local government as key buffers to hold back the threat of tyranny of the majority. However, the limits of these are well-known and do not require us to recite their well-documented and researched deficiencies here,[121] except to say that more than 70 years ago, Herman Finer said that 'the British Constitution is sustained by the democratic self-restraint of the parliamentary majority and the unsubversive and unrevolutionary parliamentary minority'.[122] One potential weakness in a parliamentary system arises where the majority, such as in the UK Parliament for example, has significant unchecked power. The traditional view of parliamentary sovereignty potentially leads to situations where the majority can impose its will without sufficient regard for minority rights or the principles of checks and balances. This can be contrasted with systems that have a written constitution or stronger judicial review mechanisms of primary law-making power and laws, which may offer a more robust protection against the excesses that might lead to, or stem from, majority rule.

Here, we return to Locke and Rousseau for a second time, albeit for a different purpose. Locke posited that political authority is not intrinsic but derived from the consent of the governed, a consent aimed at protecting their natural rights of life, liberty, and property.[123] This principle has always had a profound relevance to the concept of parliamentary sovereignty. With regard to parliamentary sovereignty, Locke's position might suggest that the absolute authority of Parliament must be exercised within the bounds of the social contract.[124] Parliamentary laws and actions must, therefore, be seen not just as expressions of majority will, but as instruments for protecting and enhancing the fundamental rights of the citizens, with whom those that govern are in a contract to protect.[125] This perspective challenges the traditional notion of unbridled sovereignty, suggesting that the true legitimacy of Parliament emanates from its alignment with the principles of liberty, equality, and the protection of natural rights. Moreover, Locke's emphasis on the separation of powers and checks and balances within government structures further adds to this argument.[126] This appears to us to imply that parliamentary sovereignty should be counterbalanced by other branches of government, particularly the judiciary,[127] to prevent the concentration of power and potential tyranny. Developing the point above further, Rousseau's concept

legislation in the pandemic: further limits of a constitutional bargain revealed' (2023) 43(4) Legal Studies 695. See also, Alexandra Sinclair and Joe Tomlinson, 'Plus ça change? Brexit and the flaws of the delegated legislation system' (Public Law Project, The SIFT Project 2020) 10 <https://publiclawproject.org.uk/content/uploads/2020/10/201013-Plus-ca-change-Brexit-SIs.pdf> accessed 30 March 2026.

[121] Rebecca McCumbers Flavin, 'Tocqueville's Critique of the U.S. Constitution' (2019) 24(7-8) The European Legacy Toward New Paradigms 755.

[122] Herman Finer, 'The Reform of British Central Government, 1945-1949' (1950) 12(2) The Journal of Politics 211.

[123] Locke (n 101) bk II, ch VIII, ss 95-99.

[124] ibid bk II, ch XI, ss 134-142.

[125] Ibid ss 135-140.

[126] David Jenkins, 'The Lockean Constitution: Separation of Powers and the Limits of Prerogative' (2011) 56(3) McGill Law Journal 543.

[127] Fabio Padovano, Grazia Sgarra and Nadia Fiorino, 'Judicial Branch, Checks and Balances and Political Accountability' (2003) 14 Constitutional Political Economy 47.

