



Prifysgol Cymru
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University of Wales
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BMCX3000: LEGAL SYSTEM

Unit 5: UK CONSTITUTION

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CONTENT

Written Constitution

Unwritten Constitution

UK Constitution

Summary

Thank you, any questions?

LEARNING OUTCOMES

- Explain the nature of a constitution
- Identify the sources of the UK constitution
- Describe the doctrine of parliamentary sovereignty
- Explain what is meant by the rule of law
- Explain the concept of the separation of powers
- Contrast the UK (Westminster) model of government with other models such as presidential systems, and
- Outline the effects of devolution on the UK constitution.

INTRODUCTION

- What is constitutional law?
- Why do we need it?
- Where can we find it?
- How have recent developments reshaped the constitution?

Nature of constitutions

Art 1 Constitution of Iran

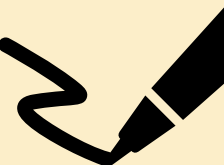
- The form of government of Iran is that of an Islamic Republic, endorsed by the people of Iran on the basis of their longstanding belief in the sovereignty of truth and Qur'anic justice, in the referendum of Farvardin 9 and 10 in the year 1358 of the solar Islamic calendar, corresponding to Jamadi al-'Awwal 1 and 2 in the year 1399 of the lunar Islamic calendar (29 and 30 March 1979), through the affirmative vote of a majority of 98.2 per cent of eligible voters, held after the victorious Islamic Revolution led by the eminent marji' al-taqlid, Ayatullah al- Uzma Imam Khomeini

Preamble to US Constitution

- We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

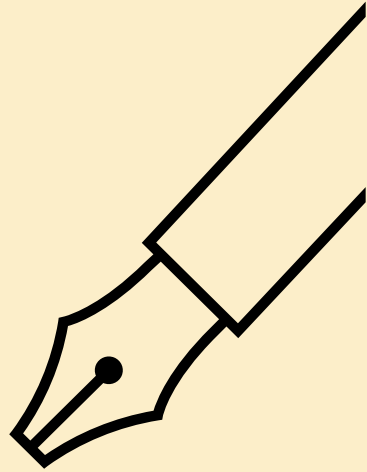
WRITTEN CONSTITUTION

- Document that governs and informs individuals of how the country need to be run.
- America is an example of a country with a written constitution.
- Ensures that the rule of law is upheld.
- Ensure independence of the Judiciary.
- No one can abuse their powers.
- Everyone must comply.
- Constitutional court – usually found



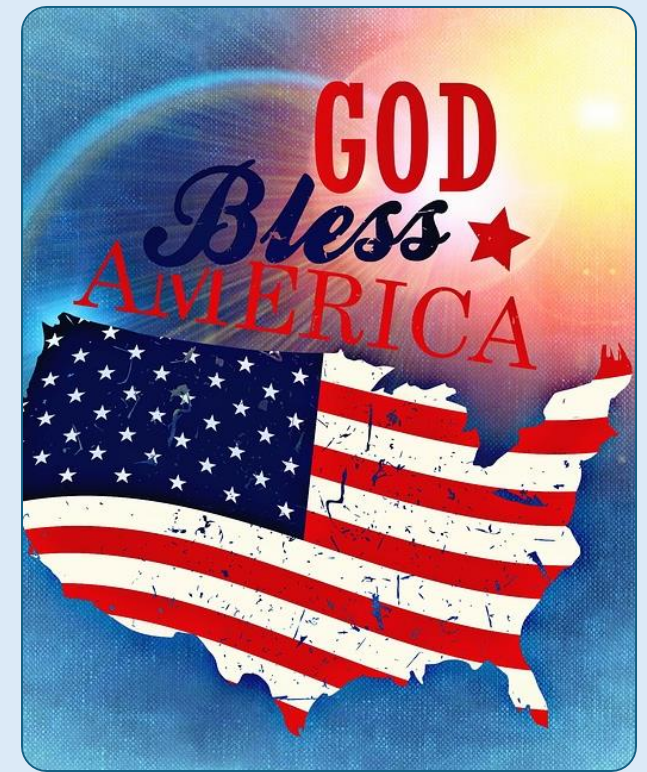
UNWRITTEN CONSTITUTION

- The United Kingdom.
- Does not have a constitution.
- We have Acts of Parliament and common law.
- Not 100% accurate because some of our constitution is written such as act of parliament.



