

This is the UK Constitution. Well...an account of the main parts of it written down with pictures.

You can find out more and order more paper copies at:  
[www.durham.ac.uk/research/institutes-and-centres/human-rights/our-research/uk-constitution-zine/](http://www.durham.ac.uk/research/institutes-and-centres/human-rights/our-research/uk-constitution-zine/)

If you found this copy in the wild or have questions let us know via:



@UKConZine



ukconstitutionzine



@ukconstitutionzine.bsky.social

2024 edition  
By Durham University  
Human Rights and Public Law Centre  
With the History Department

**The United Kingdom**

**Constitution**

*Zine*

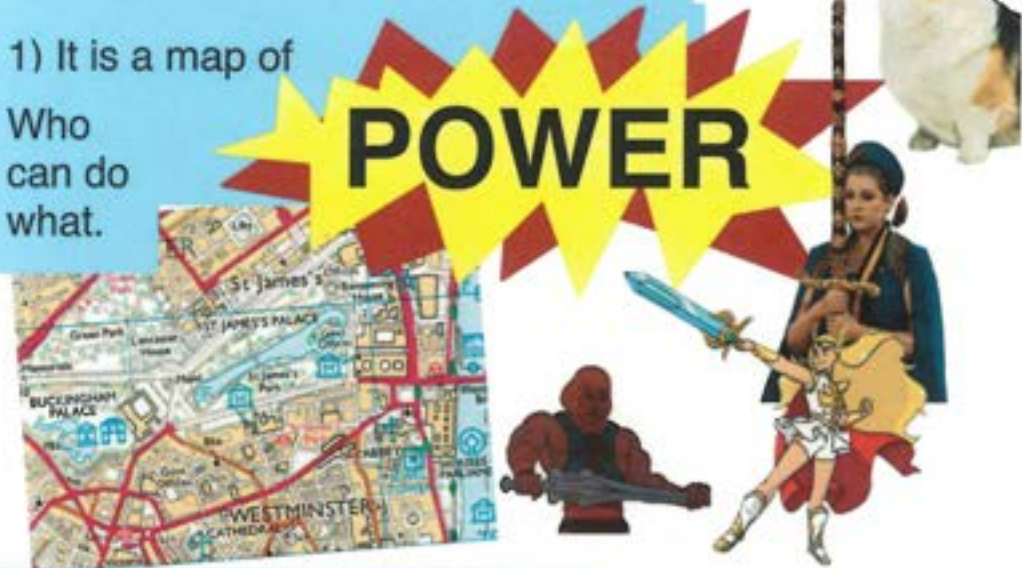
# What is a Constitution?

## Table of Contents

- What is a constitution - p.1
- When was the constitution? - p.2
- Parliamentary Sovereignty - p.3
- Rule of Law - p.6
- Separation of Powers - p.8
- Parliament - p.10
- Legislation - p.12
- Devolution - p.16
- Local Government - p.18
- The Electoral System - p.20
- The Executive (the government) - p.24
- Conventions - p.26
- The Monarchy - p.28
- Judicial Review - p.30
- International Law - p.38
- The European Convention on Human Rights - p.40
- EU Law and the UK Constitution - p.46
- What is a UK? - p.50

A constitution does two key things:

1) It is a map of  
Who  
can do  
what.



2) It is statement of our values

Write in our  
constitutional value(s)  
after reading this zine:

*R (Miller) v Secretary of State*  
[2017] UKSC 5



Unlike most countries, the UK  
does not have a constitution in  
the sense of a single coherent  
code of fundamental law  
which prevails over all other  
sources of law.



Ours has developed over time through a combination of statutes,  
events, conventions, academic writings and judicial decisions.

WHEN

WAS THE

CONSTITUTION?



After rebellion by his barons, England's King John signed **Magna Carta**. It limited monarch's power, and future generations would claim their rights based on (mis-)understandings of it.