of the 'general will' also helps us call for an atomistic view of law-making and a limitation on law-making powers. Rousseau argued that legitimate political authority reflects the 'general will' (or *volonté générale*) of the people, a collective agreement aimed at the common good.[128] Rousseau's concept of the general will has caused considerable debate as to its true meaning and application, much like the principle of parliamentary sovereignty. There is a tension between viewing the principle as the collective decision of the citizens, and viewing it as an abstract representation of the common interest, independent of individual desires.[129] However, Christopher Bertram explains that a third perspective is possible on the general will, and that is viewing the principle as the individual citizens' will aimed at the common good.[130] Modern interpretations often link Rousseau's ideas to democratic procedures for determining the public interest, as Bertram explains, using methods such as Condorcet's jury theorem to legitimise state authority.[131] This tension between democratic and abstract conceptions can be reconciled if we see Rousseau as suggesting that proper conditions and procedures lead citizen legislatures towards laws reflecting their common interest, and without these, the state lacks legitimacy.[132] Rousseau argues, in a manner similar to that which we may see within the formal description of the rule of law, that for the general will to be effective, laws must apply universally and not target individuals. Doing so creates the generality of law and, as such, engenders a propensity towards ensuring fairness.[133] Bertram goes on to argue that this only works if citizens' situations are similar; in diverse or unequal societies, laws may not impact everyone equally, challenging the idea that citizens can fully represent the general will by considering how laws affect them personally.[134] Therefore, a universal attempt to explain the generality of law appears to be contingent upon a relative homogeneity among the citizens. In societies characterised by significant diversity, the impact of laws is not experienced uniformly. This disparity undermines the ability of citizens to view the general will through the lens of their personal circumstances, as Rousseau suggests. The uniform application of law presumes a commonality of interests and conditions that may not exist in heterogeneous societies. When citizens' experiences and needs are vastly different, laws that are ostensibly general and impartial may inadvertently privilege certain groups over others,[135] thereby contravening the principle of fairness that is central to Rousseau's theory. This issue is further compounded where cultural, economic, and social diversity is the norm. To address this, Joshua Cohen argued that deliberative democratic processes must be employed

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[128] Christopher Bertram, 'Jean Jacques Rousseau' (*Stanford Encyclopedia of Philosophy*, 21 April 2023) <https://plato.stanford.edu/entries/rousseau/> accessed 30 March 2026.

[129] See Christopher D. I. Bertram, 'Rousseau's Legacy in Two Conceptions of the General Will: Democratic and Transcendent' (2012) 74(3) The Review of Politics 403; Bernard Grofman and Scott L. Feld, 'Rousseau's General Will: A Condorcetian Perspective' (2013) 82(2) American Political Science Review 567; Bert van Roermund, 'An inconvenient legacy' in Bert van Roermund, *Law in the First Person Plural* (Edward Elgar 2020).

[130] Jason S. Canon, 'Three General Wills in Rousseau' (2022) 84(3) The Review of Politics 350.

[131] Bertram (n 128).

[132] ibid.

[133] We recognise that the generality principle, as classically formulated, does not require uniform application of the same law to all individuals irrespective of difference. Rather, it requires that those in like circumstances be treated alike, and that any legal distinctions be based on relevant and justified criteria. As such, generality is compatible with legal distinctions drawn between groups such as minors and adults, or persons with and without legal capacity. This conception underpins formal accounts of the rule of law and remains central to liberal constitutionalism. See Raz, 'The Rule of Law and Its Virtue' (n 7); Craig (n 7).

[134] Bertram (n 128).

[135] See Derrida (n 75) on privileging.

to ensure that diverse perspectives are adequately represented in law-making.[136] Unlike traditional models that focus on voting and majority rule, deliberative democracy asserts that legitimate laws and policies emerge from the process of open, reasoned debate among free and equal citizens. According to Jürgen Habermas, this discourse should be inclusive and non-coercive, ensuring that all participants can contribute and that their arguments are evaluated on their merits rather than their origin. This model aims to transform personal preferences into a collective will through mutual understanding and consensus, echoing Rousseau's idea of the general will and John Rawls' principles of justice under the veil of ignorance (which we will discuss below).[137] Habermas argues that such a deliberative process not only promotes democratic legitimacy but also fosters a more informed and engaged citizenry, capable of reaching decisions that reflect the common good.[138] By embedding the democratic process in continuous dialogue, Habermas' theory insists that true democracy is not just about the aggregation of votes, but about the transformation of preferences through reasoned public debate.[139] This approach aligns with Rousseau's view that legitimate laws are those that reflect the common interest through a process of collective deliberation and agreement. Hence, while Rousseau's ideal of the general will promotes fairness through universal application, its realisation in practice demands a nuanced approach that accommodates the diversity within the citizenry, ensuring that laws genuinely reflect the collective will and common good.

