

朗文·培生法学基础系列·影印本

Foundation Studies of Law

宪法与行政法

Constitutional and Administrative Law

第二版 2nd Edition

[英]亚力克斯·卡雷尔 Alex Carroll 著



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宪法与行政法作为一个整体进行研究的并不多见，国内这样，国外亦如此。本书将宪法与行政法放在一起进行综合研究，让我们在理解英国宪法基本原则和宪政制度同时晓悉具体的行政法律制度，既知其然，又知其所以然，效果非将宪法与行政法割裂开来所能取得。



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导 读

目前国内已有一些有关英国行政法的学术著作或译作,但有代表性的只有王名扬教授著《英国行政法》,姜明安教授主编并负责撰写其中英国行政法部分的《外国行政法教程》,威廉·韦德著,徐炳等译的《行政法》(有部分内容未译出)等书为数不多的几本,但还不能最大程度地满足行政法理论界和实务界的需要,加之出版时间较早,亦不能很好地反映出英国行政管理制度及行政法研究的最新动态。法律出版社影印推出的这本《宪法与行政法》,正好弥补了这方面的缺憾。

全书分7编,共25章:第1编“基本原理”,分“宪法与行政法导论”、“宪法的特点”、“宪法与行政法的法源”3章;第2编“议会与欧洲共同体”,分“欧洲共同体:组织机构与法律渊源”、“议会立法至上”2章;第3编“议会的组成与运作”,分“选举权与选民”、“下议院:下议院议员”、“下议院:主要职能”、“上议院”、“议会特权”5章;第4编“行政部门”,分“首相与内阁”、“君主特权”、“王权诉讼及王权与公共机构的法律责任”3章;第5编“行政行为的司法审查”,分“司法审查的性质”、“司法审查的依据:不合法、不合理与程序不适当”、“司法审查的排除与适用”、“排他性”4章;第6编“人权”,分“《欧洲人权公约》”、“1998年《人权法案》”、“治安权、人身自由与隐私”、“集会与结社自由权的限制”、“言论与信息自由权的限制”、“自由与紧急权”6章;第7编“裁判所、调查与申诉程序”,分“裁判所与调查”、“督察专员”2章。

本书有如下特点:

1. 宪法与行政法相互交融。在我国,行政法学与其他法学分支学科的关系是独立的、平行的部门法关系,但行政法学与宪法学之间却有着较为特殊的密切关系,这源于宪法与行政法的紧密联系,正如龚祥瑞教授在其《比较宪法与行政法》一书中指出:“宪法是行政法的基础,而行政法则是宪法的实施。行政法是宪法的一部分,并且是宪法的动态部分。没有行政法,宪法每每是一些空洞、僵死的纲领和一般原则,而至少不能全部地付诸实施。反之,没有宪法作为基础,则行政法无从产生,或至多不过是一大堆零乱的细则,而缺乏指导思想。”但是,将宪法与行政法作为一个整体进行研究的作品并不多见,国内这样,国外亦如此。本书将宪法与行政法放在一起进行综合研究,让我们在理解英国宪法基本原则和宪政制度的基础上,同时又知晓了具体的行政法律制度,既能知其然,又能知其所以然,效果非将宪法与行政法割裂开来所能取得。

2. 体系构建新颖。这一特点亦与本书将宪法与行政法综合起来研究的方法有关系。本书开篇就是对有关宪法与行政法的基本原理进行综合阐述,然后对英国议会立

法与欧洲共同体法律之间的关系这一“法律全球化”的缩影进行研究,接下来对立法、行政、司法这三个权力部门的运作进行具体分析,再就是有关人权和裁判所、调查和申诉程序的内容。该体系新在将人权单独作为一部分进行专门研究,并占有本书最长篇幅,这不但顺应了世界各国对人权愈加重视的历史潮流,更是体现了行政法作为“公民权利保护法”或“人权保障法”的重要功能。行政法对公民权利和人权的保障主要是通过行政权力的控制和对行政侵权的救济实现的,因此具有比其他部门法更为特殊、更为重要和更为显著的意义。反观我国,对公民基本权利和人权的研究传统上属于宪法学研究的范畴,行政法学在这方面的研究还很薄弱,这种状况亟待改变。