(gr8 charter) Posted reluctantly by King John - 1215

425 views 41 replies



In 1688, Parliament sacked the king and invited his daughter and her Dutch husband to rule. William and Mary signed the 1689 **Bill of Rights**, curbing power over parliament + the law.

(Rights) Posted by king\_will.i.am+queen\_mary - 1689

1,268 views 363 replies



OF MONARCHS



Not one event but lots of HISTORICAL events + claims

THESE ARE JUST SOME

Subscribe

1,000

Subscribe

10,000



The **Commonwealth** provided a 'club' for British colonies gaining more self-rule. All of their constitutions varied under empire, with more self-rule in colonies settled by white people.

(Empire) Posted by Commonwealth - 1931

1,276 views 168 replies



British **citizenship** was only invented in 1948 to allow the state to restrict rights of those subjects of the crown born in the empire.

(Empire) Posted by British Nationality Act - 1948

875 views 57 replies



# Parliamentary Sovereignty

Parliamentary Sovereignty my beloved



Parliamentary sovereignty can be explained as being the principle that parliament is the most powerful institution in the UK constitution. This leads to the view among many that parliamentary sovereignty is the most important principle in the UK constitution due to the consequences the principle has on all other areas of the constitution. Parliamentary sovereignty can so be split into two aspects: positive and negative

There are several reasons why parliamentary sovereignty is viewed as having such importance. One reason is that it places the branch of state that is democratically elected as having the most power in the UK, therefore being essential in the UK being a democracy. The other reason is that parliamentary sovereignty has often been seen by many important writers on the UK constitution as the most important aspect of the constitution, such as A.V Dicey, whose writings are often viewed as creating the foundation of UK constitutional law.

## Positive

The positive aspect of parliamentary sovereignty is that parliament can make or unmake any law it desires.

This means that parliament can unmake any law it desires, even if it is of great importance such as the Human Rights Act 1998, or the Representation of the People Act 1928 in any normal session of parliament. The same applies to the ability to make whatever legislation it wants, even if it would be impractical to enforce, such as banning smoking on the streets of Paris.

As the monarch, I bestow ~~sup~~ sovereignty of the state to Parliament



## Negative

The negative aspect of parliamentary sovereignty is that parliament cannot be restricted in its role by anyone, including parliament itself. This results in two major consequences:

- Unlike other countries such as the USA, no other branch of state can repeal legislation, even if it conflicts with other important pieces of legislation.
- This led to the creation of a hierarchy of laws in the UK, where legislation passed by Parliament is viewed as 'Primary' while legislation made by any other branch of state, such as common law or delegated legislation, are viewed as 'Secondary', which allows them to be repealed by the courts.



We cannot interfere with Parliament as it is sovereign



(4)

We ~~are~~ cannot interfere with Parliament as it is sovereign?



(5)

# RULE OF LAW

Presented by Don Brookes

A.V. Dicey



What is the rule of law? It means that no one is above the law, and that everyone, regardless of their position in society, is subject to the same laws as everyone!



Lord Reed

It means our society is governed by law, and the role of the courts is to ensure the Government follows them.



Lord Templeman

Exactly! If it wasn't possible to hold Government actions to account, it would mean they would follow the law only if they wanted to!

All the above is correct, but we need more, it isn't enough to have just principles as the above stated, we need formal processes for the rule of law to work! Such as access to courts, general, stable and clear laws, and that laws must be forward facing!



Lord Fuller

Lord Bingham



Formal processes are all well and good, but we need to look to the bigger picture, the rule of law means nothing if we don't have fair laws that do not prosecute or oppress their own citizens!

...does it work in practice?

Act of Parliament  
UNCLEAR

Act of Parliament  
DENSE

Act of Parliament  
CONFUSION

Act of Parliament  
XI,000,000

of Parliament  
of Parliament  
- Law

Judges are supposed to hold the Government to account, but they regularly use laws to prevent us doing so!

Brian Haw! New law from Parliament, your one man protest against the Iraq war is now prohibited!

