

E. C. S. Wade and G. Godfrey Phillips

# **Constitutional and administrative law**

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**By E. C. S. Wade and G. Godfrey Phillips**

**Ninth Edition**

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## Preface

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At a time when we are increasingly aware both of the strengths and weaknesses of extensive government, the ways of government become ever more complicated for the citizen to understand. Even the law, which has often been looked to by the citizen as a lifeline if all else fails, seems in many situations to have become tinged with the less attractive hues of official power. In these circumstances, it is the more necessary that the citizen, his representatives and all concerned with public affairs should understand the structure of legal and constitutional principle which underlies our system of government.

*Constitutional Law*, by E. C. S. Wade and the late G. Godfrey Phillips, was first published in 1930. It soon became one of the leading textbooks on its subject. Between 1930 and 1970, eight editions were published. The many changes made in each new edition, reflecting developments in our public law, enabled the book to introduce successive generations of students to one of the most important but difficult branches of law.

In 1974, Professor Wade invited me to prepare a new edition of the book, having decided after some ten years in retirement from law teaching that he would not be able to undertake the work himself. While generously offering his advice to me whenever I might wish to seek it, he no less generously allowed me a completely free hand in preparing this edition. In the event, I have tried to produce an edition that will meet the needs of students for an introduction to constitutional law, as well as providing a more substantial account of the subject for them and other readers. While therefore I have sought to build upon the foundations which he laid, Professor Wade bears no responsibility for the views and statements which I have expressed. Throughout the preparation of this edition, he has been of great assistance to me, reading manuscript and proofs, and commenting upon them. For these and many other acts of kindness, I record my deep personal gratitude to one who occupied with distinction the Downing Chair of the Laws of England at Cambridge between 1945 and 1962, and who during a long career contributed much to legal education, to the study of public law (exemplified by the masterly introductions which he wrote to the 9th and 10th editions of A. V. Dicey's *Law of the Constitution*), to public affairs (he served in the Cabinet Office and in the Home Office as legal advisor during the Second World War, and later was a member of the Lord Chancellor's Law Reform Committee) and, not least, to the quality of justice dispensed from the magistrates' bench in the City of Cambridge.

In preparing this edition, I have become acutely aware of the difficulty of trying to present within a single book material which may serve as an introduction to the study of public law, as a guide to the work of Government and Parliament in the United Kingdom, (to which is now added the new dimensions of the EEC and of devolution to Scotland and Wales) and as a point of departure for more advanced study. While it has not made the task any easier, I have sought to emphasise that English law is only one of three jurisdictions within the United Kingdom. Although I have dealt much more fully with English law than with the equivalent law in Scotland, I hope that I have not created too many pitfalls for the reader by this selective treatment of Scottish topics. I would have liked to give more emphasis to Northern Ireland than I have done.

Compared with the 8th edition, too many changes of arrangement and treatment have been made for them to be enumerated. The new material can speak for itself. It includes discussion of many matters on which the law or constitutional practice either is uncertain or, if settled, is far from satisfactory and in respect of which reform is needed. Despite the inclusion of administrative law in the title of the book, Part III is probably less altered from previous editions than Parts I and II, but even here much new material has been included. Pressure on space excluded discussion of the relationship between church and state. A topic which receives less attention than it deserves is the public law relating to the economy, industry and the trade unions. The course of history has enabled discussion of the law relating to the Commonwealth to be shortened. I have omitted details of the jurisdiction of the courts since published accounts of the legal systems in England and Scotland are readily available.

Chapters 8 (on the EEC) and 18 (on foreign affairs) have been contributed by my Edinburgh colleague, T. St. J. N. Bates, who kindly agreed to prepare these chapters at a time when I was falling behind schedule in the preparation of the rest of the book. The writing of chapter 25 was a joint operation between us.

While I have tried to give enough details of leading cases and statutes to make discussion of them intelligible, to encourage the reading of source material I have often given references to *Cases and Materials on Constitutional and Administrative Law*, by Professor Geoffrey Wilson (2nd edn, 1976) and *Cases in Constitutional Law*, by Sir David Keir and Professor F. H. Lawson, (5th edn, 1967). At the suggestion of the publishers, a collected list of books cited has been included. In the interest of saving space, many official publications have been referred to merely by their serial number (e.g. Cmnd 218, 1957; and H.C. 352 (1972-73)); further details may be found in the annual index published by HMSO.

One problem for the reader of a book of this character is to know whether he should read the chapters consecutively from the beginning to the end. While many of the chapters are more or less self-contained, the chapters in Part I, especially chapters 1 to 7, are intended to be read in the sequence in which they appear. But these earlier chapters may be more fully appreciated on a second reading after Parts II and III have been read, since they do not serve a merely introductory purpose. It was not easy to decide where to locate the chapter on the EEC. In chapter 8, it comes after the discussion of general constitutional principles and before detailed treatment of our national institutions, but I realise that this may be something of a compromise.

