

The Question of the Return to Parliamentary Sovereignty in South Africa: A Comparative Perspective

Associate professor **Paul S. MASUMBE**¹

Abstract

South Africa's constitutional framework is founded on the principle of constitutional supremacy, deliberately chosen to prevent the perceived abuse that parliamentary sovereignty enabled during apartheid. However, current debates on judicial power raise the legal question of whether courts have exceeded their interpretive mandate by effectively creating law. The central issue is whether a return to parliamentary sovereignty would advance democratic responsiveness or undermine constitutionalism. This article considers three questions: (i) Can judges legitimately exercise law-making authority over Parliament, and what is the role of the Separation of Powers, Checks and Balances? (ii) To what extent does judicial overreach contribute to the weakening of parliamentary oversight in a dominant-party state? and (iii) How does South Africa's experience compare with other jurisdictions such as the United Kingdom, Finland, and Israel in this regard? It is argued that unchecked parliamentary sovereignty poses grave risks to democracy, while judicial overreach equally threatens constitutional legitimacy. The study will contribute to understanding the legal implications of a potential return to parliamentary sovereignty in South Africa, particularly concerning judicial law-making, parliamentary authority, and the separation of powers.

Keywords: *parliamentary sovereignty, constitutional supremacy, judicial law-making, separation of powers, South Africa.*

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1. Introductory Remark

South Africa's constitutional order was deliberately designed to break with the authoritarian legacy of parliamentary sovereignty.² Under apartheid, Parliament's absolute authority enabled the passage of laws that entrenched injustice, discrimination, and the denial of fundamental freedoms.³ However, the adoption of the 1996

¹ Paul S. Masumbe - Head of School of Law, Faculty of Law, Humanities and Social Sciences, Walter Sisulu University, South Africa, pmasumbe@wsu.ac.za, ORCID: 0000-0002-9997-4125.

² Dennis M. Davis, "Authoritarian constitutionalism: the South African experience." In Helena Alviar García, Günter Frankenberg (eds.) *Authoritarian Constitutionalism: Comparative Analysis and Critique*. Edward Elgar Publishing, 2019, pp. 57-75.

³ Ibid.

Constitution marked a profound turning point in South Africa's political and legal history.⁴ It moved the country away from the consociational arrangements that had characterised the transitional period and established a liberal democratic framework grounded in equality, freedom, and human dignity.⁵ This new constitutional order not only safeguarded individual rights but also symbolised the formal end of apartheid, laying the foundation for a more inclusive and just society built on constitutional supremacy and the rule of law.

The enforceability of constitutional rights often depends on an individual's social and economic position, meaning that those with greater resources are better able to access justice, while vulnerable groups remain at a disadvantage. Dube observed that the judiciary in South Africa constitutes one of the three branches of government within the framework of the doctrine of separation of powers, a principle central to the 1996 Constitution.⁶ This position has been reinforced by numerous judicial decisions affirming that the Constitution establishes a system in which the legislative, executive, and judicial branches are of equal standing while exercising distinct and independent powers.⁷ The Constitution of the Republic of South Africa, 1996, embraces the doctrine of separation of powers as a cornerstone of democratic governance.⁸ At its heart, this doctrine recognises that government is made up of three distinct branches: the legislature, the executive, and the judiciary. Each branch has its own unique and identifiable responsibilities, designed to ensure that no single institution dominates the political order.⁹ Yet concerns have arisen that the South African judiciary is extending its role beyond the limits of its constitutional mandate. Judges, who are unelected and not vested with legislative authority, are sometimes perceived as creating law rather than merely interpreting and applying it. In principle, the judicial function is confined to giving effect to existing law and the Constitution, not to assume the law-making powers that properly belong to Parliament.

Parliament is tasked with making the laws, the executive with implementing them, and the courts with interpreting and enforcing them. In considering a return to parliamentary sovereignty in South Africa, some argue that such a system would strengthen democracy by keeping powers clearly divided and preventing any branch from acting beyond its proper limits. This is a way to restore legislative supremacy and ensure that elected representatives remain directly accountable to the people. This division not only creates balance but also safeguards against the concentration of power

⁴ Rupert Taylor. "Ending Apartheid: The relevance of Consociationalism." In Guy Ben-Porat (ed.) *The Failure of the Middle East Peace Process? A Comparative Analysis of Peace Implementation in Israel/Palestine, Northern Ireland and South Africa*, London: Palgrave Macmillan UK, 2008, pp. 97-110, https://doi.org/10.1057/9780230582637_5.

⁵ Ibid.

⁶ Felix Dube. "Separation of powers and the institutional supremacy of the Constitutional Court over Parliament and the executive", *South African Journal on Human Rights*, Volume 36, Issue 4, 2020: 293-318, <https://doi.org/10.1080/02587203.2021.1925954>.

⁷ Ibid.

⁸ Magabe T. Thabo, Kola O. Odeku. "Separation of powers, checks and balances and judicial exercise of self-restraint: an analysis of case law." *Obiter* 42, no. 3 (2021): 547-560.

⁹ Ibid.

in any one set of hands, reflecting the Constitution's deep commitment to accountability and fairness in public life. Parliament was vested with legislative authority in section 43,¹⁰ the executive with governmental authority in section 85, and the judiciary with authority in section 165.¹¹

Within this framework, the Constitutional Court was established as the ultimate guardian of constitutional compliance. In this instance, the Constitutional Court does not make laws, but its role is to interpret laws and ensure that they align with the Constitution. The Constitutional Court further applies the law, decides cases based on constitutional principles. It has the exclusive power to declare laws or actions unconstitutional if they conflict with the Constitution, but the Court should not act beyond the given power. The doctrine of separation of powers is often invoked to explain this institutional design.¹² Judges frequently remind themselves of the need for restraint, cautioning against interference in domains reserved for other branches. This self-discipline reflects an awareness that democracy requires balance and that unelected judges must respect the roles of elected representatives. Furthermore, to describe the Court as "law-making" risks misunderstanding the limits of judicial authority. It is essential to emphasise that judges in South Africa cannot make laws. The Constitution vests that power exclusively in Parliament. Courts are empowered to interpret legislation, develop the common law, and test statutory and executive acts against the Constitution.¹³ When a court declares legislation invalid or compels Parliament to remedy a defect, it does not create new law; rather, it ensures that existing law complies with constitutional requirements.¹⁴