WHAT? I thought laws were supposed to be general! Not specific...



Bingham claimed laws need to be broadly fair to comply with the rule of law, but who decides that? An anarchist might say that no law under our current system is fair...

"How noble the law, in its majestic equality, that both the rich and poor are equally prohibited from pissing in the streets, sleeping under bridges, and stealing bread!" - Anatole France



# SEPARATION OF POWERS:

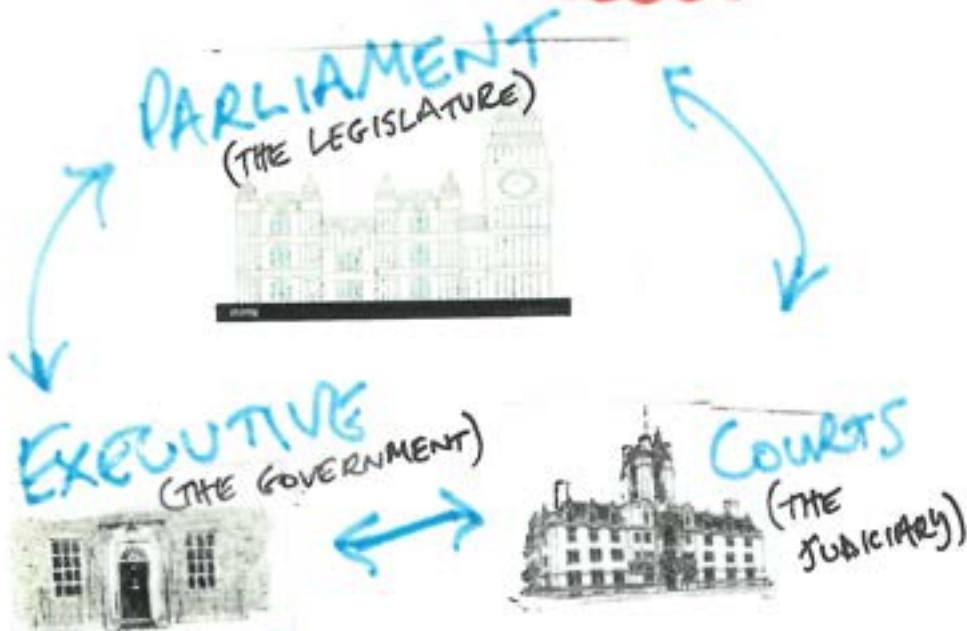
## 1: What is separation of powers?

A constitutional theory which requires that governmental powers be divided in order to prevent over-mighty institutions (often associated with the French philosopher-lawyer Montesquieu).



MONTESQUIEU →

## 2: What are the institutions of government?



## 3: What governmental powers do they exercise?



"Parliament makes the law, the executive carry the law into effect and the judiciary enforce the law"

(Lord Templeman, *M v Home Office*).

## 4: Separated powers in the UK constitution?

"FUSED" LEGISLATURE + EXECUTIVE ...



AND INDEPENDENT COURTS



# PARLIAMENT

PARLIAMENT IS MADE UP OF 2 KEY PARTS

THIS IS PARLIAMENT



IT DOES LOTS OF THINGS!

- CHECKS & PASSES LAWS (LEGISLATION)
- CHECKS & SCRUTINISES THE WORK OF GOVERNMENT (IN THE CHAMBERS, IN SELECT COMMITTEES)
- REPRESENTS US (ENGLAND, SCOTLAND, WALES, NORTHERN IRELAND)
- DEBATES IMPT ISSUES
- POOL FROM WHICH MINISTERS CAN BE CHOSEN

PARLIAMENT & GOVERNMENT ARE 2 DIFFERENT THINGS!

