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# CONSTITUTIONAL AND ADMINISTRATIVE LAW

## 宪法学与行政法学 (第3版)

CHRIS TAYLOR 王梓 注释 黄卉 审校

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著名法学家江平教授、许章润教授为

《西方法学经典教材系列》题词

教材所收皆为精品，精准阐释了英美法制的专门领域，而篇幅适中，书写畅达，值得一读。

——中国政法大学终身教授 江平

采撷异域法意，以接济和光弘本土法律精神，助推中国转型，进而建政立制，本套教材正当时也！

——清华大学法学院教授 许章润

# 华中法学出版学术顾问

(按姓氏笔画为序)

方流芳 刘春田 张 军 郭寿康

## 《宪法学与行政法学》导读

由英国 PEARSON 出版社授权华中科技大学出版社出版的《法学初阶——西方法学经典教材系列·影印双语注释本》已经与读者见面了。该系列涵盖了国内法学本科生必修的法学课程内容，是一套非常适合中国法学院校本科生系统了解与学习英美法系课程内容的经典教材，同时该教材兼顾法律英语的学习目的。

《法学初阶——西方法学经典教材系列·影印双语注释本》，通过中英文双语注释的方式，把原汁原味的英国各类部门法的内容介绍给读者，这是该系列教材与以往出版的影印版法学书籍最大的不同之处。注释者依据国内法学院校教授英美法系课程内容和法律英语教学的特点，在参考《布莱克法律字典》、《元照英美法词典》、《牛津法律大辞典》等多部权威字典基础上，采取中英文双语注释的方式，将教材中重要的法律词汇一一作出解释。这样，便于大家学习英美法系课程内容，同时也能够更快地掌握法律英语。

《法学初阶——西方法学经典教材系列·影印双语注释本》的出版，旨在将英美法系中（英国各部门法）的法律内容介绍给中国法学院校的老师与同学们，大家可以借助中英文注释这一桥梁，便捷、准确地了解英国法律。

出版者希望采用该系列教材的法学院校师生们，喜欢我们这样的编排方式，并从中受益，也期待师生们对其提出宝贵意见！

下面是对这套法学经典教材之一《宪法学与行政法学》的介绍。

宪法与行政法，是公法学习中非常重要的部门法，也是法学本科生必修课程。学生通过对该教材的学习，可以了解到英国宪法的重要内容及立宪背景。在这本教材中，作者采用简明易懂的语言将其重点知识，如宪法的起源、宪法

的基本原则、国家组织结构、人权及司法审查等内容一一作了介绍与阐释。教材每一章节之始，作者为其内容的重点知识词汇编制了知识网络图，这种最为直观的方式，可以使学生在学习前就对其有一个完整及初步的了解。同时，每一章节还配有相关的案例以及分析，这样可以帮助学生理解相关知识并熟悉司法实践过程，提高运用能力。再有，每一章节还附有部分内容的知识图表，便于学生对所学的知识能够得到及时的总结和梳理。

《宪法学与行政法学》这本教材语言简明易懂，便于老师和学生在短时间内，掌握宪法与行政法学的主要内容，并了解英国法是从怎样的角度和思路介绍宪法与行政法学内容的。教材附录部分的重点词汇，可以使学生很快地理解重点词汇的含义，以扫清阅读和学习障碍。

为了保证本教材中英文注释的准确性，出版社邀请了北京航空航天大学法学院副教授法学博士黄卉担任专业审校，确保该教材注释内容的专业精准和学术权威。

# Acknowledgements

Our thanks go to all reviewers who contributed to the development of this text, including students who participated in research and focus groups which helped to shape the series format.



# Introduction

Constitutional and Administrative Law is one of the core subjects required for a qualifying law degree and so is a compulsory part of undergraduate law programmes and graduate diploma in law programmes. It is, however, very different from many of the other core legal subjects as it concentrates less on legal rules than on the operation of the system itself, in particular, the operation of the state and the relationship between the state and the individual.

Constitutional law is often described as where law meets politics, and there are frequent references to the political process which directly influences the law which is introduced. Much of the law we work with originates in Parliament in the form of statute and so we must understand how Parliament works and how such statutes are produced. Similarly, in order to appreciate the role played by the common law, we must understand the position of the courts within the constitution. More importantly, constitutional law considers how power is exercised by the state and how those in power are held accountable. This includes the protection of civil liberties, and mechanisms for the individual to challenge the exercise of state power.