Here, we contend that Rousseau's general will, in the manner explained by Bertram, is a nexus between the methodological individualist's view of law-making, and the social contract between the lawmakers and the citizenry. This nexus suggests that, while laws are indeed crafted by individual lawmakers with their own motives and actions, these laws gain legitimacy and authority only when they align with the general will and common good as understood through the social contract. Rousseau's concept of the general will can serve as a bridge, asserting that individuals' actions within the law-making process should be oriented towards the common interest of all citizens. This alignment is crucial, as it transforms individualistic legislative acts into expressions of the general will, thereby fulfilling the social contract and ensuring the legitimacy of the laws. Consequently, the general will can function as a guiding principle that harmonises individual motivations by inserting the overarching objective of achieving the common good into the law-making process, ensuring that the resultant laws respect the contract between the citizenry and lawmakers by being fair, inclusive, and representative of the entire citizenry.

Hitherto, we have asserted that lawmakers act from a position of personal motivation, and that the social contract places a burden on them to remember their obligations to the citizenry. Additionally, the general will theory asserts that this obligation includes the objective of creating law for the common good in a heterogeneous society. As we outlined above, law-making for heterogeneous societies can lead to certain members of society suffering the impact of law more greatly than others. It is at this point that

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[136] Joshua Cohen, 'Deliberation and Democratic Legitimacy' in James Bohman and William Rehg (eds), *Deliberative Democracy: Essays on Reason and Politics* (MIT Press 1997).
[137] John Rawls, *A Theory of Justice* (first published 1971, rev edn, Harvard University Press 1999).
[138] Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (William Rehg tr, The MIT Press 1996); Simon Susen, 'Jürgen Habermas: Between democratic deliberation and deliberative democracy' in Ruth Wodak and Bernhard Forchtner (eds), *The Routledge Handbook of Language and Politics* (Routledge 2018); Kevin Olson, 'Deliberative Democracy' in Barbara Fultner (ed), *Jürgen Habermas: Key Concepts* (Acumen Publishing 2011).
[139] ibid.

we turn to Rawls' veil of ignorance to impose upon lawmakers the duty to consider the effect on those most vulnerable to the impact of law.[140] The veil of ignorance posits that individuals, when designing the basic structure of society, should do so from an original position of equality, where they are deprived of any knowledge about their own personal characteristics, social status, or natural abilities. This seeks to ensure that the state is ordered, and laws are made, by those who do not know whether they will fall on the majority or minority sides of a heterogeneous society. This is more likely to lead one to look for fairness in outcome, as decisions are made without knowledge of individual or societal characteristics that could bias the lawmaker's decisions. The veil of ignorance attempts to coerce representatives to focus solely on principles beneficial to all, thus embodying Rawls's ideas of freedom, equality, and fairness.

By drawing the veil of ignorance into our nexus that we have outlined above, there develops an imperative for those in law-making positions to act in a fair way, by ensuring that laws are crafted without the influence of personal biases or societal positions. In doing so, the veil of ignorance appears to align well with Rousseau's concept of the general will, in that the creation of laws under the general will must reflect the common good, transcending individual interests or motivations. This incorporation also appears to reinforce the social contract, as it requires lawmakers to envision themselves as any member of society, including the most vulnerable. This approach not only satisfies the philosophical underpinnings of the social contract but also operationalises the notion of fairness espoused by Rousseau in his general will.

The nexus that we have identified between the work of Locke, Rousseau, and Rawls emphasises that legitimate governance must transcend mere majoritarian rule and embody principles of fairness, equality, and the common good. However, as we acknowledge the theoretical frameworks and constitutional safeguards designed to prevent the tyranny of the majority, it is equally crucial to recognise and address the emerging threat of tyranny by the minority. This phenomenon, where a small but vocal or influential group exerts disproportionate control over political and legal processes, poses significant challenges to democratic integrity and social cohesion.

