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Introduction to English Law

Lecture 3: Constitutional Law

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Structure of the Lecture

1. Terminology
2. Sources of the Constitution
3. Constitutional Principles
 - Representative Democracy
 - Parliamentary Sovereignty
 - Separation of Powers
4. Human Rights
5. Role of the Monarchy

2

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Section 1


Terminology

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Terminology

- The state
- The government
- The executive
- The Cabinet
- The legislature (note not legislator)

4

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The English Constitutional System


State
Liberal democratic, emergent democracy, communism, national socialism, authoritarian nationalism, military authoritarianism, Islamic nationalism, absolutism

Political structure
Unitary or federal?

Assembly
One or two chamber?

Executive
Parliamentary executive, limited presidential executive, dual executive, communist executive, unlimited presidential, military executive, absolute executive

5

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Section 2


Sources of the Constitution

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Sources (1): Overview

1. Legislation
2. Judicial decisions
3. Conventions
4. Legal literature
5. Law and custom of Parliament


7

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Sources (2): Legislation

- **Magna Carta 1215:** Set out rights of various classes
- **Haebus Corpus Act 1679:** Remedy against unlawful detention
- **Bill of Rights 1689:** Consent of Parliament necessary
- **Act of Settlement 1700:** Succession to throne
- **Treaty of Union 1707:** Formalised Union between Eng & Scot
- **Union with Ireland Act 1800:** Formalised Union with Ireland
- **Reform Act 1832:** Equitable distribution of seats
- **Parliament Act 1911 and 1949:** Fixing duration of Parliament
- **Crown Proceedings Act 1947:** Government according to the law
- **European Communities Act 1972:** UK in the EC
- **British Nationality Act 1981:** Nine categories of citizenship
- **Public Order Act 1986:** Statutory police powers

8

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Sources (3): Judicial precedent

- Number of cases which have declared constitutional principles:


Entick v. Carrington

- In 1762 Nathan Carrington and others broke into the home of John Entick
- They were acting on the orders of the Secretary of State to secure evidence of sedition.
- Entick sought judgment against Carrington.
- The judgment established the limits of executive power in English law, that an officer of the state could only act lawfully in a manner prescribed by statute or common law.

M v. Home Office

- Discuss in class!


9

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Sources (4): Conventions

- Conventions, understandings, habits or practices which though they may regulate the conduct of the several members of the sovereign power ... are not in reality law at all, since they are not enforced by the courts (*Dicey*)
- Sometimes must be taken into account:
 - *Attorney General v. Jonathan Cape* (1976)
- But, are not enforced by the courts:
 - *Madzimbamuto v. Lardner-Burke* (1969)
- Furthermore, can only become law by statutory interpretation:
 - *Reference Re Amendment to the Canadian Constitution* (1982)

10


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Sources (5): Literature

Literature
Works such as Dicey


Law and Custom of Parliament
Queen's speech opens Parliament
Parliament reopens after 5 years etc et

11

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Section 3

Constitutional Principles

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Principles: Democracy

1. Democracy
 Representation of the People's Act 1918: Men >21, Women, >30
 Representation of the People's Act 1928: Men >21, Women, >21
 Representation of the People's Act 1948: Men >18, Women, >18

Essentials
 System of representative and responsible Government
 Democratic representation said to be instrument of accountability

13

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Principles: Parliamentary Sovereignty


"Under the English Constitution" the right to make or unmake any law whatsoever and further that no person or body is recognised by the law as having right to override or set aside the legislation of Parliament" (Dicey)

Essentials

- (a) Legislative supremacy: no legal limitations on parliamentary power
- (b) Only Acts of Parliament are supreme
 - *Mortensen v. Peters* (1906)
- (c) Acts remain in force until repealed, amended or expire
 - *Vauxhall Estates v. Liverpool Corporation* (1932)

Is this then a bar to a written constitution?

14

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Principles: Separation of Powers


Divided into three branches: executive, legislative and judicial

Essentials

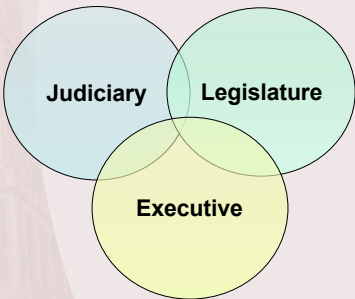
- (a) Judicial task is to apply legislation and not interpret it so a way so as to give their own view.
 - *Dupont Steels Ltd. v. Sirs* (1980)
- (b) "Parliament makes the law, the judiciary interprets them"
 - *Dupont Steels Ltd v. Sirs* (1980), per Lord Diplock

What does the executive branch do then?
 Does England have a separation of powers?


15

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Principles: Balance of Powers



16

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Principles: Judicial Review


If an individual suffers grievance at the hands of public body then a citizen may be able to obtain redress in court.

3 grounds:

- Illegality
- Procedural impropriety
- Irrationality

} *GCHQ* (1985)

17

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Section 4

Human Rights


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Human Rights

Is there a Bill of Rights in England & Wales in the traditional sense?


Are treaties sources of law in England & Wales?

19

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Section 5

The Rule of the Monarchy

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The Role of the Monarchy (1)

Willie, Willie, Harry, Ste,
 Harry, Dick, John, Harry three;
 One two three Neds, Richard two,
 Harrys four five six, ... then who?
 Edwards four five, Dick the bad,
 Harrys (twain), Ned (the lad);
 Mary, Bessie, James the vain,
 Charlie, Charlie, James again.
 Will and Mary, Anna Gloria,
 Georges four, then Will, Victoria;
 Edward seven, George and Ted,
 George the sixth, now Liz instead.



21


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The Role of the Monarchy (2)

Prerogatives of the Monarch

1. Appointment of the Prime Minister
 - Must appoint person in best position to achieve majority support
 - If absolute majority for 1 party, leader of this party
 - If hung parliament, no discretion to choose
 - 1957: 2 successors after Eden fell ill: Butler/**MacMillan**
 - 1963: MacMillan resigned, Douglas-Home recommended.
 - 1974: Wilson asked by Queen, vote of no confidence
2. Dissolution of Parliament
 - Normally accepts advise of Prime Minister
3. Dismissal of Ministers (1910, 1956, 1975)

22

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The Role of the Monarchy (2)

Prerogatives of the Monarch

1. Legislative: Royal Assent, Calls/dismisses Parliament etc.
2. Judicial: AG acts on her behalf, pardons
3. Foreign Affairs: Treaties, declare war/peace, acquire territories
4. Armed Forces: Commander in chief
5. Appointment of Honours: Honours and decorations
6. Immunities: Cannot sue Crown, but criminally liable
7. Emergency Powers: Demand personal service
8. Miscellaneous: Coinage, Bible etc.

23