

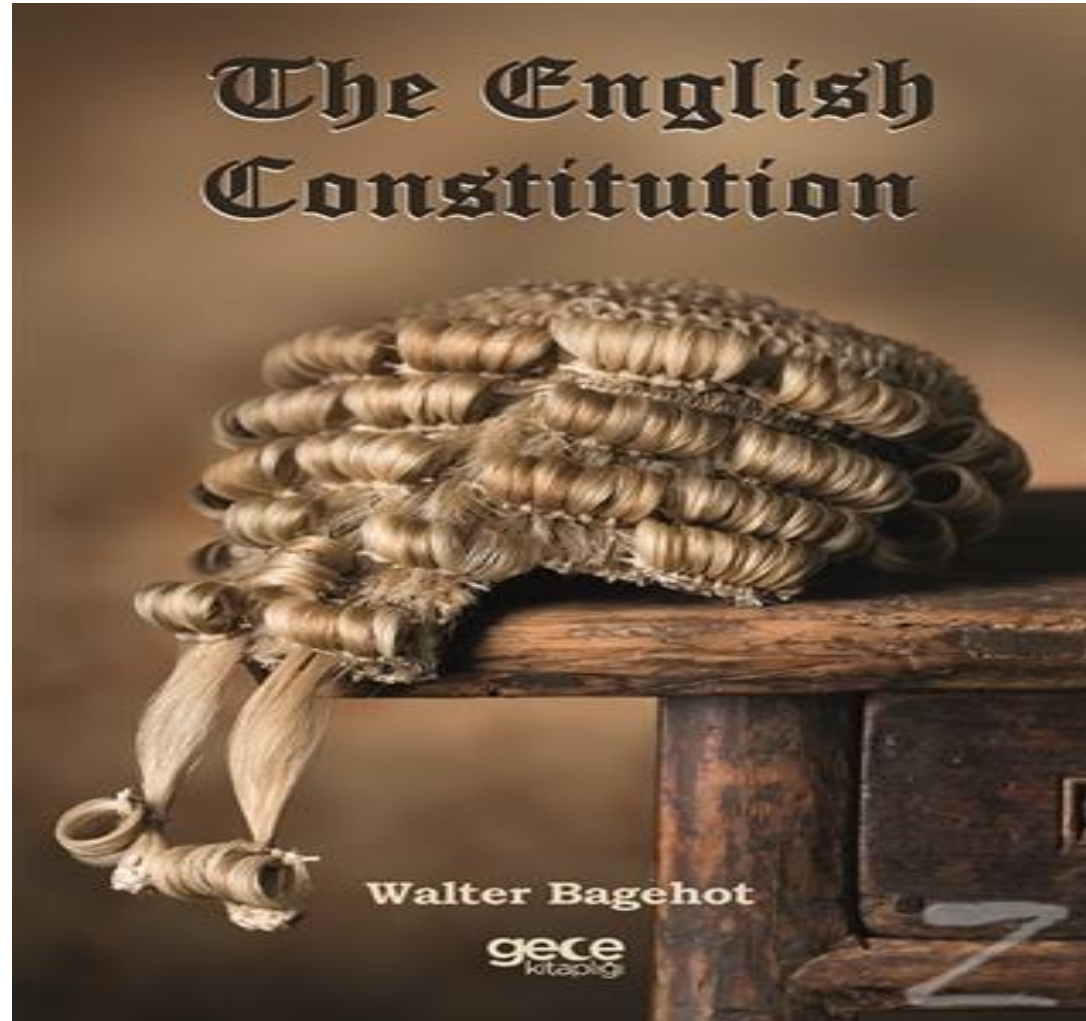


# THE ENGLISH LEGAL SYSTEM

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# CONSTITUTIONAL LAW



# FACTS ABOUT THE CONSTITUTION

- It is unwritten—but it exists
- It is derived from a number of sources (**legal** and **conventions**):
  1. Statues passed by Parliament
  2. Constitutional conventions (unwritten practices which have developed over time and which regulate the business of governing)
  3. Common Law (developed by the courts through cases)
  4. European Union Law (through the European Communities Act 1972)
  5. International Law

# FACTS (CONTINUED)

- Finally, because the Constitution cannot be found in any single document, politicians and lawyers have relied on ***constitutional authorities*** (scholars) to locate and understand the Constitution

# SOURCES



**The Major sources of the British Constitution**

- Statute Law – Acts of Parliament
- Common Law – Decisions of Courts
- Conventions – Unwritten rules, i.e. the Prime Minister must sit in the House of Commons
- Law and Customs of Parliament - Procedures
- Works of Authority – Expert texts such as Bagehot (The English Constitution 1867)
- EU Law
- European Convention Human Rights (signed 1998)

# THE RULE OF LAW

**The Rule of Law** is an aspect of the British Constitution that is an equally important part of British politics. It involves the following principles:

1. The rights of individuals are determined by legal rules and not the arbitrary behavior of authorities
2. There can be no punishment unless a court decides there has been a breach of the law
3. Everyone, regardless of their position in society, is subject to the law

# (CONTINUED)

The protection of individual liberties depend on the presence of the Rule of Law. This is manifested through:

1. Trial by jury
2. Impartiality of judges
3. Prerogative orders

# PREROGATIVE ORDERS

There are three:

1. **Certiorari.** In order to insure justice, a case may be called up from an inferior court to a superior court
2. **Prohibition.** A lower court may not hear a case outside its jurisdiction
3. **Mandamus.** Higher courts can order lower courts to carry out their duties