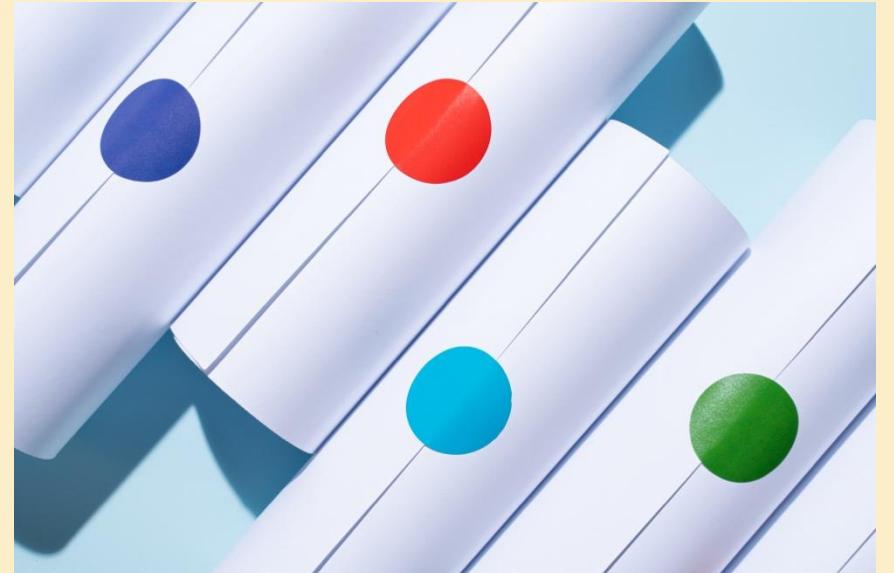
ACTIVITY 1

- Read the summary of Art 5 of the United States Constitution at <https://www.pbs.org/newshour/extra/app/uploads/2013/11/summary-of-the-US-Constitution.pdf>.
- Who needs to approve an amendment to the United States Constitution?



UK CONSTITUTION

- The Uk constitution is made up of a number of sources;
- 1. Legislation/statute
- 2. Case law relating to constitution
- 3. Prerogative powers
- 4. International law
- 5. Constitutional conventions.



STATUTE

- Aka Acts of Parliament
- Magna Carta 1215
- Bill of Rights 1689
- Act of Settlement 1700
- Judicature Acts 1870s
- Parliament Acts 1911 and 1949
- Human Rights Act 1998
- Government of Wales Act 1998, 2006.
- Constitutional Reform Act 2005
- Fixed-term Parliaments Act 2011 (repealed)
- Wales Act 2017
- And more...



CASE LAW



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graph LR; A[Common law – right to be free from torture.] --> B[Judicial review]
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Common law
– right to be
free from
torture.

Judicial review

ROYAL PREROGATIVE (CROWN)



- Declaring war
- Making treaties
- Deploying the armed forces
- Granting pardons
- Dissolve or prorogue parliament

CONSTITUTIONAL CONVENTIONS (1)

- Terminology: be careful not to confuse the alternative meaning of this type of convention! (not international treaties)
- Non-legal rules: rules of constitutional practice: gap filling (glue)
- Political rules, which constrain behaviour through political precedent, rather than legal consequences
- Many important aspects rely on conventions:
 - (1) The collective responsibility of Cabinet – government ministers are expected to support in public all government policies, regardless of internal disagreements.
 - (2) The monarch will ask a leader of the political party with a majority in the House of Commons to form a government.
 - (3) A minister must be a member either of the House of Commons or House of Lords.
 - (4) The monarch will give Royal Assent to Acts of Parliament on the advice of his ministers – he will not refuse because he personally disagrees with them.

CONSTITUTIONAL CONVENTIONS (2)

- 3 factors that help establish whether there is a convention (and distinguish convention from habit or practice).
- (1) There is a practice among constitutional actors (including politicians).
- (2) Those who practice the convention consider themselves bound by the convention.
- (3) They believe that there is a good reason for the convention to exist.