V. Tyranny of the Minority

The UK's unique blend of an uncodified constitution, a legally sovereign legislative body, and a first-past-the-post electoral system is, we propose, a framework that presents a constant threat to its democratic values. It could be argued that these factors have created a system that promotes the tyranny of the minority, and this is particularly apparent when viewed through the prism of methodological individualism. Read through this lens, the constitutional significance is that institutional design determines which individuals are empowered to convert preferences into binding legal form, and with what degree of effective constraint. Where executive control of legislative time and party discipline concentrates decision-making, the practical locus of law-making authority can shift away from any 'Parliamentary' abstraction and toward a narrow set of political actors. The concern, then, is not merely representational unfairness in the abstract, but the risk of legally consequential power being exercised with attenuated accountability. We begin our discussion of this point by considering John Stuart Mill's view of representative democracy. Mill, in his seminal work, *Considerations on Representative*

[140] Rawls (n 137).

Government,[141] argued that a truly representative democracy is necessary to prevent the tyranny of the majority, and endorsed Thomas Hare's proposals for electoral reform,[142] which were expressed in Hare's *Treatise on the Election of Representatives*,[143] a method that we know today as the single transferable vote system. According to Mill, a legislative body that represents minority groups, in a manner that is proportionate to their representation within the electorate, would allow these groups to exert their influence through their involvement in the regular business of the legislative body.[144] In order to achieve this, it is necessary that human beings are represented in Parliament, and not towns and counties as is the case with a first-past-the-post system.[145] It is often argued today, as it was when Mill was promoting this argument, that such a system of representation would eradicate local representation. However, as Mill argued, local concerns are not independent of the human beings that share these concerns, and it can be presumed that localities are represented when the people who inhabit these localities are represented.[146] Furthermore, there is no justification for a political system in which a geographical location is given pre-eminence over the collective needs of individuals across the country, particularly those who belong to marginalised groups and are in imperative need of protection through adequate representation.

A truly representative Parliament is also necessary to prevent the collective despotism that is fostered when political parties do not have to compromise in order to achieve their legislative aims. Here we turn to 'Duverger's Law',[147] named after political theorist Maurice Duverger, which posits that, where there is an electoral system with a single winner, as is the case with the UK's first-past-the-post system, two major parties will emerge, with the other minor parties typically splitting votes from the two dominant parties. This is demonstrably the case in most democracies with winner-take-all electoral systems,[148] and it is particularly the case in the UK. The House of Commons is comprised of two major political parties, the Conservative Party and the Labour Party, who have been the governing parties following every general election for over a hundred years.[149] However, since the end of the Second World War, no party has received a majority of the overall votes in any general election, yet the governing party has failed to achieve a majority of seats in the House of Commons only twice during this period.[150] Therefore, it would not be entirely accurate to describe the actions of Parliament as representing the tyranny of the majority when it passes oppressive laws that are supported only by those aligned with the governing party.

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[141] John Stuart Mill, *Considerations on Representative Government* (first published 1861, Batoche Books 2001).
[142] ibid 90-91.
[143] Thomas Hare, *A Treatise on the Election of Representatives* (2nd edn, Longman, Green, Longman & Roberts 1861).
[144] Mill, *Considerations on Representative Government* (n 141) 150.
[145] ibid 97.
[146] ibid.
[147] Maurice Duverger, *Political Parties Their Organization and Activity in the Modern State* (Wiley 1954).
[148] William Roberts Clark and Matt Golder, 'Rehabilitating Duverger's Theory: Testing the Mechanical and Strategic Modifying Effects of Electoral Laws' (2006) 39 Comparative Political Studies 679.
[149] House of Commons Library, 'UK Election Statistics: 1918-2023' (CBP 7529, 2023) <https://researchbriefings.files.parliament.uk/documents/CBP-7529/CBP-7529.pdf>accessed 30 March 2026.
[150] ibid.