The judiciary's interpretive role may have practical consequences that influence policy, but those outcomes flow from the supremacy of the Constitution, not from a judicial assumption of legislative power. This distinction matters for democracy. If courts were truly making laws, they would usurp the representative function of Parliament, undermining the principle that the people govern through their elected representatives. Furthermore, when courts apply constitutional standards to legislation, they are performing the task assigned to them by the democratic settlement of 1996 to safeguard rights and prevent abuses of power. Far from being a violation of the

¹⁰ Section 43 of the Constitution of South Africa states that the legislative authority of the national, provincial, and local spheres of government is vested in Parliament, the provincial legislatures, and municipal councils, respectively. The national legislative authority rests with Parliament (the National Assembly and National Council of Provinces), each provincial legislature holds the provincial authority, and the local legislative authority belongs to municipal councils.

¹¹ Section 165 of the South African Constitution establishes the principle of judicial independence, stating that the Republic's judicial authority is vested in its courts, which must operate independently, subject only to the Constitution and the law. It also prohibits any person or organ of state from interfering with the courts and requires organs of state to assist and protect the courts to ensure their effectiveness and impartiality.

¹² Felix Dube. "Separation of powers and the institutional supremacy of the Constitutional Court over Parliament and the executive." pp. 293-318.

¹³ Parliament holds exclusive legislative power, while courts are tasked with interpreting laws, developing the common law, and reviewing the constitutionality of statutes and executive actions. The Constitution, as the supreme law, guides these roles, with courts ensuring that all actions, including legislation, align with its provisions.

¹⁴ *Ibid.*

separation of powers, this judicial function is its necessary expression. There is a deeper tension about the nature of South African democracy. It is argued that allowing unelected judges to frustrate the will of the majority might pose a big issue in the South African democracy. Remember, parliament makes the law, and courts ensure that those laws respect the Constitution. The legitimacy of the judiciary depends on holding this line firmly, resisting the temptation to claim a law-making role, and clarifying that its authority lies in interpretation and enforcement. South Africa's future democratic stability depends not on dismantling constitutional supremacy but on recognising the judiciary's true function.

The courts are guardians, not legislators.¹⁵ Their role is to interpret the laws made by the Parliament within the limits of constitutional values.¹⁶ The task ahead is not to weaken the judiciary or inflate its powers, but to sustain a balanced understanding. For instance, Finland is a sovereign republic governed by its Constitution, which is enshrined in the Constitutional Act. The Constitution guarantees the inviolability of human dignity, protects individual freedoms and rights, and seeks to promote justice and fairness throughout society.¹⁷ In Finland, state powers are vested in the people, who exercise their sovereignty through representation in Parliament. Democracy guarantees individuals the right to participate in shaping society and influencing their living conditions.¹⁸ The exercise of public authority must always be grounded in law, and all public activities are required to strictly adhere to legal provisions. Lastly, legislative authority in Finland is vested in the Parliament, which also has the power to decide on state finances.¹⁹ Executive authority is exercised by the President of the Republic and the Government, whose members must enjoy the confidence of Parliament.²⁰ Judicial authority is exercised by independent courts, with the Supreme Court and the Supreme Administrative Court serving as the highest judicial instances. This study draws. For instance, parliamentary sovereignty in the United Kingdom means that no Parliament can bind a future Parliament.²¹

Every newly elected Parliament enjoys the same unlimited law-making power as its predecessors.²² In Finland, the Finnish Constitution establishes Parliament as the highest organ of government, granting it supreme legislative authority, including the power to override a presidential veto and to amend the Constitution itself.²³ Moreover, Israel presents a unique case for studying parliamentary sovereignty. Without a single formal, entrenched constitution, the Israeli system depends on a collection of Basic

¹⁵ Jorge Farinacci-Fernós. "Constitutional courts as majoritarian instruments." *Vienna Journal on International Constitutional Law*, vol. 14, issue 4 (2021): 379-397, <https://doi.org/10.1515/icl-2020-0014>.

¹⁶ Ibid.

¹⁷ Finland 1999 (rev. 2011), section 1 of the Constitution.

¹⁸ Ibid, section 2.

¹⁹ Ibid, section 3

²⁰ Ibid, section 3.

²¹ Anne Dennett. "6. Parliamentary sovereignty." In Anne Dennett, *Public Law Directions*, Oxford University Press, 2024, pp. 99-123.

²² Ibid.

²³ Tapio Raunio and Matti Wiberg. "Building elite consensus: Parliamentary accountability in Finland." *Journal of Legislative Studies*, vol. 6, issue 1 (2000): 59-80, <https://doi.org/10.1080/13572330008420613>.

Laws, judicial precedents, and institutional practices.²⁴ Hence, adopting parliamentary sovereignty in South Africa could potentially serve as a blessing or panacea, providing a system in which legislative authority is clearly defined and accountable. This study is divided into four parts. Part II deals with the judges legitimately in exercising law-making authority over Parliament. Part III deals with Separation of Powers, Checks and Balances. Part IV deals with Judicial Overreach and the weakening of Parliamentary Oversight in a Dominant-Party State. Part V deals with the lessons that South Africa can draw from other jurisdictions.