It is not uncommon to approach constitutional law for the first time with a certain amount of uncertainty, especially if politics is not your favourite subject, but don't worry. Almost all students find themselves enjoying the subject more than they expected and your knowledge of how 'the system' works will be invaluable in your other legal studies. The most important thing to remember is that, because we don't have a written constitution, there is no central set of rules which dictates how the state should operate. Instead, our constitutional system is a web of principles and customs which often appear outdated and vague, so don't worry if this subject seems disjointed when compared with other areas of law and don't assume that it is just you who doesn't understand – just remember the basic principles and take a little time to think about *why* the constitution has evolved into the system we have today.

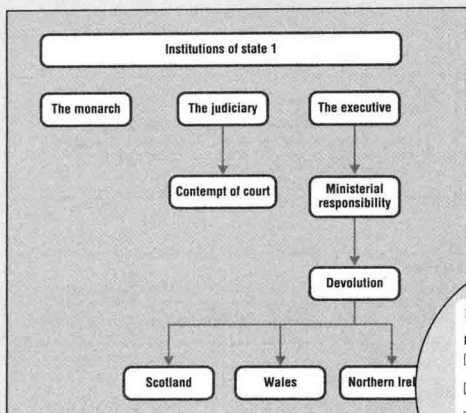
Remember that this is a revision guide, not a core text, so it can never provide you with the depth of understanding which you will need to excel in examinations and it will be no substitute for structured reading around the various topics. What it can do, however, is to focus your revision on the key areas and highlight those additional points which examiners are looking for. The single most common failing in constitutional law examinations is that

students write 'common sense' answers, without sufficient reference to the cases and legal principles. We all know (or think we know) what government or Parliament are but that is not enough – as in any other area of legal writing you need to produce logical, reasoned arguments supported by relevant authorities if you are to achieve the highest grades.

 **REVISION NOTE**

**Before you begin, you can use the study plan available on the companion website to assess how well you know the material in this book and identify the areas where you may want to focus your revision.**

# Guided tour



**Topic maps** – Visual guides highlight key subject areas and facilitate easy navigation through the chapter. Download them from the companion website to pin on your wall or add to your own revision notes.

**Revision checklists** – How well do you know each topic? Use these to identify essential points you should know for your exams.

But don't panic if you don't know them all – the chapters will help you revise each point to ensure you are fully prepared. Print the checklists off the companion website and track your revision progress!

## Revision checklist

### Essential points you should know:

- The constitutional position of the monarch as a symbolic powers in relation to the operation of the
- The importance within the constitution of the independence to protect the individual from abuse of state power
- The function and forms of contempt of court as a tradition of justice
- The composition and function of the executive state and its ministers (including the process)
- The development of ministerial responsibility

## Sample questions with Answer guidelines

– Practice makes perfect! Read the question at the start of each chapter and consider how you would answer it. Guidance on structuring strong answers is provided at the end of the chapter. Try out additional sample questions online.

## Sample question

Could you answer this question? Below is a typical problem question that could arise on this topic. Guidelines on answering the question are included at the end of this chapter, whilst a sample essay question and guidance on tackling it can be found on the companion website.

**Assessment advice** – Not sure how best to tackle a problem or essay question? Wondering what you may be asked? Use the assessment advice to identify the ways in which a subject may be examined and how to apply your knowledge effectively.

## ASSESSMENT ADVICE

### Essay questions

Essay questions might involve consideration of how ultimate power within the constitution has shifted from the monarch to the other institutions of state. You may also be asked to explore the operation of government and the relationship between Prime Minister, minister and civil servants – possibly within the context of ministerial responsibility. In all cases, the examiner will be looking for both an understanding of the composition and function of the various state institutions, and an appreciation of the relative

**Key definitions** – Make sure you understand essential legal terms. Use the flashcards online to test your recall!

### KEY DEFINITION: Devolution

The process by which power is given (or 'devolved') from Westminster to Scotland, Wales and Northern Ireland, giving them greater control over their own affairs and the power to make their own laws in certain areas. This is not full independence, however, as Westminster retains power over key areas such as defence.