Rather, it shows that power within Parliament is vested in a small number of individuals who represent less than half of the voters.

The disproportionate representation of the major parties in Parliament can be explained through the mechanical and psychological effects of voting.[151] The mechanical effect considers the tangible effects of voting, when votes are translated into seats.[152] Within the UK's first-past-the-post system, the mechanical effect inflates the representation of the major parties in Parliament as they are able to win seats consistently without the need to attract the majority of votes.[153] This lack of representation is further exacerbated when the psychological effect is considered. Whereas the mechanical effect is the translation of votes to seats following the vote, the psychological effect concerns the factors that influence voter behaviour and preference.[154] In first-past-the-post systems, many voters are encouraged to vote tactically for the candidate whom they perceive will have a better chance of winning, rather than their preferred candidate, in order to ensure that the less favourable candidate does not win the seat. This is a very negative approach to the exercise of democracy and further challenges the legitimacy of the democratic mandate that is claimed by the governing party in Parliament. It should be noted that, as the mechanical effect is an objective calculation, it has been well-documented in many jurisdictions around the world, whereas the psychological effect, due to its very nature, is more difficult to quantify and empirically analyse.[155] It is not within the scope of this article to consider this in much greater detail; however, for the purposes of this article, it suffices that a significant portion of the electorate has consistently responded to pollsters that they engage in tactical voting during general elections. For instance, analysis by the Electoral Reform Society found that 32% of voters in the 2019 general election did not vote for their preferred party or candidate but chose to vote tactically instead.[156] It is also noteworthy that 45% of all votes were for non-elected candidates.[157] This is a significant section of the population whose votes do not count at all and are therefore left voiceless, without representation in Parliament.

When the mechanical and psychological effects are combined, it suggests that, not only does the governing party in Parliament receive less than half of all votes, but that their support may be even lower than their vote share indicates. As well as posing a serious challenge to the democratic mandate claimed by the governing party, this also invalidates the last vestiges of any claim to legitimacy put forth by proponents of parliamentary sovereignty. If not for the contention that Parliament represents the will of the people, what argument remains, worthy of respect in a 21st-century society, for upholding parliamentary sovereignty? It is submitted therefore that, in a modern democratic country, if the legislature does not represent even half of the voters, then

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[151] André Blais, Romain Lachat, Airo Hino, and Pascal Doray-Demers, 'The Mechanical and Psychological Effects of Electoral Systems: A Quasi-Experimental Study' (2011) 54(1) Comparative Political Studies 146.
[152] ibid.
[153] Clark and Golder (n 148).
[154] Blais et al, 'The Mechanical and Psychological Effects of Electoral Systems' (n 151).
[155] André Blais and R. K. Carty, 'The Psychological Impact of Electoral Laws: Measuring Duverger's Elusive Factor' (1991) 21(1) British Journal of Political Science 79-93.
[156] Jess Garland, Michela Palese and Ian Simpson, 'Voters Left Voiceless: The 2019 General Election' (Electoral Reform Society 2020) 6 <https://www.electoral-reform.org.uk/wp-content/uploads/2020/02/2019-General-Election-Report.pdf> accessed 30 March 2026.
[157] ibid.

any remaining assertion of such a body's legislative sovereignty is untenable and should not be entertained.