## PARLIAMENT

- CHECKS & PASSES LAWS
- MAKES SURE GOVERNMENT IS RUNNING THE COUNTRY PROPERLY

## GOVERNMENT

- INITIATES & DRAFTS LAWS
- RUNS THE COUNTRY

- BUT MOST OF THE GOVERNMENT (MPS & PEERS) COMES FROM PARLIAMENT!
- WE ELECT MPS, NOT THE GOVERNMENT IT IS UP TO THE PARTIES TO DECIDE WHO WILL BE THE GOVERNMENT (1)

## THE HOUSE OF COMMONS

- THERE ARE 650 MPS ELECTED BY US
- 40% ARE WOMEN
- THE AVERAGE AGE IS ABOUT 50
- THE COMMONS ARE IS THE DOMINANT HOUSE, BECAUSE IT IS ELECTED.



## THE HOUSE OF LORDS

- THERE ARE ABOUT 900+ PEERS
- SOME ARE A SMALL NUMBER ARE HEREDITARY, BUT THE MAJORITY ARE APPOINTED
- MANY COME FROM POLITICAL PARTIES, BUT SOME ARE WELL KNOWN EXPERTS
- THE LORDS USUALLY CONFINES ITSELF TO CHECKING LAWS & GOVERNMENT ACTION



\* WHEN LEGISLATION IS INVOLVED, SO IS THE CROWN

# Legislation - Acts of Parliament

## Preparation

A draft bill is proposed by the government (government bill) or an individual MP or Lord. (private members bill). Bills rarely become law without government support.

Most bills can begin either in the House of Commons or in the House of Lords. Tax bills must start in the Commons. Bills of major constitutional importance conventionally start in the Commons.

## First reading

Title read out there is no debate.

## Second reading

The main principles of the bill are debated. No amendments at this stage.

## Committee stage

Detailed line by line scrutiny of the bill's provisions. Usually occurs in a parliamentary committee, but may be considered by the whole House in the chamber. Amendments suggesting changes to the bill can be proposed and made.

## Third reading

Occurs in the Commons immediately after the report stage, no amendments are possible. Third reading in the Lords follows this, tidying up amendments can be made here.

## Report stage

Amendments from the committee stage are discussed, new ones may be added, they are voted on. Occurs in the chambers of the House.



## Ping-pong

To become law a bill must be passed with the same provisions in each House. If one house proposes a bill with different provisions, then it goes back and forward between them, to be debated and amended until both agreed to the same form of words.

Under the Salisbury Convention the Lords will not block bills implementing manifesto commitments. There is provision under the Parliament Acts 1911 & 1949 for the Commons to overrule Lords amendments. It has only been invoked seven times.

## Royal assent

Once agreed by both Houses the Bill goes to the monarch for their approval. This is now symbolic. Once this is given it becomes law as an Act of Parliament.

*not*  
"Laws are like sausages.  
It's better *not* to see  
them being made."

• John Godfrey Saxe



legislation.gov.uk

*Final Act of Parliament here*



# Secondary Legislation



Acts of Parliament can't contain all the details necessary for a law to be effective. They need a sidekick.

Sometimes it's necessary to make small changes to legislation or to make laws quickly.

To get do these things an Acts of Parliament can contain clauses giving government ministers the power to make secondary legislation - laws called Regulations or Rules.

**Powers**

**Weaknesses**

Fills in details of laws

Can change effect of Act of Parliament quickly

Can't repeal an Act of Parliament

Subject to much less scrutiny by MPs than Acts of Parliament.

Can be invalidated by courts if not consistent with Act of Parliament or Human Rights



## Public Health (Control of Disease) Act 1984

CHAPTER 22

Note breather powers

Act of Parliament that gave the power to make Coronavirus lockdown rules

- 1402 Health protection regulations: domestic*
- (1) The appropriate Minister may by regulations make provision for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in England and Wales (whether from risks originating there or elsewhere).
  - (2) The power in subsection (1) may be exercised—
    - (a) in relation to infection or contamination generally or in relation to particular forms of infection or contamination, and
    - (b) so as to make provision of a general nature, to make contingent provision or to make specific provision in response to a particular set of circumstances.
  - (3) Regulations under subsection (1) may in particular include provision—
    - (a) imposing duties on registered medical practitioners or other persons to record and notify cases or suspected cases of infection or contamination,
    - (b) conferring on local authorities or other persons functions in relation to the monitoring of public health risks, and
    - (c) imposing or enabling the imposition of restrictions or requirements on or in relation to persons, things or premises in the event of, or in response to, a threat to public health.