2. Can Judges Legitimately Exercise Law-Making Authority over Parliament

Judges in South Africa cannot make laws because that responsibility belongs to Parliament, which is directly elected by the people. Our democracy is built on the separation of powers, meaning each branch of government has its own role. Parliament debates and passes laws, the executive implements them, and the judiciary interprets and applies them.²⁵ If judges were to create laws, it would upset this balance and weaken accountability, since judges are not elected representatives and cannot be held politically accountable for policy decisions. Their authority comes from applying the law fairly and ensuring that all laws and government actions comply with the Constitution. This way, they protect the rights of citizens without interfering in Parliament's democratic mandate. Respecting these boundaries is crucial for both democracy and judicial independence, which is why courts emphasise restraint in their judgments. The relationship between judicial authority and legislative power in South Africa has shifted profoundly since the advent of democracy in 1994. Under apartheid, courts generally followed a strict textual approach, limiting themselves to the precise wording of legislation and avoiding intervention in the work of Parliament.²⁶

The adoption of the 1996 Constitution, however, replaced parliamentary sovereignty with constitutional supremacy, fundamentally altering the balance of power. Section 39(2) now requires judges to interpret laws in a manner consistent with the spirit and values of the Bill of Rights, which has encouraged a more purposive approach to interpretation.²⁷ At the same time, the Constitution upholds the doctrine of

²⁴ Luke Kemps 'In Quest of Constitutional and Societal Stability: A Comparative Exploration of the Israeli Basic Laws and the United States Constitution Amidst Israel's Constitutional Crisis', <https://arno.uvt.nl/show.cgi?fid=178999>, accessed on 20 January 2026.

²⁵ Democracy relies on the separation of powers, dividing government into the legislature, executive, and judiciary to ensure each branch has distinct roles, preventing one from becoming too powerful. The legislature makes laws, the executive implements and enforces them, and the judiciary interprets them and administers justice. This system creates checks and balances where each branch can hold the others accountable, safeguarding citizens from potential abuses of state power.

²⁶ Annie Singh and Moreblessing Zaryl Bhero. "Judicial law-making: unlocking the creative powers of judges in terms of section 39 (2) of the Constitution." *Potchefstroom Electronic Law Journal/ Potchefstroomse Elektroniese Regsblad* 19, no. 1 (2016), <https://doi.org/10.17159/1727-3781/2016/v19i0a1504>.

²⁷ Ibid.

separation of powers, with built-in checks and balances that demand judicial restraint to prevent encroachment on the functions of the legislature or executive.²⁸ Courts are empowered to strike down laws or executive conduct that breach constitutional limits, but this authority is supervisory, not legislative.²⁹ More recently, the Constitutional Court has extended its oversight to reviewing parliamentary procedures and rules of accountability. Such interventions have been justified by concerns over the abuse of dominant party power, which threatened the effectiveness of democratic checks and required judicial remedies.³⁰

This evolution highlights the ongoing tension in South Africa's constitutional democracy: courts must remain vigilant in protecting constitutional values without stepping into the legislative role. The judiciary's legitimacy lies in the interpretation and enforcement of the Constitution, not in the creation of new laws. In this sense, judicial authority strengthens democracy only when it is carefully exercised within the boundaries of constitutional supremacy and the separation of powers.³¹ Hence, if judges in South Africa were to continue making laws, the consequences for democracy would be far-reaching. The most immediate effect would be a breakdown of the separation of powers. Parliament is elected by the people and entrusted with the task of creating laws, while judges are appointed to interpret and apply those laws fairly.³² These judges would bypass the democratic process and act without the accountability that comes from elections if they began writing laws. This shift would also weaken Parliament's authority. Instead of policies being openly debated and passed through democratic channels, they would be shaped in courtrooms by individuals who are not chosen by the people.

Such a development could create serious tension between the branches of government and even lead to constitutional conflict. Another risk is the loss of public trust in the judiciary. Courts are respected because they are seen as impartial and independent. If they start making laws, they may be perceived as political actors, undermining their legitimacy and credibility. Moreover, if judges overstep their role, it would blur the line between interpretation and creation of law. This would not only weaken Parliament but also threaten the constitutional order itself, which depends on each branch of government respecting its boundaries. Judges protect the Constitution by ensuring laws comply with it not by taking over the law-making function reserved for Parliament.

²⁸ Magabe T. Thabo, and Kola O. Odeku. "Separation of powers, checks and balances and judicial exercise of self-restraint: an analysis of case law.", p. 547-560.

²⁹ Ibid.

³⁰ Stephen Gardbaum. "Pushing the boundaries: judicial review of legislative procedures in South Africa." *Constitutional Court Review* 9, no. 1 (2019): 1-18, <https://doi.org/10.2989/CCR.2019.0001>.

³¹ Hugh Corder. "Judicial authority in a changing South Africa." *Legal Studies* vol. 24, no. 1-2 (2004): 253-274, <https://doi.org/10.1111/j.1748-121X.2004.tb00250.x>.

³² Keith Syrett and John Alder. *Constitutional and administrative law*. Bloomsbury Publishing, 2021.

3. Separation of Powers, Checks and Balances: Respecting Other Branches of Government

When exercising judicial power, courts must remain sensitive to the functions and dignity of other branches of government. A notable example of this principle is found in the case of *President of the Republic of South Africa v South African Rugby Football Union*,³³ where the Constitutional Court addressed the limits of judicial intervention in relation to the executive. In this case, the High Court had sought to compel the President to provide oral evidence. The Constitutional Court held that such a demand was not in the interests of justice, as it would amount to a failure to respect the dignity and status of the President. The Court emphasised that preserving the authority and integrity of the executive is essential for its effective functioning. Even in Cabinet meetings, where sensitive policy matters are discussed, the President's role must be protected to ensure that executive decision-making is not compromised. Insisting that the President appear in person would, the Court reasoned, undermine the executive branch and the presidency itself. The judgment underscored the principle that courts must exercise appropriate restraint when their actions could disrupt or encroach upon the functions of other branches.

At the same time, the Court recognised that judicial self-restraint does not imply abdication of constitutional responsibilities. The judiciary retains its duty to administer justice effectively but must do so in a manner that respects the status and functions of the executive. This case, therefore reinforces a fundamental lesson of South Africa's constitutional order: while the branches of the State must respect one another, this respect does not relieve any branch of its obligations under the Constitution. Courts must balance their authority with sensitivity, ensuring that judicial intervention does not impair the capacity of the executive to perform its functions, while still upholding the rule of law.