The difficulty in ascribing sovereignty to Parliament is compounded when viewing these issues from the perspective of methodological individualism. We have argued that Parliament should not be viewed as a monolith that represents the collective will of the people, but rather that it should be seen as a body of individual parliamentarians with their own personal goals and predilections that shape their legislative agenda. Therefore, it is important to further scrutinise the role of the chief parliamentarian in the House of Commons, the Prime Minister. It is easier to persist with the fiction of parliamentary sovereignty if parliamentarians are regarded as true representatives of the will of the people, not subject to any external pressures that may influence their vote. However, this is categorically not the case, due to two factors, in particular. The first is the Prime Minister's ability to appoint and remove paid government ministers, and the second is the whip system. The Prime Minister can appoint up to 108 paid government ministers, as per the Ministerial and other Salaries Act 1975,[158] with no more than 95 ministers permitted to sit in the House of Commons,[159] and the Prime Minister can also remove these ministers from their positions. This is entirely at the discretion of the Prime Minister, and appointments are often made as rewards, and dismissals can be the result of ideological differences. Anthony King and Nicholas Allen suggest that this is probably the Prime Minister's 'most important single power',[160] and we agree with this assessment. The number of paid ministers represents over 15% of the total membership of the House of Commons, which is a significant proportion of voting MPs who are beholden to the Prime Minister personally for their ministerial roles and salaries. It would be very difficult to argue that the Prime Minister does not hold exceptional influence over this collection of MPs. Included in the ranks of the paid MPs obliged to the Prime Minister are the government whips, who act as the Prime Minister's enforcers.[161] The whips enforce the whipping system and ensure that MPs vote in line with the objectives of the party. The tactics used by the party whips to compel obedience has been the subject of sustained criticism for many years. Former minister, Rory Stewart, warned that the whip system makes the UK an 'elected dictatorship', and there have been numerous allegations of blackmail by party whips.[162] In addition to this, it is possible for the Prime Minister to 'withdraw the whip' from an MP, which effectively means that the MP is expelled from the party and has to sit as an independent in the House of Commons, which could sound the death knell for their parliamentary career, as MPs who are expelled are seldom returned to Parliament by their constituents at the next general election.[163] Therefore,

[158] Ministerial and other Salaries Act 1975.
[159] House of Commons Disqualification Act 1975, s 2(1).
[160] Anthony King and Nicholas Allen, "Off With Their Heads': British Prime Ministers and the Power to Dismiss' (2010) 40(2) British Journal of Political Science 249-278, 249.
[161] See Christopher J. Kam, *Party Discipline and Parliamentary Politics* (Cambridge University Press 2009).
[162] Tabitha Troughton, '"Almost never discussed": inside the UK whipping system' (*The Constitution Society*, 1 September 2022) <https://consoc.org.uk/inside-the-uk-whipping-system/> accessed 30 March 2026.
[163] Peter Walker, 'Crop of the whipless: tally grows of British MPs stripped of parliamentary heft' *The Guardian* (London, 8 January 2023) <https://www.theguardian.com/politics/2023/jan/08/crop-of-the-whipless-tally-grows-of-british-mps-stripped-of-parliamentary-heft> accessed 30 March 2026. For a more general comment on this power in use in Canada, see, Christopher J. Kam, 'Demotion and Dissent in the Canadian Liberal Party' (2006) 36(3) British Journal of Political Science 561.

this is yet another powerful weapon in what has become the Prime Minister's considerable political arsenal.

Ultimately, these are the individuals who create laws in the House of Commons: individuals with personal desires and ambitions, individuals who wish to remain in their positions, and, crucially, individuals who are controlled, or at the very least, greatly influenced, by one person, the Prime Minister. When parliamentary sovereignty is viewed through the lens of methodological individualism, we can see an institution that hearkens back to the days of monarchical rule. Ascribing sovereign power to Parliament, without considering the individuals and the power dynamics that shape the law-making process within this institution, is a dangerously myopic position. Individuals, or a tiny collection of individuals, should not be sovereign in a modern democratic state, and they should not be allowed to hide behind the façade of an ancient institution and its romantic ideals of representative democracy, which often have limited basis in current constitutional reality. Parliamentary sovereignty is increasingly difficult to defend in its orthodox form, and it is time to move beyond the reverential treatment it has traditionally received. It persists as an idea sustained in part by narratives of British exceptionalism that continue to inform political and constitutional discourse, or, more concerningly, by those who see it as a political tool for the consolidation of individual power. In a country without the protection of a codified constitution, this should be cause for serious concern.