**Key cases and Key statutes** – Identify and review the important elements of the essential cases and statutes you will need to know for your exams.

**KEY STATUTE****Contempt of Court Act 1981***The strict liability rule*

In this Act 'the strict liability rule' treated as a contempt of court particular legal proceedings.

Contempt of Court Act 1981

**KEY CASE*****Sunday Times v. United Kingdom* [1979] 2 EHRR 245 (ECiHR)**

**Concerning:** publications prejudicial to the course of justice

**Facts**

*The Sunday Times* was prevented by injunction from publishing an article on the Thalidomide drug scandal at a time when the parties to the case were engaged in negotiations to reach a settlement.

**Make your answer stand out** – This feature illustrates sources of further thinking and debate where you can maximise your marks. Use them to really impress your examiners!

✓ **Make your answer stand out**

- Include examples from recent history. Remember, because ministerial responsibility is a convention, there are no decided cases but you should use examples to illustrate your points. All too often, students forget to use such examples and this greatly undermines their answers.

**Exam tips** – Feeling the pressure? These boxes indicate how you can improve your exam performance when it really counts.

📌 **EXAM TIP**

More recent examples of the reluctance of ministers to resign for the apparent errors within their departments surrounded the numerous examples of lost computer data which have occurred. Despite millions of people's personal details being lost, no minister has resigned.

**Revision notes** – Get guidance for effective revision. These boxes highlight related points and areas of overlap in the subject, or areas where your course might adopt a particular approach that you should check with your course tutor.

📖 **REVISION NOTE**

Although you are highly unlikely to face an exam question solely on the monarch, it is a subject which features in many possible exam questions, as part of topics such as the Royal prerogative, the separation of powers and parliamentary sovereignty. The diminishing powers of the monarch is one of the most important themes underpinning

**Don't be tempted to . . .** – This feature underlines areas where students most often trip up in exams. Use them to spot common pitfalls and avoid losing marks.

! **Don't be tempted to . . .****Examples of ministerial responsibility**

Because ministerial responsibility is a constitutional convention, it is a 'non-legal' rule and so not enforced by the courts. This means that examples are not decided cases but are simply 'political events'. Don't make the mistake of discussing such examples as if they were decisions of the court.

**Read to impress** – Focus on these carefully selected sources to extend your knowledge, deepen your understanding, and earn better marks in coursework as well as in exams.

**READ TO IMPRESS**

Bamforth, N. (2005) 'Political Accountability in Play: The Budd Inquiry and David Blunkett's Resignation', *Public Law* 229–38.

Brazier, R. (1994) 'It is a Constitutional Issue: Fitness for Ministerial Office in the 1990s', *Public Law* 431–51.

Editorial (2007) 'Losing Heads over the lost Data', 171 *Justice of the Peace* 841.

## Glossary of terms

**Glossary** – Forgotten the meaning of a word? This quick reference covers key definitions and other useful terms.

The glossary is divided into two parts: key definitions and other useful terms. The key definitions can be found within the chapter in which they occur, as well as in the glossary below. These definitions are the essential terms that you must know and understand in order to prepare for an exam. The additional list of terms provides further definitions of useful terms and phrases which will also help you answer examination and coursework questions effectively. These terms are highlighted in the text as they occur but the definition can only be found here.

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# The constitution of the UK