A similar principle was emphasised in *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism*,³⁴ where the Constitutional Court made it clear that the judiciary should avoid encroaching upon the executive's domain. In this case, the applicant challenged the allocation of fishing quotas for the 2002-2005 seasons, seeking to have the process reviewed. The Cape High Court initially upheld the review, but the Supreme Court of Appeal overturned that decision on appeal.³⁵ The case presented a critical question under South Africa's constitutional order: to what extent could executive decisions, made within the exclusive competence of the executive branch, be subjected to judicial scrutiny? The Constitutional Court emphasised that one arm of the State must respect the authority of the others. Courts cannot operate on the assumption that they are inherently "wiser" than the executive in matters falling squarely within its constitutional mandate. The Court highlighted that judicial intervention is only warranted where a decision by another branch clearly violates the

³³ 2000 (1) SA 1 (CC).

³⁴ 2004 (4) SA 490 (CC).

³⁵ Ibid.

Constitution. Furthermore, the system of checks and balances within South Africa's constitutional model of the separation of powers recognises that some overlap between the three branches of government is inevitable.

The core aim of this doctrine is to ensure that power is controlled and not concentrated in any single branch. However, it also acknowledges that a complete and rigid separation would make governance ineffective. Therefore, while each branch the legislature, executive, and judiciary operates independently, they must still interact and cooperate in ways that allow the government to function efficiently and act in the public interest.³⁶

4. Judicial Overreach and the Weakening of Parliamentary Oversight in a Dominant-Party State

In South Africa's constitutional democracy, the growing weakness of Parliament's oversight role over the executive has raised the question of whether courts have been drawn into matters better left to other branches of government. The Constitution is clear, whereby judges must declare invalid any law, policy, or conduct that is inconsistent with constitutional provisions.³⁷ This function affirms the supremacy of the Constitution and ensures that state power is exercised within lawful bounds. Yet, as Judge Dennis Davis has cautioned, there is a real danger in expecting the judiciary to resolve every political impasse.³⁸ When courts are routinely asked to step into disputes that are essentially political or policy-driven, they risk entering terrain that is better suited for democratic forums, especially when such disputes have wide-ranging social and economic consequences.

The principle of non-intrusion is central to the separation of powers. It requires judges to avoid interfering in the work of Parliament and the executive, because judicial overreach can be just as harmful to democracy as executive abuse. Courts are unelected; they do not draw legitimacy directly from the people, and for this reason, they must act with restraint.³⁹ Decisions that impose political or policy burdens on the state belong in the legislative sphere, where elected representatives are accountable to the electorate. However, South Africa's dominant-party system has altered this balance. The dominant party in Parliament has weakened effective opposition and undermined the legislature's capacity to hold the executive to account.⁴⁰ This vacuum in accountability has driven more individuals and institutions to the courts, relying on the judiciary to remedy abuses of power.

The unintended consequence is that the judiciary, as the only independent arm of government, has become overburdened, forced to navigate disputes that stretch

³⁶ *S v. Dodo* [2001] ZACC 16; 2001 (3) SA 382 (CC); 2001 (5) BCLR 423 (CC), (hereinafter referred to as *S v. Dodo*), para16.

³⁷ Section 172(1) of the Constitution.

³⁸ *Mazibuko v Sisulu MP Speaker of the National Assembly* [2012] ZA WCHC 189; 2013 (4) SA 243 (WCC).

³⁹ Barry Friedman. "Dialogue and judicial review." *Michigan Law Review* vol. 91, issue 4 (1993): 577-682.

⁴⁰ *United Democratic Movement v Speaker of the National Assembly and others* [2017] ZACC 21.

beyond its constitutional mandate. Furthermore, when judicial overreach intersects with weak parliamentary oversight in a dominant-party state, the balance of constitutional democracy is threatened.

The principle of the separation of powers (*trias politica*) requires each branch of government to function within its constitutional limits. If courts begin to assume powers reserved for the legislature or executive, the boundaries between state institutions become blurred, undermining both accountability and stability. This erosion risks turning judges into de facto lawmakers, a role inconsistent with their constitutional mandate. Another side effect is the perception of politicisation. When courts are continually drawn into disputes that are essentially political, they risk being seen not as impartial guardians of the *suprema lex* (the Constitution) but as political actors. This diminishes public confidence in judicial independence, which is the cornerstone of the rule of law. In addition, weak parliamentary oversight reduces the effectiveness of representative democracy.

Parliament, as the body directly accountable to the people, is entrusted with the making of laws (*lex ferenda*) and holding the executive to account. When it fails to discharge this duty, citizens increasingly look to the judiciary for remedies. While courts can declare invalid any law or conduct inconsistent with the Constitution, they are unelected and not answerable to the electorate. Shifting responsibility onto the judiciary undermines democratic legitimacy and burdens the courts with responsibilities beyond their institutional design. Judicial overreach creates a vicious cycle. As Parliament grows weaker, more matters are shifted to the judiciary, which strains its capacity and distorts the constitutional order. Such imbalance not only risks *ultra vires* actions but also threatens the long-term health of democracy itself.

4.1. The Return of Parliamentary Sovereignty in South Africa

South Africa underwent a profound constitutional transformation with the adoption of the 1994 and 1996 Constitutions, which replaced the doctrine of parliamentary sovereignty with that of constitutional supremacy. This shift placed the rule of law and the judiciary as its guardian at the centre of the constitutional order.⁴¹ Under the previous system, from 1910 to 1993, the fusion of the executive and legislative branches within a parliamentary structure limited the effective separation of powers, allowing excessive dominance by the ruling majority.⁴² The current constitutional framework, while designed to ensure democratic accountability and protect against the abuse of power, continues to face tensions between the authority of the elected majority and the constraints imposed by constitutional supremacy. These tensions reveal persistent weaknesses in legislative oversight and executive accountability, as Parliament often struggles to assert itself against both an empowered

⁴¹ Stewart Motha. "Rationality, the rule of law, and the sovereign return." *Constitutional Court Review*, vol. 4, no. 1 (2011): 113-136, <https://doi.org/10.2989/CCR/2011.0005>.