3. 原理性与实践性相结合。基本原则对于宪法与行政法非常重要,这可能源于宪法与行政法的政治性与原则性本来就要强于其他部门法,也是因为宪法尤其是行政法所要调整的关系变动性较强,因而需要基本原则这一根绳索将复杂的、动态的各种现象串联起来。本书对有关宪法、行政法的一些基本原则,结合影响并形成这些原则的英国特有的政治、历史、文化等因素和典型案例进行综合分析,既让我们掌握了基本原则的内容,更使我们了解了这些原则的产生背景和现实运作情况。

4. 材料鲜活。学术研究离不开新鲜的一手资料,本书很好地满足了这方面的需求。本书1998年第1版,2002年第2版,所用材料截至2001年底,可以说是目前国内出版的有关英国宪法与行政法方面最新的书籍。第6编“人权”即是一例,第2版根据英国1998年的《人权法案》、2000年的《反恐怖主义法》和《调查权力规制法》进行了全面修订。本书其他内容也紧密结合了英国近几年来来的宪政改革,特别是政府体制重构与上议院改革的最新动态。

本书专为英国法学本科教育以及将宪法与行政法作为核心课程的其他类型教育项目而编写,采用典型的教科书写作体例,即一般先对有关概念进行定义式描述,然后再分解开来进行细化研究。这不同于理论性过强的学术专著,这样的教科书能帮助我们全景式地、原汁原味地领略英国宪法与行政法的基于内容。值得一提的是,作者在每章正文后还列出了相关参考书目,这在很大程度上扩大了本书的信息量,对读者进一步学习大有裨益。我们相信,本书能给读者带来知识的乐趣。

李凌波

2003年夏于北京大学

PREFACE

This book has been written for students undertaking legal studies at undergraduate level and those pursuing similar courses which include constitutional and administrative law as a core component (e.g. the Postgraduate Diploma in Law). It is based on over twenty-five years' experience of teaching the subject at A-level, on undergraduate programmes and on postgraduate courses. Particular attention has been paid to the views of students concerning the strengths and weaknesses of existing textbooks in this discipline.

No attempt has been made to produce an exhaustive reference book covering all those issues which might conceivably fall within the boundaries of the subject. Rather the book concentrates on those topics which form the essential core of most constitutional and administrative law syllabi currently taught in further and higher education institutions.

Recent years have witnessed many significant changes to the law and practice of the British constitution. Detailed comment on these changes has been included notwithstanding that in some contexts, e.g. the House of Lords, the process of change is not yet complete. Hence, in addition to parliamentary reform, extensive coverage is given to such further innovations as the creation of regional assemblies for Scotland, Wales and Northern Ireland, developments within the European Union, changes to electoral law, the enactment and application of the Human Rights Act 1998 and the granting of even greater powers to the executive to deal with crime and terrorism.

As with most law books many of the legal principles included are explained by reference to particular judicial decisions. The approach taken here has been to discuss those cases which illustrate the principles in issue most clearly or those which exemplify their most recent application.

Constitutional and administrative law cannot be fully understood without reference to the nation's political history and its social and cultural development. The subject is also of great topical interest and is in a constant process of change and adjustment with many of its principles and cases resulting from, or relating to, recent political controversies. Hence, while every attempt has been made to explain the necessary principles as precisely and succinctly as possible, it has also been the author's intention to do so in a way which places these in their contextual framework. This approach gives some insight into the relationship between the subject and those political, historical and cultural factors which have influenced and shaped its nature and content.

The author is greatly indebted to all those who have helped in the book's compilation and production. Particular thanks are due to Mrs Linda Cork, and Mrs Gaynor Breach, administrative assistants at Manchester Metropolitan University, and to Mrs Loraine May of Power X Ltd, Sale, Manchester. The author would also like to express belated thanks to Mr R H Buckley, one-time Principal Lecturer in Law at Manchester Metropolitan University, for all his help and advice over the years and for first exciting the author's interest in the subject. Thanks are also due to Mr Pat Bond of Pearson Education for his patience, support and understanding while the book was being written.

Alex Carroll
November 2001

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Constitutional and Administrative Law 2nd Edition
by Alex Carroll



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