Some of the many coronavirus regulations:

*Regulations made by the Secretary of State, laid before Parliament under section 45B of the Public Health (Control of Diseases) Act 1984 (c. 22), for approval by resolution of each House of Parliament within twenty-eight days beginning with the day on which the instrument is made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.*

### STATUTORY INSTRUMENTS

2020 No. 1105

### PUBLIC HEALTH, ENGLAND

The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) Regulations 2020

Made . . . . . at 5.00 p.m. on 12th October 2020  
 Laid before Parliament . . . . . at 6.00 p.m. on 12th October 2020  
 Coming into force . . . . . 14th October 2020

Note short period for parliamentary scrutiny

# DEVOLUTION



Transfer and subsequent sharing of powers between institutions of government within a limited framework set out in legislation  
- Burrows

- Established by Statute following referendums
- Elected by proportional representation
- Westminster style of governing
- Unicameral

## COMPETENCES

Powers which the devolved nations have

Devolved legislation has been held to be a form of primary legislation (*AXA General Insurance Ltd v Lord Advocate 2011*), which means that, within the limits of devolved competence, it has the same status as Acts of the UK Parliament

### Devolved competences

- Education
- Health and social care
- Local government
- Food, agriculture, and fisheries
- Transport
- Sports, arts and culture

However, the UK Parliament has reserved competences:

- Defence
- Foreign Affairs
- Immigration
- Trade
- Constitution

## History

- Scotland became devolved in 1998
- Powers increased in 2012 and further in 2016 by Statute

- Wales Gained primary legislation competence in 2011
- Powers increased in 2017

- Northern Ireland has a different political circumstance
- Devolution came from the Good Friday Agreement 1998
- consociational model which means its legislation is on a cross-party basis



## Asymmetrical

- The idea that the nations don't have the same powers devolved
- Scotland is stronger than Wales as it has more competencies and is symbolically stronger, this is because 74% of Scottish supported devolution in 1998 compared to just over 50% in Wales.
- England is not devolved



# Local Government

Parliament is responsible for governing the whole of the United Kingdom. However, the UK is very big and diverse; different people living in different parts of the UK have different wants and needs. To help it govern effectively parliament gives power and responsibility to smaller areas of the UK called 'local authorities' or 'councils'. These different local authorities are divided up into different levels of responsibility, like layers of a cake.



## The Local Government Cake



### 'Local Government Cake' ingredients:

**A Mayor**—To be the head of the council (this role is usually ceremonial)

**Councillors**—these decision makers are elected in local elections and try to solve the day to day problems people have

**Council Employees**—people permanently employed by the council to provide services, such as bin men and social workers

**Council Tax**—paid by citizens to fund all the local services councils provide

*Like all cakes, local government comes in lots of different types. Some are 'Combined authorities' and some are 'unitary authorities', and some mayors are directly elected (like the Mayor of London)*



### County Councils

These local authorities are responsible for important areas such as schools, hospitals and transport. They have the power to build new roads.

If you thought there should be a new GP surgery in your local area, you would start by consulting with the County Council.



### Borough or District Councils

Borough or District Councils provide many front line services for citizens. They are responsible for social housing (council houses), bin collection, and social care. They also oversee parking and planning (who can build new houses, or change existing properties).

If you wanted to extend your house, you'd have to work with officers of the Borough Council to obtain planning permission.



### Town or Parish Councils

Town and Parish Councils are the smallest local authorities. They are responsible for public spaces such as village halls, parks, and cemeteries.