INTERNATIONAL LAW

- UK operates in a global world: historically colonies, nowadays very different relationship with other countries
- Consequence of operating on a global scale, states enter into agreements with each other, setting standards, or agreeing practices.
- International law operates at a state:state level
- Not always legal sanctions, but political
- Dualist v monist states
 - UK is monist: enacting legislation needed

EU LAW

- Sizable body of law, generated whilst UK member of EU
- Some EU law had direct effect, whereas other had to be implemented to have effect (regulations v directives)
- European Union (Withdrawal) Act 2018: retained EU law
- Retained EU Law (Revocation and Reform) Act 2023: wide powers to revoke/replace with alternative provisions – sunset clause (31 December 2023) but since revoked.

PARLIAMENTARY SOVEREIGNTY (1)

- Three interrelated ideas flow from Dicey's explanation of parliamentary sovereignty.
- (1) Parliament is free to legislate on any matter which it chooses. It has unlimited legislative competence.
- (2) No institution has the power to invalidate legislation made by Parliament.
- (3) Parliament cannot bind its successors: each Parliament for the time being is sovereign and may repeal the legislation of a previous Parliament but cannot bind a future Parliament.

PARLIAMENTARY SOVEREIGNTY (2)

- Parliament are the supreme law-making body: can change any law that they wish to.
- Create " Acts of parliament".
- They are able to abolish the Monarchy is needed.
- A.V Dicey's definition: "The principle of parliamentary sovereignty means neither more or less than this, namely, that parliament...has, under the English constitution, the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament."
- Legal not political sovereignty

PARLIAMENTARY SOVEREIGNTY (3)

- Binding successors: manner and firm
- Human Rights Act 1998
- Constitutional statutes: *Thoburn v Sunderland City Council*
- Parliament Acts 1911 and 1949
- Prorogation of Parliament: Miller II
 - “[Sovereignty of Parliament] would...be undermined as the foundational principle of our constitution if the executive could, through the use of the prerogative, prevent Parliament from exercising its legislative authority for as long as it pleased”.

RULE OF LAW

Lord Bingham;

" That all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly and prospectively promulgated and publicly administered by the courts."

CONTINUED

- Theories of the rule of law include A.V Dicey -
- “ No person may be punished by the state except for a breach of the law”
- “ The law should not be applied arbitrarily or retrospectively”
- “ the law should be made according to established procedure:
- Cases involving the state as a party should be heard in the ordinary courts rather than specialist administrative courts. “



SEPARATION OF POWERS

- Legislative – discuss and enact law.
- Executive – Carry out law and supervise enforcement.
- Judicial – Judges, legal personnel.

Legislature



Parliament



Create the
law

Judiciary



Judges



Apply
the law

Executive



Government



Bring laws
into effect

CONSTITUTIONAL STRUCTURES

- Parliamentary v presidential
- Monarchical v republic

DISTRIBUTION OF POWER

- Unitary v federal
- Devolution
 - Scotland
 - Wales
 - Northern Ireland
 - England?

ACTIVITY 2: Breakout rooms

- Imagine that you attended the CILEX conference, held this year on a cruise ship. You have been shipwrecked and found your way, along with 16,000 delegates to an island. After 6 weeks you have given up prospect of escape and decided to set up your own state.
- In your groups, discuss what the key features of your constitution will be.
 - How will you distribute law making, law enforcing and adjudication powers? Will you adopt a federal, unitary or devolved model?
 - Will you have a head of state? What role will they have?
 - Will you have a written or unwritten constitution?
 - In conflict between the organs of state, who will hold supremacy?

KNOWLEDGE CHECKER (1)

- The UK adopts a federal constitutional model?
- True
- False

KNOWLEDGE CHECKER (2)

- The UKSC can strike down legislation which breaches Human Rights conventions?
- True
- False

KNOWLEDGE CHECKER (3)

- Which of the following is a constitutional convention?
 - a) Collective cabinet responsibility
 - b) The right to declare war
 - c) The right to make treaties
 - d) Drinking alcohol at cabinet

KNOWLEDGE CHECKER (4)

- The Supreme Court can review the acts of:
 - a) Parliament
 - b) Government
 - c) House of Lords
 - d) Monarch

KNOWLEDGE CHECKER (5)

- The UK constitution has been codified

a) True

b) False

KNOWLEDGE CHECKER (6)

- The doctrine of implied repeal does not apply to constitutional statutes?
- True
- False

SUMMARY

- Written Constitution vs Unwritten Constitution.
- Uk Constitution;
- Rule of law, Parliamentary Sovereignty, Separation of Powers.
- Devolved State.
- Devolved Powers.

Any Questions?

Thank you!