My thanks are due to many people for their assistance. In addition to Mr Bates, my departmental colleagues - D. J. Christie, W. B. Creighton, A. G. Donaldson,

and C. M. G. Himsworth – have always been ready to assist me on the many matters of which their knowledge exceeds mine. Carol R. Harlow of the London School of Economics kindly read and commented upon chapters 1–7 in typescript. At a time when money for university libraries is being cut, I record that I could not have prepared this edition without access to the excellent facilities of the University Library at Edinburgh – notably the Law Library, the Library of the Centre for European Governmental Studies and the Statistical Reference section, whose staff have in every way been most helpful. I have received immense help from Helen Dignan and Sheila Smith, who have cheerfully and most capably provided secretarial and typing services well beyond their duty. And I must thank my family for their great patience and support at many stages.

The preparation of the manuscript for printing may be deemed to have been completed during December 1976. It has been possible to include references to legislation of the 1975–76 session of Parliament but not to deal fully with all relevant events and judicial decisions occurring late in 1976. A guide to recent developments may be found in Appendix B, dealing with devolution, and in Appendix C, on other matters.

Old College,  
Edinburgh

A. W. Bradley  
April 1977



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## Abbreviations

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In addition to the standard abbreviations used for the citation of reported cases, the following abbreviations are used for the principal text-books, journals and other sources cited. Details of the edition used may be found in the bibliography at the end of the book.

- A.J.C.L.** *American Journal of Comparative Law*  
**A.J.I.L.** *American Journal of International Law*  
**A.L.J.** *Australian Law Journal*  
**A.P.S.** *Acts of Parliament of Scotland*  
**Anson** W. R. Anson, *Law and Custom of the Constitution*  
**Bagehot** W. Bagehot, *The English Constitution*  
**B.Y.I.L.** *British Yearbook of International Law*  
**C.L.** *Current Law*  
**C.L.J.** *Cambridge Law Journal*  
**C.L.P.** *Current Legal Problems*  
**C.M.L.R.** *Common Market Law Reports*  
**C.M.L.Rev.** *Common Market Law Review*  
**Crim. L.R.** *Criminal Law Review*  
**de Smith, Judicial Review** S. A. de Smith, *Judicial Review of Administrative Action*  
**Dicey** A. V. Dicey, *The Law of the Constitution*  
**Erskine May** Erskine May, *Parliamentary Practice, (The Law, Privileges, Proceedings and Usage of Parliament)*  
**Gordon Walker** P. Gordon Walker, *The Cabinet*  
**H.C.** House of Commons Paper  
**H.C.Deb.** House of Commons Debates (Hansard)  
**H.E.L.** Sir William Holdsworth, *A History of English Law*  
**H.L.** House of Lords Paper  
**H.L.Deb.** House of Lords Debates (Hansard)  
**H.L.E.** *Halsbury's Laws of England* (4th edn, 1973 onwards)  
**Heuston, Essays** R. F. V. Heuston, *Essays in Constitutional Law*  
**I.C.L.Q.** *International and Comparative Law Quarterly*  
**Jennings, Cabinet Government** Sir Ivor Jennings, *Cabinet Government*  
**Jennings, Law and Constitution** Sir Ivor Jennings, *The Law and the Constitution*  
**Jennings, Parliament** Sir Ivor Jennings, *Parliament*  
**J.R.** *Juridical Review*  
**J.S.P.T.L.** *Journal of the Society of Public Teachers of Law*  
**K. & L.** Sir David Keir and F. H. Lawson, *Cases in Constitutional Law*  
**Kilbrandon Report** Report of Royal Commission on the Constitution, vol. 1, Cmnd 5460

**Mackintosh, British Cabinet** J. P. Mackintosh, *The British Cabinet*  
**Maitland, History** F. W. Maitland, *The Constitutional History of England*  
**Marshall and Moodie** G. Marshall and G. C. Moodie, *Some Problems of the Constitution*  
**M.L.R.** *Modern Law Review*  
**M.P.R.** Report of Committee on Ministers' Powers, Cmd 4060, 1932  
**N.I.L.Q.** *Northern Ireland Legal Quarterly*  
**P.L.** *Public Law*  
**S.I.** Statutory Instrument  
**S.R. & O.** Statutory Rule and Order  
**S.L.T.** *Scots Law Times*  
**Smith and Hogan** J. C. Smith and B. Hogan, *Criminal Law*  
**Street, Freedom, Individual and the Law** H. Street, *Freedom, the Individual and the Law*  
**Taswell-Langmead** Taswell-Langmead, *English Constitutional History*  
**Wilson, Cases** G. P. Wilson, *Cases and Materials on Constitutional and Administrative Law*  
**Yearbook** *Yearbook of the European Convention on Human Rights*



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