If you lived in a village and wanted to place a new bench in a local park, you would contact your local Parish Councillor.

# The Electoral System

## What is the Electoral System?

This is the process in which voters choose who will represent them. There are different methods of doing this but the UK primarily uses 'First Past the Post'

## First Past the Post

Each voter can choose one candidate, and whoever wins the most votes wins the election, even if this is by a very small margin. In the 2024 election, Labour candidate Wes Streeting defeated Independent candidate Leanne Mohammed by only 1.2% in Ilford North



## Proportional Representation

This is the idea that voting systems should accurately reflect the voters' decisions in the assembly. Meaning that if a party received 25% of the votes, they should receive 25% of the votes in parliament

## Why have we kept First Past the Post?

FPTP, compared to many alternatives, is very simple to operate. It is also argued that it produces stable, single-party governments. However, the 2010 and 2017 elections both failed to produce this result. There is also no agreement as to which system would replace it.

FPTP benefits the two main parties, so they have no incentive to get rid of it. It encourages 'tactical voting' where voters vote for the candidate who is most likely to win against a candidate they oppose. This is most often a candidate for a major party. We saw this in 2024 when people tactically voted to try and eject the Conservatives.



## Criticisms of First Past the Post?

FPTP can be criticised as unfair as it does not fairly represent the constituency's support. For example, Labour won a landslide majority of 411 seats in Parliament (63%) in 2024 despite only receiving 33.7% of the voter share. Conversely, Labour won 32.2% of the voter share in 2019 but received only 203 seats (31%). Tactical voting also means that voters may not be voting for the candidate that best reflects their values



# Alternatives to First Past The Post?

## Single Transferrable Vote

	1	2	3	4	5
CANDIDATE A	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
CANDIDATE B	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
CANDIDATE C	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
CANDIDATE D	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
CANDIDATE E	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>



Rather than voting for one candidate, voters rank them in order of preference. Constituencies elect a small group of representatives to represent the diversity of

## Supplementary Vote



Voters rank their top two choices. If a candidate secures an overall majority, they are elected. If no candidate does, then only the top two candidates remain. The second preferences of voters for an eliminated candidate are distributed between the top two

22

## Additional Member System



Voters vote once under the FPTP system, and also in a regional election where multiple representatives are elected. These seats are distributed so that the number of seats the party gets for that region is proportional to the percentage of votes for the party

## Alternative Vote



Similar to the supplementary vote except that voters can rank as many candidates as they like. This was the subject of a referendum to replace FPTP in 2011 but was unsuccessful. For this reason, it is unlikely to be reconsidered

23

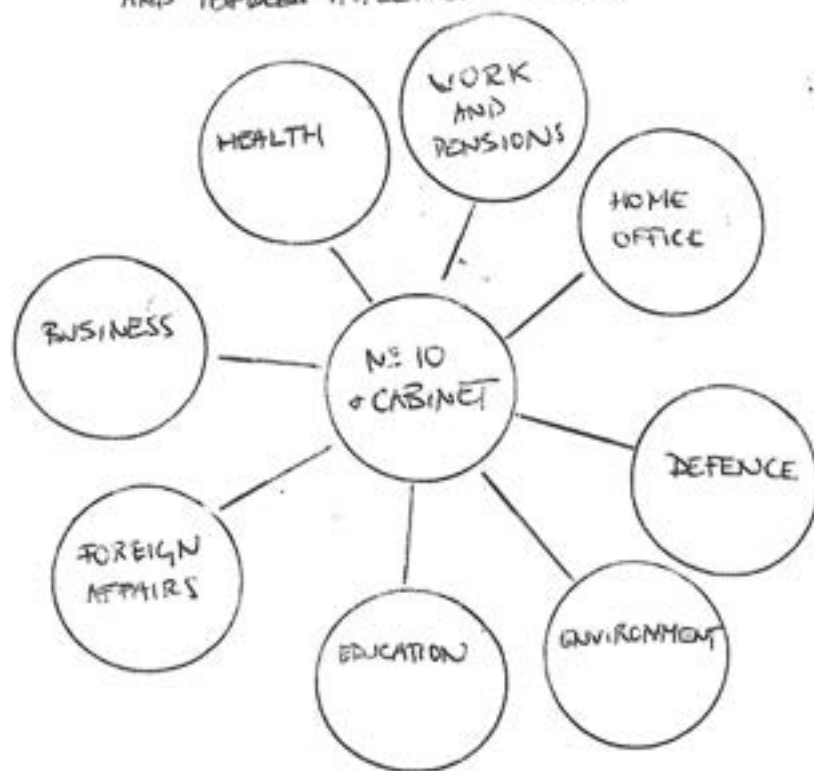
# THE EXECUTIVE (THE GOVERNMENT)