The United Kingdom has long benefitted from robust constitutional traditions that have supported a functional and respected separation of powers. Judicial independence, a professional and politically insulated civil service, a culture of legal accountability, and a Parliament that has historically shown at least some degree of constitutional self-restraint have together contributed to the UK's longstanding commitment to the rule of law. This is reflected in the UK's high placement in global rankings such as the World Justice Project's Rule of Law Index.[164] These indicators demonstrate that the UK's constitutional structures have so far performed well by global standards. However, the danger lies in complacency. A high ranking or long tradition of legal accountability is not, in itself, a safeguard against constitutional erosion. Across a number of contemporary democracies, we have seen that abuse of power does not always arrive dramatically or without warning, but can instead develop incrementally, sometimes under the guise of legality. In Hungary, constitutional amendments and judicial restructuring under Viktor Orbán have eroded institutional independence.[165] In India, concerns have been raised about executive encroachment on judicial autonomy, particularly through sustained interference in judicial appointments under Narendra Modi's government.[166] In the United States, Donald Trump's return to office has reignited concerns about the potential misuse of presidential power, especially where judicial independence and constitutional conventions are treated as political obstacles rather than foundational principles.[167]

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[164] World Justice Project, 'Rule of Law Index – Rankings' (2025) <https://worldjusticeproject.org/rule-of-law-index/global> accessed 30 March 2026.
[165] Aylin Aydin-Cakir, 'The varying effect of court-curbing: evidence from Hungary and Poland' (2024) 31(5) *Journal of European Public Policy* 1179.
[166] Madan B. Lokur, 'The Government Wants a 'Committed Judiciary' – And Could Be Close To Getting One' *The Wire* (New Delhi, 13 January 2023) <https://thewire.in/law/supreme-court-judges-appointment-committed-judiciary> accessed 30 March 2026.
[167] Nicholas Riccardi, 'Trump's moves test the limits of presidential power and the resilience of US democracy' *Associated Press* (New York, 1 March 2025) <https://apnews.com/article/542ac437a58880e81c052f8f2df1643f> accessed 30 March 2026.

These examples serve as reminders that a democratic mandate is not a sufficient constraint on the abuse of authority. The more pressing question, then, is not whether the UK has upheld the rule of law in the past, but whether its constitutional design makes it as difficult as possible to depart from it in future. To meet that challenge, there is a pressing need for clearer constitutional safeguards, stronger mechanisms for enforcing the separation of powers, and a more principled understanding of legislative limits within a legal order governed by the rule of law.

These concerns are not merely hypothetical. The recent enactment of the (now repealed) Safety of Rwanda (Asylum and Immigration) Act 2024 offers a striking illustration of the very dangers outlined above. Despite the Supreme Court's finding in *R (on the application of AAA (Syria)) v Secretary of State for the Home Department* (2023) that Rwanda could not be treated as a safe country due to systemic deficiencies in its asylum system,[168] Parliament responded by passing legislation that declared Rwanda safe as a matter of legal fact, effectively overturning judicial findings.[169] The Act further provided that this designation was non-justiciable, thereby excluding the courts from reviewing the government's assertion.[170] This legislative assertion of fact, combined with the deliberate exclusion of judicial oversight, exemplifies how Parliament, acting through individual political actors with party-driven motives, may exploit the doctrine of sovereignty to bypass constitutional safeguards. If the rule of law were entrenched as a constitutional principle, superior to Parliament's authority, as we argue that it ought to be, such an Act could not lawfully exclude judicial scrutiny. The principle that those who exercise public power must be subject to independent review would render any attempt to oust judicial oversight invalid. Where Parliament asserts the power to determine facts through legislation, and simultaneously prevents courts from examining those assertions, the essential function of the judiciary is undermined. A legal order grounded in the rule of law cannot permit one branch of the state to insulate itself from accountability by declaring legal and factual matters beyond the reach of the courts.