# PARLIAMMENTARY SOVEREIGNTY

“**Sovereignty**” defined: the full right and power of a governing body over itself, without any interference from outside sources or bodies

- Parliamentary Sovereignty is the centerpiece of the Constitution
- It makes Parliament the supreme legal authority in the UK
- Generally, the courts cannot overrule its legislation, and no Parliament can pass laws that future Parliaments cannot change

# EXCEPTIONS TO PARLIAMANTARY SOVEREIGNTY

Over the years, Parliament has passed laws that limit the application of Parliamentary Sovereignty:

These include:

1. The **devolution** of power to bodies like the Scottish Parliament and Welsh Assembly
2. The UK's entry to the European Union in 1972 (supremacy of EU law)
3. The Human Rights Act 1998 (which became part of national law)
4. The decision to establish a UK Supreme Court in 2009, which ended the House of Lords function as the UK's final court of appeal

# DEVOLUTION REVISITED

**Definition:** in general, devolution is the transfer or delegation of power to a lower level, especially by central government to local or regional administration

Here, devolution refers to the statutory granting of powers from the Parliament of the United Kingdom to the Scottish Parliament, the National Assembly for Wales, the Northern Ireland Assembly and the London Assembly and to their associated executive bodies (the Scottish Government, the Welsh Government, the Northern Ireland Executive and in England, the Greater London Authority and combined authorities).

# IS PARLIAMENTARY SOVEREIGNTY THREATENED BY THESE EXCEPTIONS?

No.

These developments do not fundamentally undermine the principle of Parliamentary Sovereignty since—at least in theory—Parliament could repeal any of the laws implementing these changes

# THE DOCTRINE OF SEPARATION OF POWERS GENERALLY

- A fundamental principle whereby powers and responsibilities are divided among the legislative branch, executive branch, and judicial branch of a government
- The officials of each branch are selected by different procedures and serve different terms of office
- Each branch may choose to block action of the other branches through the system of checks and balances.
- The doctrine ensures that no one branch would accumulate too much power and that issues of public policy and welfare would be given comprehensive consideration before any action was taken

# WHAT ARE THE “POWERS” REQUIRING SEPARATION IN UK GOVERNMENT?

1. **Legislative** (where laws are passed): Parliament
2. **Executive** (which plans prospective laws and formulates government policy): the Cabinet of the government
3. **Judicial** (which has the final word on legal issues): Supreme Court

# THE UK VERSION OF SEPARATION OF POWERS

The principle of Separation of Powers exists, but the lines are “blurred”:

1. The Prime Minister is an active member of the *legislature* (and can vote in Parliament)—yet she is also a leading member of the *executive*
2. The Lord Chancellor is a member of the Cabinet (*executive*) as well as being head of the *judiciary*
3. As with the Prime Minister, the members of the Cabinet (*executive*) who have the right (as members of Parliament, the *legislature*) to vote on issues

# PARLIAMENT: TWO HOUSES

## I. The House of Commons

- This is the publicly elected chamber of Parliament (650 members, each representing a *constituency*)
- Members debate political issue by examining and challenging the actions of government
- Members debate proposals for new laws
- Members pass new laws and enable government to raise taxes
- Much of the preliminary work takes place in committees made up of approximately 50 MPs



# (CONTINUED)

## 2. The House of Lords

- The second chamber of Parliament (800 members, non-elected)
- Members are known as “peers”
- “Lords Spiritual” are members of the Church of England; “Lords Temporal are *hereditary peers* (nobility) and *life peers* (appointed by the Queen on advice of the Prime Minister)
- It works with the House of Commons to make laws, challenge actions of the government, and provide independent expertise

# GOVERNMENT

- The executive branch
- **Prime Minister** is the leader (by general election—that is, if one political party has a majority in the Commons, then the leader of that party will be appointed **Prime Minister**)
- Divided into government departments, each headed by a minister (always a member of Parliament) chosen by the Prime Minister
- Prime Minister selects a group of senior ministers to form the **Cabinet**. They decide on government policy
- The **leader of the opposition** forms his/her own **shadow government**. This allows the opposition to comment on or challenge actions by the government

# PRIME MINISTER



# THE LEGISLATIVE PROCESS

1. Both Houses participate
2. Each Act of Parliament begins as a “Bill” (the draft of a proposal for a new law).  
Either House may introduce bills
3. Each Bill must be sponsored by a MP
4. “First Reading”: title of Bill is read out
5. “Second Reading”: general principles of Bill are debated in the House
6. Bill is then sent to a committee—changes and amendments are suggested
7. “Third Reading” Bill is presented to the other House
8. Two Houses must agree on the drafting of Bill
9. If they agree, Bill is sent to the Queen for “Royal Assent”

# HAMLET (SHAKESPEARE)

## GRAVEYARD SCENE

There's another: *why may not that be the skull of a lawyer? Where be his quiddities now, his quillies, his cases, his tenures, and his tricks? why does he suffer this rude knave now to knock him about the sconce with a dirty shovel, and will not tell him of his action of battery?* Hum! This fellow might be in's time a great buyer of land, with his statutes, his recognizances, his fines, his double vouchers, his recoveries: *is this the fine of his fines, and the recovery of his recoveries, to have his fine pate full of fine dirt?* will his vouchers vouch him no more of his purchases, and double ones too, than the length and breadth of a pair of indentures? The very conveyances of his lands will hardly lie in this box; and must the inheritor himself have no more, ha?

# QUESTIONS?

