ST MARY'S CHURCH PUTNEY, 28 NOVEMBER 2025

LEARN WITH THE LORDS / CONSTITUTIONAL SOCIETY EVENT FOR SCHOOLS

"20 YEARS AFTER THE CONSTITUTIONAL REFORM ACT, WHERE DOES SOVEREIGNTY LIE IN THE UK?"

1. Welcome. We are in a place as sacred to our democracy as Runnymede – where Magna Carta was sealed by King John – is sacred to the rule of law. The place where the *Levellers,* self-styled "agitators" whose views were forged in the Civil War, debated their vision for the future with Oliver Cromwell and the Grandees of the New Model Army.

2. The Agreement of the People, as the Levellers' constitutional manifesto was called, is a thrilling statement of revolutionary intent.

    a. *Sovereignty* was to lie not with the King, but with the *people* – who would elect Members of Parliament by almost universal suffrage – of men that is; votes for women was too advanced an idea even for the Levellers.

    b. *Powe*r was to be exercised by the *House of Commons*, whose members, as the manifesto put it, would be "*inferiour only to those who chuse them*". The Levellers were not united on everything, but they all agreed that the House of Lords, that medieval relic of aristocratic privilege, needed to be abolished.

    c. Most remarkably of all there were to be some rights – freedom of conscience, equal treatment before the law – so fundamental that not even Parliament could change them. Those rights would be defended against encroachment by courts – whose "activism" could be at least as controversial in the 17th century as it is today.

3. If the Levellers were back in this church now, they might be disappointed that we still have an unelected House of Lords, and that we place no rights beyond the power of the legislature to meddle with them. Both those ideas left their mark on the US Constitution rather than ours.

4. But in other respects, Leveller ideas of sovereignty are alive today.

5. *Political sovereignty* rests in the people. It is expressed through elections to Parliament (though universal adult suffrage came only in 1928), to the devolved legislatures and to local government. Between elections, it is expressed through social media, in petitions and opinion polls, in marches and rallies, in civil disobedience and even – where Parliament allows it – through referendums.

6. *Legal sovereignty* lies with Parliament. The Government of the day *initiates* nearly all our laws – the Assisted Dying Bill is an exception – but it is Parliament that *makes* them. And there are no legal limits to Parliament's power. It can impose rules on the exercise of a prerogative power – to declare war or to call an election. It can transform common law, made by the Judges, into an Act of Parliament. And as in the Safety of Rwanda Act 2024, it can even declare a country to be safe, now and in the future, when it has just been declared unsafe by the Supreme Court. Parliament can *delegate* power to the European Union, to the devolved nations, or to anyone else. But in legal terms, if not always in political reality, Parliament can always claim it back.

7. What about the *Government,* or as we sometimes call it, the executive? Well governments do *not* have sovereignty. They can continue in office only for as long as they have the support of sufficient Members of Parliament. And if the Prime Minister tries to stop Parliament from carrying out its functions of *law-making* and *controlling the executive* – for example by proroguing a Parliament which refuses to entertain his plans for a no-deal Brexit – then the Supreme Court may intervene as it did in the second *Miller* case of 2019, not to *challenge* the sovereignty of Parliament but to *defend* it.

8. Does that mean the *courts* are sovereign? No.

    a. The mechanism of judicial review allows people to ask them to curb the unlawful or irrational use of *official* power – by Ministers, by devolved administrations, by local authorities, by the police or by the agencies, such as Ofcom or the Environment Agency, to which power is increasingly delegated. That is simply the exercise of authority by one non-sovereign body over another.

b. But what our courts cannot do, unlike those in many other countries, is to declare an Act of Parliament unlawful. Our judges remain, as Francis Bacon described them in 1625, "*lions, but lions under the throne*".

9. Every now and again, including in the *Jackson* case of 2005, some judges have suggested that where parliamentary sovereignty is abused in a way that cannot be mitigated by judicial interpretation, the courts might refuse to give effect to an Act of Parliament, citing the higher authority of the rule of law. But without massive popular backing, that would be a perilous course indeed – not least for the courts themselves.

10. The Constitutional Reform Act 2005 has altered none of these fundamental features of our constitutional arrangements. Parliamentary sovereignty has survived recent upheavals, from devolution to the creation of a Supreme Court and Brexit. Ending it would require a still more dramatic political spasm, followed by a new written constitution with guaranteed rights - a constitution to which even Parliament would be subordinate and whose ultimate arbiter could only be the courts. That did not happen after 1647, and it has not happened since. Which is not to say it will not happen in your lifetimes – but that will depend on events. And it will depend on you.

D.A.