⁴² Pieter Labuschagne, "The doctrine of separation of powers and its application in South Africa." *Politeia* 23, no. 3 (2004): 84-102.

executive and an increasingly assertive judiciary.⁴³

This dynamic reflects a broader theoretical concern: the difficulty of maintaining institutional balance in systems where both judicial and legislative supremacy claim legitimacy. While constitutional supremacy safeguards rights and limits governmental excesses, the growing judicial influence over public policy has raised questions about whether the courts are encroaching upon the democratic functions of Parliament. The debate over a potential return to parliamentary sovereignty thus reflects a deeper struggle to reconcile democratic will with constitutional restraint a challenge that continues to define South Africa's evolving democratic landscape. Although participatory democracy is a central principle of the South African Constitution, it does not fully address the deeper flaws that may exist at the heart of democracy itself.

Democracy, by its nature, is a self-referential system in which political autonomy can paradoxically undermine itself when expressed through absolute sovereign authority. In other words, while democracy seeks to empower the people, it can also weaken its own foundations when power becomes overly centralised or detached from genuine public participation.

The return of parliamentary sovereignty in South Africa would mark a fundamental shift in the country's constitutional and governance framework. It would signal a move away from the current model of constitutional supremacy where all branches of government are bound by the Constitution toward a system where Parliament once again holds ultimate legislative authority. Such a change would profoundly alter the balance of power among the executive, legislature, and judiciary.

5. Lessons That South Africa Can Draw from Other Jurisdictions

5.1. United Kingdom

In the United Kingdom, the doctrine of parliamentary sovereignty signifies that each Parliament possesses absolute legislative authority, free from the constraints of its predecessors.⁴⁴ This means that no Parliament can enact laws that permanently bind future Parliaments, as every newly elected legislature inherits the same unrestricted power to make, amend, or repeal any law it deems necessary.⁴⁵ Parliamentary sovereignty has long been regarded as the cornerstone of the United Kingdom's constitutional order, granting Parliament supreme authority to enact, amend, or repeal any law without external constraint. However, this traditional view has faced increasing scrutiny in both theory and practice. Eleftheriadis suggested that what appears to be unrestrained legislative power actually operates within a framework of interconnected constitutional principles that collectively function as a form of higher law placing the

⁴³ Shadi Maganoe. "Legislative oversight and executive accountability in South Africa." *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 26, no. 1 (2023): 1-34, <https://doi.org/10.17159/1727-3781/2023/v26i0a13371>.

⁴⁴ Anne Dennett. "6. Parliamentary sovereignty", pp. 99-123.

⁴⁵ Ibid.

UK closer in nature to systems governed by written constitutions, such as those of the United States or Germany.⁴⁶

Furthermore, Lakin takes a more radical stance, arguing that parliamentary sovereignty is a misunderstood doctrine and that the true foundation of the British constitution lies in the rule of law, which ensures that the exercise of governmental authority remains legally accountable.⁴⁷ Elliott further observed that contemporary constitutional developments ranging from the UK's membership and eventual withdrawal from the European Union to the enactment of human rights legislation and the expansion of devolved governance have redefined parliamentary sovereignty into a more fluid, context-dependent concept.⁴⁸ The concept of parliamentary sovereignty was famously articulated by legal scholar A.V. Dicey in the 19th century, who described it as "the right of Parliament to make or unmake any law whatsoever, and that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament."⁴⁹ This idea captures the essence of democratic governance that the people's elected representatives, gathered in Parliament, should have the ultimate authority to determine the law of the land.⁵⁰ It reflects a system of government in which power flows from the people through their representatives, rather than being restrained by unelected judges or external constitutional bodies.

In addition, parliamentary sovereignty in the United Kingdom means that no Parliament can bind a future Parliament.⁵¹ Every newly elected Parliament enjoys the same unlimited law-making power as its predecessors.⁵² This ensures flexibility in governance and allows the legal system to adapt to changing social, political, and economic conditions. It prevents the law from becoming static and keeps the democratic process alive by ensuring that the current will of the people, as expressed through elections, remains the ultimate source of legal authority. The United Kingdom's model of parliamentary sovereignty is also closely linked to the principle of the rule of law.⁵³

Although Parliament can legislate freely, it is expected to do so within the framework of fairness, justice, and accountability. The rule of law ensures that all individuals and public authorities, including Parliament itself, are subject to legal norms. However, this does not mean that courts can invalidate parliamentary statutes. Instead, the courts play a vital interpretative role they apply and clarify the law enacted

⁴⁶ Pavlos Eleftheriadis. "Parliamentary sovereignty and the constitution." *Canadian Journal of Law & Jurisprudence* vol. 22, no. 2 (2009): 267-290, <https://doi.org/10.1017/S0841820900004690>.

⁴⁷ Stuart Lakin. "Debunking the idea of parliamentary sovereignty: the controlling factor of legality in the British constitution." *Oxford Journal of Legal Studies*, vol. 28, no. 4 (2008): 709-734.

⁴⁸ Mark Elliott. "Constitutional Adjudication and Constitutional Politics in the United Kingdom: The Miller II Case in Legal and Political Context." *European Constitutional Law Review*, vol. 16, no. 4 (2020): 625-646, <https://doi.org/10.1017/S1574019620000401>.

⁴⁹ Mark D. Walters, *AV Dicey and the common law constitutional tradition: a legal turn of mind*. Cambridge University Press, 2021, <https://doi.org/10.1017/9781139236249>.

⁵⁰ Ibid.

⁵¹ Anne Dennett. "6. Parliamentary sovereignty." pp. 99-123.

⁵² Ibid.

