

EPISODE 17

WHO GOVERNS THE GOVERNORS?

Constitutional Supremacy, Parliamentary Accountability and the Separation of Powers

Estimated Reading Time: 8 minutes

Introduction

Every democratic nation must answer one fundamental question:

Who should ultimately exercise public power?

Should it be:

- the people through elections?
- Parliament?
- the Executive?
- the Judiciary?
- or the Constitution itself?

Different countries answer this question differently.

There is no single constitutional model adopted by every democracy.

Understanding those differences helps us better understand South Africa's constitutional system and encourages informed discussion about how institutions can continue to improve.

Constitutional Supremacy vs Parliamentary Sovereignty

Broadly speaking, democracies tend to follow one of two constitutional traditions.

Parliamentary Sovereignty

Under this model, Parliament is the supreme law-making authority.

Courts generally apply Acts of Parliament rather than invalidate them.

The United Kingdom is the classic example of this constitutional tradition.

Constitutional Supremacy

Under this model, the Constitution is the highest law.

All public power—including that exercised by Parliament, the Executive and other state institutions—must comply with the Constitution.

Courts have authority to determine whether legislation or government conduct is constitutionally valid.

South Africa adopted this model after 1994.

How Different Democracies Organise Public Power

Country	Constitutional Model	Role of Courts	Key Feature
South Africa	Constitutional supremacy	Constitutional Court may invalidate legislation or government conduct inconsistent with the Constitution.	Strong constitutional rights and judicial review.
United Kingdom	Parliamentary sovereignty	Courts generally cannot strike down Acts of Parliament, although they review executive action and interpret legislation.	Parliament remains the supreme law-making authority.
United States	Written Constitution	Courts exercise strong judicial review under the Constitution.	Strong separation of powers with checks and balances.
Germany	Basic Law	Federal Constitutional Court exercises constitutional review.	Strong constitutional protection informed by post-war constitutional design.
Canada	Constitutional supremacy	Courts review legislation for constitutional compliance under the Constitution Act and Charter.	Parliamentary government combined with constitutional review.
India	Constitutional supremacy	Supreme Court exercises judicial review and has	Parliamentary democracy combined

Country	Constitutional Model	Role of Courts	Key Feature
		developed doctrines protecting the constitutional framework.	with constitutional review.
Botswana	Constitutional supremacy	Courts interpret and enforce the Constitution.	Constitutional democracy with parliamentary institutions.

What Can South Africa Learn?

No constitutional system is perfect.

Every democracy faces its own challenges.

Some systems emphasise parliamentary authority.

Others emphasise constitutional review.

Some rely more heavily on courts.

Others place greater responsibility on elected institutions.

The important question is not which model is perfect.

The important question is:

Which constitutional arrangements best protect rights, promote accountability and improve the lives of the people?

The Case Study

Recent constitutional litigation in South Africa has generated public debate about the relationship between Parliament, the Executive and the Judiciary.

These discussions raise important educational questions:

- How should the separation of powers operate?
- When should courts intervene?
- How should democratic accountability and judicial independence be balanced?
- Should constitutional arrangements evolve as society changes?

These are questions worthy of thoughtful public discussion.

OUBAS Analysis

OUBAS believes that constitutions exist to serve people—not the other way around.

Every institution should therefore be assessed by the outcomes it produces for society.

Strong constitutional rights matter.

Independent courts matter.

Democratic accountability matters.

Effective public administration matters.

These values should reinforce one another rather than compete with one another.

OUBAS also believes that constitutional arrangements should never be regarded as beyond discussion.

Just as technology, education and healthcare continue to evolve, constitutional democracies should continuously examine whether their institutions remain capable of meeting the needs of the people they serve.

That discussion should be evidence-based, respectful and conducted through lawful democratic processes.

OUBAS Reform Proposal

OUBAS proposes that South Africa encourage broader public constitutional education and informed discussion on questions such as:

- How should institutional performance be measured?
- How should accountability be strengthened?
- How should judicial independence and democratic accountability be balanced?
- Should public participation in constitutional review processes be expanded?
- How can constitutional institutions continue to innovate while remaining faithful to constitutional values?

Reform is strongest when it is informed, participatory and grounded in constitutional processes.

Key Lessons

After reading this episode you should understand that:

- democracies adopt different constitutional models;
- South Africa operates under constitutional supremacy;
- the United Kingdom traditionally follows parliamentary sovereignty;
- constitutional design always seeks to balance rights, accountability and effective government;
- institutions should continually strive to improve the service they provide to the people.

OUBAS Knowledge Check

1. Which constitutional model does South Africa follow?

- ☐ Parliamentary sovereignty
- ☐ Constitutional supremacy
- ☐ Presidential supremacy
- ☐ Judicial supremacy

2. In which country is parliamentary sovereignty traditionally regarded as a central constitutional principle?

- ☐ South Africa
- ☐ Germany
- ☐ United Kingdom
- ☐ Canada

3. What is the purpose of the separation of powers?

- ☐ To concentrate authority in one institution.
 - ☐ To distribute public power among different institutions.
 - ☐ To eliminate Parliament.
 - ☐ To prevent elections.
-

4. Which principle best reflects the OUBAS philosophy?

- ☐ Institutions should never change.
 - ☐ Continuous improvement should be a permanent objective.
 - ☐ Public participation is unnecessary.
 - ☐ Tradition should always outweigh innovation.
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5. Which statement best reflects this episode?

- ☐ Every democracy has exactly the same constitutional system.
 - ☐ Different democracies organise public power differently.
 - ☐ Judicial review is identical everywhere.
 - ☐ Parliamentary sovereignty and constitutional supremacy are the same.
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OUBAS Public Sentiment Survey

1. Before reading this episode, did you understand the difference between constitutional supremacy and parliamentary sovereignty?

- ☐ Yes
 - ☐ No
-

2. Which constitutional principle should receive the greatest emphasis?

- ☐ Constitutional rights
 - ☐ Democratic accountability
 - ☐ Effective public administration
 - ☐ A careful balance among all three
-

3. Should constitutional arrangements be periodically reviewed through lawful democratic processes?

- ☐ Strongly Agree
- ☐ Agree
- ☐ Neutral

- ☐ Disagree
 - ☐ Strongly Disagree
-

4. In your opinion, what is the best measure of a successful constitutional system?

- ☐ Protection of rights
 - ☐ Accountability
 - ☐ Service delivery
 - ☐ Public confidence
 - ☐ A combination of all these
-

5. What constitutional topic would you most like OUBAS to examine next?

OUBAS Innovation Challenge

The only constant in any successful institution should be innovation and continuous improvement.

Imagine that you have been appointed to a Constitutional Review Commission.

Your task is **not** to defend the existing system.

Your task is **not** to replace it.

Your task is to improve it.

Question:

What one constitutional reform would most improve accountability, strengthen democracy and improve the daily lives of citizens?

Share your proposal with OUBAS.

Outstanding ideas may be analysed by AAP working groups and featured in future **OUBAS Reform Papers**.

Share Your Experience

How has your experience with public institutions shaped your views about democracy, accountability or constitutional governance?

Your experiences contribute to the **OUBAS People's Index** and help build a richer understanding of how institutions affect people's lives.

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 Visit the **OUBAS Bookstore** for books on constitutional law, governance, institutional accountability, banking, public administration and democratic reform.

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