THE EXECUTIVE RUNS THE COUNTRY!  
(WITH THE HELP OF LOCAL AND DEVOLED  
GOVERNMENTS)



- THERE ARE MANY PARTS TO THE EXECUTIVE BUT WE'RE JUST GOING TO TALK ABOUT CENTRAL GOVERNMENT
- THE EXECUTIVE DOES LOTS OF THINGS, LIKE
- KEEPS US SAFE FROM DOMESTIC & FOREIGN THREATS
  - INITIATES AND DRAFTS LAWS
  - BUILDS AND MAINTAINS INFRASTRUCTURE
  - COLLECTS AND REDISTRIBUTES RESOURCES (MONEY, PEOPLE, TIME)
  - BALANCES CURRENT NEEDS AGAINST THE NEEDS OF FUTURE GENERATIONS

THE ~~REPER~~ CENTRAL GOVERNMENT IS MADE UP OF DEPARTMENTS, WHICH ARE HEADED BY MINISTERS. DEPARTMENTS ~~WHP~~ DEVELOP POLICIES AND ~~IBPDEMT~~ IMPLEMENT LAWS



## WHO IS IN THE EXECUTIVE? (CENTRAL GOVERNMENT)

### MINISTERS

THE PRIME MINISTER - THE LEADER, WHO CHOOSES ALL THE OTHER MINISTERS

CABINET - MADE UP OF MPS & PEERS WHO USUALLY RUN DEPARTMENTS

MINISTERS RUN DEPARTMENTS AND DECIDE ~~OR~~ POLICY

GIVE INSTRUCTIONS TO →

← SUPPORT & ADVISE

### CIVIL SERVANTS

- SUPPORT MINISTERS
- ABOUT 500,000 CIVIL SERVANTS
- MUST BE POLITICALLY IMPARTIAL AND SUPPORT THE CURRENT GOVERNMENT

The source of the constitution not legal in nature

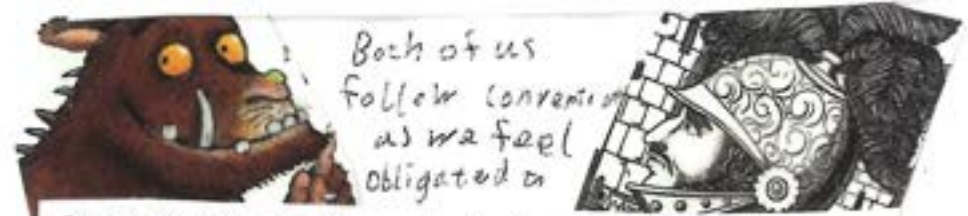
# Conventions

Conventions are one source of the UK constitution. They can be best described as codes of behaviour that people feel obligated to follow. They are often used to explain how different branches of state should interact with each other, and how accountability should work.

Conventions can be best compared to queueing. The act of queueing is not a legal obligation which if you skip will see you fined or imprisoned. It is more of a sense of obligation due to people in the past and present queueing themselves.