## Revision checklist

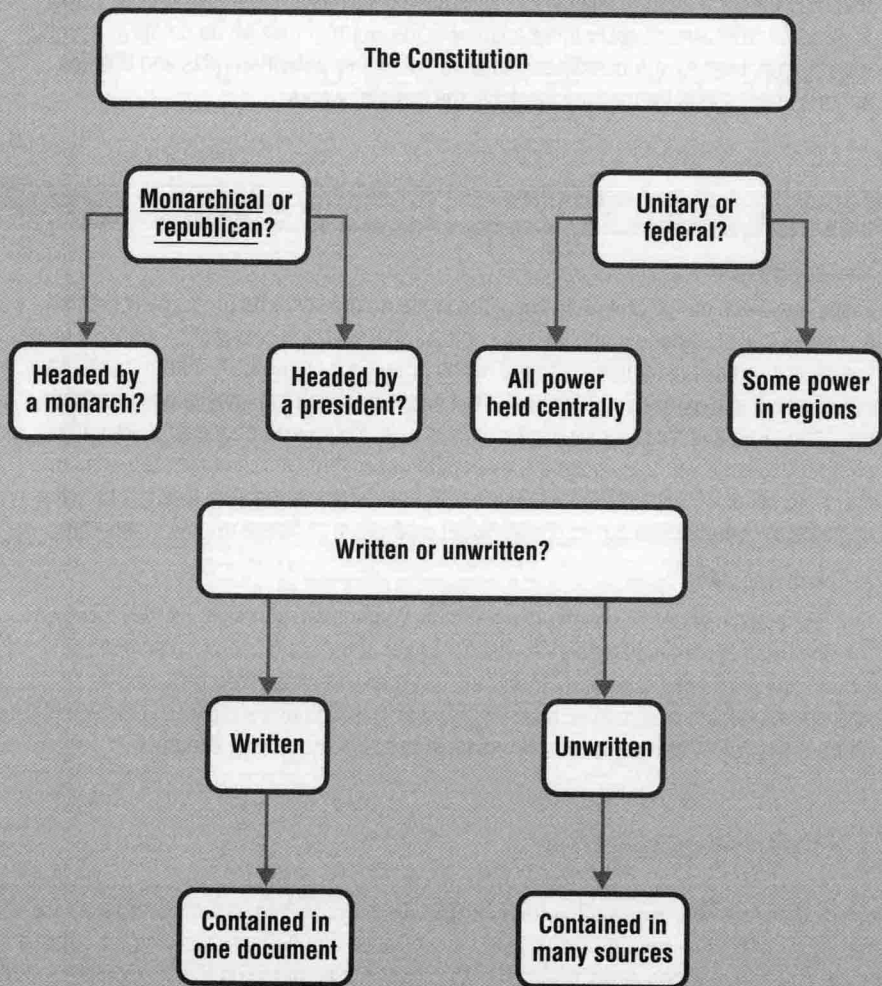
### Essential points you should know:

- What is meant by the term 'constitution'
- The difference between a written and an unwritten constitution
- The characteristics of both types of constitution
- The advantages and disadvantages of written and unwritten constitutions

## 第一章注释

序号	页	表格	行	词汇	中文注释	English
1	3	1		Monarchical	君主政体	A government in which a single person rules, with powers varying from absolute dictatorship to the merely ceremonial.
2				Republican	共和政体	A system of government in which the people hold sovereign power and elect representatives who exercise that power.
3	4		5	Written constitution	成文宪法	
4			13	Royal prerogative	[英]王权; 君主特权	
5	8			Constitutional conventions	宪法惯例	An assembly of state or national delegates who meet to frame, amend or revise their constitution.
6	10		8	Coalition government	联合政府	

## ■ Topic map





## ■ Introduction

### What is a constitution anyway?

Before you can discuss the operation of the constitution, you need to know what we mean by the term and the answer to this is not as easy as it might first appear. The UK is different from almost every other country in the world in that we do not have a written constitution. Instead, our constitution is a web of mainly unwritten rules and this has serious implications for the way in which 'the system' works.

## ASSESSMENT ADVICE

### Essay questions

Essay questions on the unwritten constitution are an old favourite of examiners. Often, questions will ask you to compare and contrast our unwritten constitution with the more common written constitution (as found in countries such as the USA). Alternatively, an essay question may ask you to consider the extent to which the constitution provides protection for an individual's civil liberties in the UK. Both types of question are fairly straightforward if you appreciate the main differences between the unwritten and written systems, and it is possible to achieve high marks by making sure that you not only describe the constitution but also offer some analysis or criticism of how it operates.

### Problem questions

Problem questions on the constitution are fairly uncommon, although the way in which the unwritten constitution influences the operation of the state can be mentioned in almost any public law question. More likely is a question which may be posed as a scenario but which is, in reality, more of an essay question and simply requires you to address the same material as you would in an essay question (see example).

## ■ Sample question

Could you answer this question? Below is a typical essay question that could arise on this topic. Guidelines on answering the question are included at the end of this chapter, whilst a sample problem question and guidance on tackling it can be found on the companion website.

## ESSAY QUESTION

'The fact that the UK does not have a written constitution is of no practical significance to the individual.' Discuss.