

Somerville Law Induction Course 2020

An Introduction to Constitutional Law

Constitutional law is one of the first legal subjects that you will study as part of your undergraduate law degree. This is not because it is easier or simpler than other legal subjects but because it deals with fundamental issues about the State and its legal system: how laws are made and unmade, how government is structured, what powers each institution of government has and what limits bind them. A State's constitution defines the basic framework for its legal system, and so a good understanding of constitutional law is a prerequisite for further legal study.

But constitutional law is not simply a technical academic subject: it is something which concerns us all as citizens and as people subject to the power of the State. Government decisions have a major impact on our lives – and it is the constitution that sets the basic rules about how these decisions are taken. In the UK context, constitutional issues have been the subject of significant political debate over the past few decades, and the constitution has changed in important ways. Debate continues about the possibility of further constitutional change.

This session is aimed at giving you an introduction to i) the key terms and ideas used to discuss and analyse constitutions and ii) more specifically, the structure of the UK Constitution and system of government. By the end of the seminar, you should understand basic constitutional concepts and the overall structure of the UK Constitution, providing you with a good foundation for further study of constitutional law. Hopefully, the session will also demonstrate the relevance of constitutional law and spark your interest in the subject.

Reading

You will need to prepare for the session by reading, and carefully thinking about, the following:

- For an general introduction to the basic concepts involved in constitutional law, please read Wil Waluchow, 'Constitutionalism' (*Stanford Encyclopedia of Philosophy*, Spring 2014 edition), Edward N Zalta (ed), available at: <http://plato.stanford.edu/entries/constitutionalism/>. Read up to the end of section [7].
- For an overview of the UK's 'uncodified' constitution see <http://www.ucl.ac.uk/constitution-unit/whatis/uk-constitution>.
- For some basic material on the different branches of government in the UK, have a look at the information available at: the UK Parliament website (<http://www.parliament.uk/about/how/>), the www.gov.uk website (<https://www.gov.uk/government/how-government-works>), and the UK Supreme Court website (<http://supremecourt.uk/about/the-supreme-court.html>).

Issues for discussion

Here is an outline of the issues which we will discuss during this session. Please think about these questions before the seminar. It's perfectly fine if there are things you don't understand – some of

the terminology used in constitutional law can be confusing! Make a note of your own questions and the points on which you'd like clarification so that we can talk about them during the seminar.

- What is meant by the term 'constitution'? What distinguishes a constitution from other laws?
- Does the UK even have a constitution? Why/why not?
- Drawing on the readings and on your own knowledge, how does the UK's constitutional structure differ from that in the US (or in other countries you may know about)? What do you think are strengths and weaknesses of the UK system compared with the system in the US (or other countries)?
 - You might like to read this article from the *New York Times*: <https://www.nytimes.com/2019/08/31/world/europe/uk-johnson-constitution-brexit.html> ('Britain's Unwritten Constitution Suddenly Looks Fragile' 31/08/19) and consider your reaction to it.
- Can you think of ways in which the UK Constitution has changed in recent decades?
- What are some current (or recent) political debates in the UK which involve proposals for constitutional change?
- How democratic is the UK Constitution?

- What is meant by the term 'constitutionalism'? How does the idea of 'constitutionalism' differ from merely 'having a constitution'?
- What are some of the ways a constitution can limit the power of government institutions? How is the power of government limited in the UK? Are constitutional limits on government power always a good thing?
- What is meant by 'sovereignty'? Is sovereignty a feature of the UK Constitution? Of all constitutions?
 - You may want to think about sovereignty in connection with a recent debate in the UK media: <https://www.theguardian.com/politics/2020/sep/08/government-admits-new-brexit-bill-will-break-international-law> Does sovereignty permit nations to do anything they wish?

- According to the theory of the separation of powers, what are the three categories of government power?
- In the UK, what are the institutions that exercise each of these powers?
- Is the separation of powers followed strictly in the UK? Should it be?

- What is the role of the Queen in the UK Constitution?
- What is the role of the Prime Minister? How is he/she chosen?
- What are the two Houses of Parliament? How are their members chosen?
- What is a statute? How is a statute made?
- How are judges appointed? What is the role of the courts? Do they make law?

- What is a 'constitutional convention'? How does a constitutional convention differ from a constitutional law? What are some important constitutional conventions in the UK?

- What is federalism? Is the UK a federal state?
- What impact has the UK's membership of the European Union had on the Constitution?

- How are human rights protected under the UK Constitution? How does this compare with the US?

- Do the UK courts have the power to ‘strike down’ legislation which violates human rights? Should they be able to?
- How can the UK Constitution be changed? Should a constitution be harder to change than other laws?