In effect, a governing party elected by a minority of the electorate was able to assert factual truths through legislation and simultaneously shield them from judicial scrutiny. This episode exposes the fragility of the UK's constitutional safeguards when parliamentary sovereignty is wielded without institutional constraint. It demonstrates how individual power, when concentrated within a party leadership and exercised through a structurally dominant legislature, can override fundamental principles such as judicial independence, legal accountability, and the rule of law itself.

VI. Conclusion

The conventional narrative of parliamentary sovereignty requires a critical re-evaluation in light of contemporary democratic values, the rule of law, and ethical considerations. Through methodological individualism, we have stressed the significance of individual actions within Parliament, challenging the monolithic perception of legislative authority. Taken together, the doctrinal, jurisprudential, and institutional arguments developed in this article show that parliamentary sovereignty cannot adequately be understood as legally unqualified legislative power vested in Parliament as an abstract whole. We propose a revised definition of parliamentary sovereignty: it is not an absolute or unchallengeable authority, but a contingent power

[168] *R (on the application of AAA (Syria))* (n 17).
[169] Safety of Rwanda (Asylum and Immigration) Act 2024, s 2(1).
[170] ibid s 4.

whose legitimacy depends on the rule of law, on the constitutional values that inform the legal order, and on acceptance and recognition by the judiciary and other legal officials. This definition draws together the principal theoretical foundations relied upon in the article, including social contract theory and the jurisprudential accounts associated with Hart and Kelsen. This redefined sovereignty emerges from a dialogue with varied historical and theoretical perspectives and specifically incorporating insights from methodological individualism to emphasise the role of individual parliamentarians. Furthermore, we have concluded that sovereignty is not an inherent attribute of Parliament, but a characteristic granted through a collective acknowledgment by the legal community.

These claims are not merely theoretical. Where legislative power is coupled with structural features that can yield decisive parliamentary control without majority electoral support, the democratic mandate cannot plausibly be treated as a sufficient justification for the use of legislative power, and the risks of both majority oppression and minority capture become constitutionally salient. The (now repealed) Safety of Rwanda (Asylum and Immigration) Act 2024 illustrates the point in concrete form by showing how legislative assertion and the attempted curtailment of judicial scrutiny may be used to bypass constitutional safeguards that the rule of law is intended to supply.

While a comprehensive proposal for constitutional reform lies beyond the scope of this article, we maintain that there is a compelling case for constitutional limits on parliamentary power. At a minimum, that case entails clarity about what the rule of law requires institutionally, and candour about the doctrinal techniques through which courts already preserve constitutional principles in practice, including legality-based interpretation and resistance to the effective exclusion of judicial review. It also entails recognising that limits on legislative power are not solely questions of judicial doctrine but are shaped by the distribution of law-making initiative within Parliament and the representational consequences of electoral design. The point is not to prescribe a single reform pathway here, but to identify the sites at which legally meaningful constraints can be developed and assessed. Whether this is achieved through statutory change or through the incremental development of judicial doctrine, legislative practice, and civic expectation, the article's argument is that the rule of law should be treated as a superior constitutional principle. A strong case for such a transformation must begin with a clear understanding of how legal authority currently functions, and how it might be reimagined in light of democratic accountability and the protection of fundamental values. While constitutional reform is a complex and often contested endeavour, the growing disconnect between legislative power and democratic legitimacy makes it increasingly difficult to postpone these conversations. Recognising the distinctive features of the UK's constitutional tradition is not an argument for stasis, but a necessary step in clarifying the legal and constitutional limits of legitimate legislative authority. Notwithstanding the challenges of reconciling diverse theoretical frameworks, we believe that the definition proposed here offers a coherent and principled foundation for thinking anew about the limits of legislative authority in the United Kingdom.