

简明法学案例丛书(影印版)

briefcase on CONSTITUTIONAL & ADMINISTRATIVE LAW

宪法和行政法简明案例

(第四版)

(Fourth Edition)

大卫·赫尔林

David Herling

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本书导读

Briefcase on Constitutional & Administrative Law 是与先前出版过的 *Essential Constitutional Law* 相配套的讲述英国宪法的基本原理及其运作的简明读本。*Essential Constitutional Law* 是从纯理论的角度来解读英国宪法,而 *Briefcase on Constitutional & Administrative Law* 则是以一个个鲜活的案例从实践运作的角度来解读英国宪法,两本读物相互配套全方位地为我们呈现出了英国宪法的面貌。如果说 *Essential Constitutional Law* 为我们所描述的是处于黑暗中的大厅,我们只能凭借它的描述来想象大厅的华丽和丰富,那么 *Briefcase on Constitutional & Administrative Law* 所显现在我们眼前的则是明媚光亮之下的大厅,英国宪法中的概念、原则都被赋予了清晰的影像。原本枯燥和晦涩的理论在具体案例的解说下被赋予了生动的生命力,成为人们生活的一种方式。

英国由于其岛国的特殊地理环境,使它与其他的欧洲大陆国家相隔离。因此,当罗马法在欧洲大陆国家风起云涌之时,英国的法律却能保证自身独立性的生长与发展,从而形成与大陆法系截然不同的法律体制,其突出性的特征就表现在与成文法主义相反的不成文法主义。作为英国法律体系构成部分的英国宪法也秉承了这一特性,表现为一个复杂的组成体系,除了有形诸文字的宪法性文件,更为重要的是还包括有宪法惯例和案例。案例在英国宪法体系中占有极其重要的地位,它不但能够用来解释和说明宪法的有关内容,并且其本身就是宪法不可分割的一部分。

英国宪法的不成文特征使得它常能不断变化,并且不存在特别制宪权,这使得英国作为一个民主国家,虽然同样也实行三权分立的原则,但是它的议会权力却是无限的,即其特殊的议会主权原则。宪法本身并无足够的力量束缚英国的议会,在英国政制的各构成部分间实际上不存在真正的制衡观念,权力间的牵制力量是相对薄弱的,而权力的重心又是非常明显的。正如密尔在其名著《代议制政府》中一针见血地指出的:“平衡政体是不可能的。”在一个英国人看来,分散的权力只会导致僵局,甚至公开的冲突。在英国议会中的上院不仅是立法机关而且还是最高的司法机关,是民、刑案件的最终上诉机关。在整个欧洲的统一的问题上,英国政制的这种特点也使得它明显表现出不同于其他国家的态度和立场。与其他国家积极追求和融入

欧洲统一体系的态度不同,英国更坚持本国及其法律的独立性。在与欧共体、欧盟等超国家机构的关系上,在与整个欧洲融合的过程中,英国以及英国的法律都走得更为缓慢和艰难。作者以英国宪法中的重要概念、原则和宪法关系为线索,使庞杂的案例能够形成一个条理严谨的结构体系。在对每一个概念、原则或宪法关系的解读中,作者又从定义、应用以及应用的限制或例外等多角度展开论述,以力求对每一问题进行清晰解说。而在每一个案例的描述中,作者克服了机械的叙述方式,分别从事实、理由、判决、著名人士的观点以及自己的评论等几个方面来对案例进行说明。全书文字浅白晓畅,结构清晰,既明确地阐述了英国宪法的传统特点和基本理论,又敏锐地把握住了时代发展中英国宪法的发展变化,是一本适合法律专业本科生及具有相当程度的一般读者阅读的参考读本。

武汉大学出版社慧眼识珠,大胆地引进包括该书在内的系列丛书,并以原版形式出版发行,为丰富本科生的阅读范围,提高其理论水平作出了可贵的开拓。本书的目录和索引部分由陈志英翻译,如有不当之处,敬请批评指正。

译者

2005年5月

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