⁵³ Syed Raza Shah Gilani, Ali Mohammed Al-Matrooshi, and Ms Aisha Nayab Qureshi. "Supremacy of the Parliament and the Rule of Law in the UK: An Analysis." *Journal of European Studies (JES)* vol. 40, no. 1 (2024): 15-26, <https://doi.org/10.56384/jes.v40i1.332>.

by Parliament but do not have the constitutional power to question its validity. This division of responsibility between the legislature and the judiciary helps preserve both democratic legitimacy and legal certainty.⁵⁴ The importance of parliamentary sovereignty lies in its democratic foundation.⁵⁵ It ensures that ultimate power resides in an institution directly accountable to the people. The members of Parliament are elected through regular, free, and fair elections, which means that legislative decisions reflect the will of the electorate.⁵⁶ When Parliament passes laws, it does so as the voice of the people's democratic choice.⁵⁷ This is what makes parliamentary sovereignty not merely a legal doctrine but a moral and political principle one that affirms the primacy of popular representation in governance. At the same time, the doctrine also provides the United Kingdom with a high degree of constitutional flexibility.⁵⁸ Unlike countries with rigid, codified constitutions, the UK can respond quickly to emerging challenges through legislative reform.

The United Kingdom's constitutional framework is often characterised as evolutionary and pragmatic, having developed incrementally in response to shifting political and social circumstances rather than through a single founding document. It as an "evolutionary, historical and predominantly political" system that adapts to change through practical, case-specific solutions rather than sweeping reform.⁵⁹ Within this context, parliamentary sovereignty establishes a political landscape in which the "terrain of ordinary politics is boundless," unlike in states governed by written constitutions, where political authority is explicitly limited by constitutional provisions.⁶⁰ Parliament can adapt laws to changing social values, address unforeseen crises, and rectify injustices without the procedural constraints that written constitutions often impose.⁶¹ This adaptability has contributed to the UK's reputation for political stability and continuity, allowing it to evolve gradually rather than through abrupt constitutional upheavals. However, the doctrine of parliamentary sovereignty has also faced modern challenges, particularly in relation to the United Kingdom's relationship with supranational institutions such as the European Union and international human

⁵⁴ Ibid.

⁵⁵ Marianne OD Delaney. "Parliamentary sovereignty and democratic accountability: matters of prerogative powers and legal reasoning.", *Centre & Institute for Innovation and Sustainable Development Economic Review*, Vol. 2, (September 2019), <https://mpr.ub.uni-muenchen.de/96233/>.

⁵⁶ Ibid.

⁵⁷ Syed Raza Shah Gilani, Mr Ashraf Ali, and Ms Shehla Zahoor. "Limitations on Parliamentary Sovereignty in the UK: A Critical Analysis." *Journal of European Studies (JES)* vol. 39, no. 1 (2023): 47-57.

⁵⁸ Ibid.

⁵⁹ Alison L. Young, Patrick Birkinshaw, Valsamis Mitsilegas & Theodora A. Christou, *Europe's Gift to the United Kingdom's Unwritten Constitution – Juridification*. In Anneli Albi, Samo Bardutzky (eds.), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law. National Reports*, Springer, 2019, pp 83–139.

⁶⁰ Paul P. Craig "Written and unwritten constitutions: The modality of change." In Sam Bookman, Edward Willis, Hanna Wilberg, Max Harris (eds.) *Pragmatism, Principle, and Power in Common Law Constitutional Systems: Essays in Honour of Bruce Harris*, Intersentia, (2022), pp. 263-288.

⁶¹ Philip Norton. "Playing by the rules: The constraining hand of parliamentary procedure." *The Journal of Legislative Studies* vol. 7, no. 3 (2001): 13-33.

rights law.⁶² During the period of EU membership, for instance, the European Communities Act of 1972 incorporated European law into domestic law,⁶³ effectively requiring UK courts to give effect to EU law even when it conflicted with national legislation.⁶⁴ This was seen by some as a partial erosion of parliamentary sovereignty, as it required Parliament to legislate within certain limits imposed by EU institutions.⁶⁵ Parliamentary sovereignty remains a central component of the UK's constitutional identity.⁶⁶ It embodies a belief in the democratic legitimacy of law-making and the accountability of those who wield political power. The principle does not exclude checks and balances; rather, it operates alongside them. The monarchy, the judiciary, and the executive all play vital roles, but their powers are ultimately subject to Parliament's authority.⁶⁷ This creates a system of governance that is both flexible and stable one that combines democratic control with constitutional continuity. Parliamentary sovereignty in the United Kingdom stands as a defining feature of its constitutional and democratic framework.⁶⁸ It ensures that laws derive their authority from the will of the people, expressed through their elected representatives. Parliament is the supreme law-making body. In a rapidly changing world, this principle continues to anchor the UK's democracy, guaranteeing both adaptability and accountability. Parliamentary sovereignty is not merely a historical relic; it is a living doctrine that upholds the essence of democratic governance that the power to make law ultimately belongs to the people, through Parliament. The following section deals with the effectiveness of parliamentary sovereignty in Finland.

5.2. Finland

5.2.1. The Constitutional Basis in Finland

In Finland, sovereign authority ultimately rests with the people, whose will is exercised through their elected representatives in Parliament. The Finnish Constitution establishes Parliament as the highest organ of government, granting it supreme legislative authority, including the power to override a presidential veto and to amend the Constitution itself.⁶⁹ Unlike many other constitutional democracies, Finland does

⁶² Yahya Berkol Gülgeç. "On the Nature of and Some Challenges to Parliamentary Sovereignty: A Jurisprudential Perspective." *Ankara Barosu Dergisi* vol. 83, no. 1, 2025: 423-483. <https://doi.org/10.30915/abd.1536827>

⁶³ European Communities Act of 1972, <https://www.legislation.gov.uk/ukpga/1972/68/enacted>, accessed on 20 January 2026.

⁶⁴ Eric C. Ip, "The judicial review of legislation in the United Kingdom: a public choice analysis." *European journal of law and economics* vol. 37, no. 2 (2014): 221-247, <https://doi.org/10.1007/s10657-011-9281-4>.

⁶⁵ *Ibid.*

⁶⁶ Mark Elliott. "Constitutional Adjudication and Constitutional Politics in the United Kingdom: The Miller II Case in Legal and Political Context.", pp. 625-646.

