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Constitutional Law of the United Kingdom – A Brief Introduction

- Nature of the constitution
- Constitutional principles
- Parliament
- Devolution in the United Kingdom



The Nature of Constitutional Law of the United Kingdom

- An unwritten/uncodified constitution; no single document but a number of sets of norms and documents that make up a body of constitutional law;
- Statute, eg the Bills of Rights 1689; Magna Carta; Acts of Union 1707 and 1800; as well common law, parliamentary conventions, and works of authority.



Key Constitutional Principles

- Parliamentary sovereignty;
- The rule of law;
- The Royal prerogative;
- The separation of powers.



Parliamentary Sovereignty: Foundations

- One of AV Dicey's twin pillars of the English Constitution;
- Constitutional principle of parliamentary democracies;
- From sharing sovereignty with the King to limitation of powers of the monarchy;
- Parliament can pass statutes on any matter and any future Parliament can undo any law;
 - Parliament cannot bind future Parliaments;
 - E.g. Brexit.
- Parliament is supreme to all other institutions including courts and executive (i.e. government).



Parliamentary Sovereignty and Common Law

- Common law can be enacted as statute;
- Statute is supreme to common law in case of conflict;
- Courts' role in reviewing primary legislation is limited;
 - A court cannot declare an Act of Parliament to be void or invalidate primary legislation;
 - Only Parliament can amend or invalidate statute;
 - Courts do have a power of judicial review – they can assess acts of state and state bodies and declare such acts to be void;
- Parliamentary sovereignty has been limited in the UK.



The Rule of Law

- AV Dicey's second pillar of the English Constitution;
- Contested and discussed by legal scholars and theorists over centuries;
- Key characteristics:
- “all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes”
- All are equal before the law; no-one is above the law;
- The law should not be applied retroactively;
- One should know what the law is, and should not be punished without a breach of the law.



The Royal Prerogative

The Crown (now, the Queen) has a number of key roles, undertaken in line with the principle of “constitutional settlement”.

Some tasks are exercised by the Queen herself: eg appointment of the Prime Minister; dissolution of Parliament before an election; opening of Parliament.

Exercised by government ministers on behalf of the Queen: eg diplomacy; negotiating and signing Treaties; engaging the armed forces.



The Separation of Powers

- Three branches of governance of a state largely attributed to Montesquieu: the executive (the Prime Ministers, the cabinet, Government Departments and the civil service), the legislature (Parliament) and the judiciary;
- Division of tasks and responsibilities into these three branches to limit any one branch from exercising the core functions of another;
- The aim – to avoid that one branch of government is able to exercise unchecked power, via checks and balances exercised by the others (eg the UK Government and Parliament on Brexit).



The Governance of the UK

- The Prime Minister forms and leads the Government, appointing the Cabinet (made up of the most important Ministers of Government departments), and Ministers of all Government departments; they decide on and coordinate law and policy in the United Kingdom;
- The executive sits and has a close relationship with Parliament (too close?);
- The Civil Service is independent and non-partisan: it advises on, and implements, decisions of ministers;
- Local governments (councils) and devolved governments.



The Houses of Parliament

- Houses of Parliament – bicameral – two chambers:
 - House of Lords and House of Commons.



The House of Commons

- 650 Members of Parliament, representing a geographical area (a constituency);
- Elected by the first-past-the-post system (the candidate with the highest number of votes is elected) in a general election;
- The political party with the highest number of MPs forms the Government; the leader of that party becomes the Prime Minister;
- The party with the second highest forms the Opposition;
- A legislative role and also holds the Executive to account.



The House of Lords

- 791 peers sit in the House of Lords;
- Reforms from 1997; has stalled in recent years;
- Lords Spiritual – the 26 bishops in the Church of England;
- Lords Temporal - Hereditary (inherited title from the nobility of the UK; reforms in House of Lords Act 1999 – only 92 such peers sit at the once time) or Life peers (sit until retirement or death; appointed by Queen on advice of Prime Minister and leaders of other parties);
- Peers are either affiliated to a political party or not; the latter are cross-benchers and appointed on their

Devolution in the UK

- The process of decentralising (with statute), powers from the UK Parliament to:
 - The Scottish Parliament;
 - The Welsh Assembly;
 - The Northern Ireland Assembly
 - Smaller executive bodies and authorities.
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- Some powers are devolved or conferred, allowing those bodies to adopt legislation on those matters (eg health and education amongst others in Scotland);
 - Others are reserved to the UK Parliament (eg on defence and international relations).





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