⁶⁷ *Ibid.*

⁶⁸ Pavlos Eleftheriadis. "Parliamentary sovereignty and the constitution.", pp. 267-290.

⁶⁹ Tapio Raunio, Matti Wiberg. "Building elite consensus: Parliamentary accountability in Finland." pp. 59-80.

not possess a separate constitutional court, and the Supreme Court lacks explicit jurisdiction to strike down legislation on constitutional grounds. Constitutional review in Finland follows a distinctive parliamentary model.⁷⁰ Questions regarding the constitutionality of proposed laws are typically resolved through parliamentary procedure rather than judicial adjudication. In this process, the Constitutional Law Committee plays a pivotal role by examining bills that raise constitutional doubts and recommending necessary amendments before enactment. Effectively, this committee performs functions comparable to those of a constitutional court in other jurisdictions.⁷¹ Beyond parliamentary oversight, Finnish courts are required to give priority to the Constitution whenever a clear conflict arises between constitutional provisions and ordinary legislation, ensuring the supremacy of constitutional norms in legal interpretation.⁷²

Amendments to the Finnish Constitution are subject to rigorous legislative procedures designed to preserve constitutional stability. Parliament may alter the Constitution either through an expedited process requiring a five-sixths vote to declare the matter urgent, followed by a two-thirds majority to approve the amendment or through a more deliberate two-stage process involving approval by a simple majority in one Parliament and ratification by a two-thirds majority in the subsequent Parliament after a general election. A unique feature of the Finnish system allows Parliament to enact exceptions to the Constitution through ordinary laws passed under the same procedures as constitutional amendments.⁷³ The State of Preparedness Act exemplifies this practice, granting the Council of State exceptional powers during national emergencies. Because such powers affect fundamental rights, the Act was enacted following constitutional procedures, though it can be repealed as easily as any ordinary statute. Executive authority in Finland is divided between the President of the Republic and the Council of State (the cabinet). However, the cabinet must retain the confidence of Parliament, ensuring the primacy of parliamentary control over the executive. Historically, the Finnish President wielded extensive powers, including the ability to dissolve Parliament and call for new elections at discretion.

The constitutional reform of 1999 significantly curtailed these presidential powers, shifting the balance of authority toward Parliament and the cabinet to reinforce Finland's parliamentary democracy and consolidate the legislature's role as the supreme organ of governance.⁷⁴ Parliament's authority in Finland extends beyond lawmaking to encompass oversight of key national institutions. It exercises supervisory control over the Bank of Finland, the nation's central bank, and the Finnish Broadcasting Company, which serves as the country's public service broadcaster. This oversight function reflects

⁷⁰ Ibid.

⁷¹ Serkan Yolcu. "East Nordic Model of Pre-Enactment Constitutional Review: Comparative Evidence from Finland and Sweden." *European Public Law* vol. 26, no. 2 (2020), 505 – 536, <https://doi.org/10.54648/euro2020053>.

⁷² Jarmo Laine, 'Parliamentarism in Finland', <https://finland.fi/life-society/parliamentarism-in-finland/>, accessed on 20 January 2026.

⁷³ Ibid.

⁷⁴ Ibid.

the legislature's broader role in ensuring transparency, accountability, and the protection of public interests across major state entities.

5.2.2. The Interplay Between Parliament and the Judiciary in Finland

In contemporary Finnish politics, governments are predominantly formed through coalition arrangements, often comprising parties that together command a strong parliamentary majority.⁷⁵ This structure provides governing coalitions with a high degree of stability and confidence that members of Parliament belonging to the coalition parties will generally support government initiatives. Additionally, most cabinet ministers simultaneously serve as Members of Parliament, enabling them to participate directly in legislative deliberations and voting. This overlap between executive and legislative functions reinforces Finland's model of parliamentary governance, where political cooperation and consensus-building are central to effective decision-making. In Finland, judges do not formally make law. The Finnish legal system is based on the civil law tradition, where legislation enacted by Parliament is the primary source of law, and judicial decisions are not legally binding as precedents. However, Finnish judges play an important interpretive role. When applying the law, they may develop legal principles through interpretation, particularly in cases where statutes are vague, outdated, or silent on a specific issue. Courts are also constitutionally obliged to give precedence to the Constitution if an apparent conflict arises between constitutional provisions and ordinary legislation. In this sense, Finnish judges indirectly contribute to the evolution of law through their interpretive reasoning and consistent application of constitutional and statutory principles, but ultimate legislative authority remains vested in Parliament.

In Finland, state powers are vested in the people, who exercise their sovereignty through representation in Parliament. Democracy guarantees individuals the right to participate in shaping society and influencing their living conditions.⁷⁶ The exercise of public authority must always be grounded in law, and all public activities are required to strictly adhere to legal provisions. Legislative authority in Finland is vested in the Parliament, which also has the power to decide on state finances.⁷⁷ Executive authority is exercised by the President of the Republic and the Government, whose members must enjoy the confidence of Parliament.⁷⁸ Judicial authority is exercised by independent courts, with the Supreme Court and the Supreme Administrative Court serving as the highest judicial instances. The following section deals with parliamentary sovereignty in Israel.

5.3. Israel

Israel presents a unique case for studying parliamentary sovereignty. Without a

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

single formal, entrenched constitution, the Israeli system depends on a collection of Basic Laws, judicial precedents, and institutional practices.⁷⁹ The Knesset (Israel's parliament) holds extensive legislative power. In theory and often in practice, parliamentary sovereignty means that the Knesset can pass, amend, or repeal Basic Laws by regular majority votes. This gives Parliament a form of flexibility and authority that many formal constitutions constrain.⁸⁰ One of the core advantages of this arrangement is democratic legitimacy. Because laws including many that have constitutional weight via the Basic Laws originate from the elected body, the legislative process is directly accountable to citizens.

The Knesset reflects majorities in society and can respond more quickly than if bound by rigid constitutional amendment rules.⁸¹ In a dynamic society subject to security, demographic, and political pressures, that responsiveness can be invaluable. It allows laws to evolve in response to changing public needs. Moreover, parliamentary sovereignty in Israel provides policy freedom to the legislature. With sovereignty, the Knesset has considerable leeway to enact legislation in areas such as public security, immigration, minority rights, state of emergency, and national identity.⁸² These are issues often fraught with disagreement and rapidly changing circumstances.

The ability to legislate without excessive constitutional leglocks gives lawmakers room to act something especially important in a country with complex security needs and diverse population groups. However, the system also includes important checks on that legislative power. Even though Basic Laws can be amended by ordinary majorities, and courts derive powers via precedent rather than via a fully codified constitution, Israel's Supreme Court (often acting through the High Court of Justice) has for decades asserted judicial review power especially when laws conflict with Basic Laws, or when executive actions are challenged under standards such as "reasonableness".⁸³ This has acted as a counterbalance to sovereignty, helping protect minority rights, civil liberties, and legal norms against potential majoritarian excesses.⁸⁴

Recent reforms in Israel underscored both the importance and fragility of this balance. Proposals and laws seeking to limit judicial review, to impose override clauses enabling Knesset laws to be restored or shielded even when invalidated by courts, and to change how judges are selected have stirred intense public debate.⁸⁵ These reforms

⁷⁹ Luke Kemps 'In Quest of Constitutional and Societal Stability: A Comparative Exploration of the Israeli Basic Laws and the United States Constitution Amidst Israel's Constitutional Crisis'.

⁸⁰ Ibid.

⁸¹ Chen Friedberg, Reuven Y. Hazan. "The legislative branch in Israel." in Reuven Y. Hazan, Alan Dowty, Menachem Hofnung, Gideon Rahat (eds.), *The Oxford Handbook of Israeli Politics and Society*, Oxford Academic, (2018). pp. 300–316, https://doi.org/10.1093/oxfordhb/9780190675585.013.18_update_001.

⁸² Tamar Hostovsky Brandes. "Basic law: Israel as the nation state of the Jewish people: Implications for equality, self-determination and social solidarity." *Minnesota. Journal of International Law* vol. 29, issue 1 (2020): 65-107.

⁸³ Rivka Weill. "Reconciling Parliamentary Sovereignty and Judicial Review: On the Theoretical and Historical Origins of the Israeli Legislative Override Power." *Hastings Constitutional Law Quarterly* vol. 39, no. 2 (2012): 457.

⁸⁴ Ibid.

⁸⁵ Suzie Navot, Guy Lurie. "An Attack on the Rule of Law in Israel." *Israel Studies Review*, vol. 39, no. 1 (2024): 20-37, <https://doi.org/10.3167/isr.2024.390102>.

correct excesses of judicial power, reassert democratic control, and reduce unelected institutional interference. In this instance, Judges are not allowed to make laws. Moreover, Israel is a country with diverse populations-Jewish in many denominations, Arab, ultra-Orthodox communities, immigrant populations, and non-citizens.⁸⁶ Parliamentary sovereignty wielded without effective judicial review can threaten the rights of vulnerable groups who do not form legislative majorities.⁸⁷

In addition, laws that appear arbitrary, discriminatory, or passed without proper review risk eroding public confidence. Judicial review serves not just to strike down laws, but to ensure that laws are predictable and consistent with established legal norms.⁸⁸ Even though Israel does not follow a rigid constitutional separation like some countries, parliamentary sovereignty combined with active judiciary creates a practical separation of powers.⁸⁹ Change reforms (for example, changing judge-selection process or limiting courts) reveal how sensitive this balance is; when sovereignty tips too far, there may be backlash or legal crisis. The Israeli model allows for adaptability laws and norms can be changed more easily. But that comes with instability; frequent changes can undermine legal certainty.⁹⁰ In this instance, parliamentary sovereignty must be exercised with a sense of responsibility to long-term constitutional identity and public values.

6. Conclusion

The reconsideration of parliamentary sovereignty in South Africa calls for a recalibration of the balance between democratic representation and constitutional oversight. Since the 1996 Constitution entrenched constitutional supremacy, the judiciary has played a vital role in upholding rights and limiting state power; however, the growing tendency of judicial overreach has blurred the boundaries between interpretation and law-making, thereby weakening parliamentary authority and diluting the voice of the electorate.

A carefully structured return to parliamentary sovereignty would not signify a rejection of constitutionalism but rather its reinforcement through democratic accountability. Parliament, as the directly elected representative of the people, should reclaim its rightful primacy in law-making, while the judiciary must remain an impartial guardian of constitutional principles without usurping legislative functions. This can be achieved by reforming the constitutional framework to define the limits of judicial authority clearly and by strengthening parliamentary oversight mechanisms to ensure

⁸⁶ Yaacov J. Katz "Religious encounters in Israeli state education." *Religious Education* vol. 112, no. 4 (2017): 329-333, <https://doi.org/10.1080/00344087.2017.1328264>.

⁸⁷ José Antonio Cheibub, Fernando Limongi, Adam Przeworski, and Ye Wang. "Anti-majoritarianism and Democracy: Effects of Judicial Review on Rights, Economic Growth, and Inequality." *Economic Growth, and Inequality**(September 04, 2024) (2024). Available at SSRN: <http://dx.doi.org/10.2139/ssrn.5069081>.

⁸⁸ Rivka Weill. "Reconciling Parliamentary Sovereignty and Judicial Review: On the Theoretical and Historical Origins of the Israeli Legislative Override Power", 457.

⁸⁹ Ibid.

⁹⁰ Suzie Navot and Yaniv Roznai. "From supra-constitutional principles to the misuse of constituent power in Israel." *European Journal of Law Reform*, vol. 21, issue 3 (2019): 403-423.

transparency, accountability, and adherence to the rule of law.

If effectively implemented, such reforms would restore institutional equilibrium, revitalise democratic participation, and ensure that the power to make and shape the law resides where it constitutionally and democratically belongs with the people's elected representatives.

Therefore, the return to Parliamentary Sovereignty in South Africa is a democratic Panacea.

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