Conventions differ from other sources of the constitution such as legislation through not being defined in any exact area. This has given conventions the unique ability to appear, alter, and disappear as time goes on. This helps allow important principles such as how parliament and the executive interact with each other, or how ministers should be kept accountable to be based off current political sentiment and behaviour rather than relying on outdated principles established centuries ago.



Conventions have the peculiarity that they cannot be enforced by the courts. This means that if an individual breaches a convention, they cannot be imprisoned or fined for their behaviour. Therefore, any punishment for a breach of convention can only be done through the individual or the party they belong to accepting punishment for their breach of convention. This often leads to politicians who have a large amount of political support facing little or no punishment if they breach a convention.

Confused in the space of Conventions

Ministerial Responsibility



Salisbury Convention = The House of Lords cannot veto legislation which was included in the manifesto

Appointment of PM being someone who can lead the confidence of the Commons (Party Leader of the winning party)

# The Monarchy

## Origin and historic role

The monarch is the historic ultimate source of power within the UK constitution, due to the divine right of Kings: their appointment by God, via ancestor removing sword from stone or getting it from a lake.



"Supreme executive power comes from a mandate from the masses, not some farcical aquatic ceremony"

However, over the centuries this power has been taken or given to parliament, the government and the courts, who use the power in the name of the monarch. We now have a constitutional monarchy meeting their powers are subject to constitutional constraint.



## Governmental Powers still exercised by the Monarch

1) **Appoint or dismiss government ministers** including Prime Minister.

The chosen Prime Minister must have confidence of the House of Commons to be effective. Ministers are appointed by the monarch, but on the advice of the Prime Minister.

2) **Summon parliament** (for King's Speech and a Parliamentary session - sessions usually last one year), **Prorogue parliament** (to close parliament prior to summoning it for the start of a new session or for a general election), and **Dissolve parliament** (for a general election, MP cease to be MPs until reelected).

Done on the advice of the Prime Minister, subject to review by the courts to ensure this is not abused to undermine democracy. See *R (Miller) v The PM* [2019] UKSC 41

3) **Give Royal Assent to Acts of Parliament**, the final in creating an Act of Parliament.

Last refused in 1708, in relation to a law concerning a Scottish militia.

Some other countries have elected head of states who either have largely ceremonial functions similar to the UK Monarch (e.g. Ireland), or substantive executive powers (e.g. USA).



# JUDICIAL REVIEW

**WHAT** is a public body?



**WHAT** is Judicial Review?



What we have here is a type of legal case where you can challenge decisions, acts (or perhaps inaction) by a public body, via the courts.

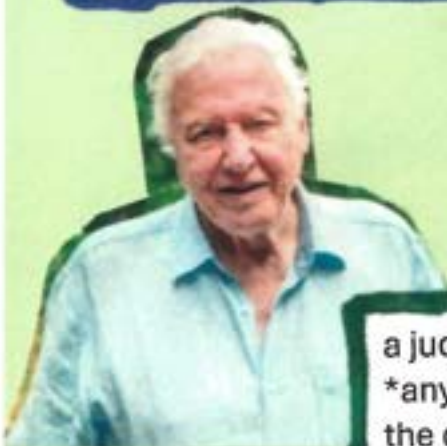


Imagine these as bodies that deliver a public service. That might be a government minister, your local council, social services and education authorities, NHS trusts, prison governors, police forces, or even regulators like OFSTED.

**WHO** can bring a judicial review?



**WHAT** can a judicial review achieve?



a judicial review can be brought by *\*anybody\** that has been affected by the decision of the public body. That might be you as an individual (perhaps you are unhappy a decision about your housing benefit payments), or maybe your community is affected (imagine a decision that allows a private company to discharge nuclear waste right next to your house).



In a judicial review, judges "review" the decision being challenged and consider if the **law** has been correctly followed by the decision-maker/public body.

**What do we mean by law?**

The conduct of public bodies must comply with "public law".

*Public law* requires that public bodies:

- Discharge their legal duties - Many laws directly impose duties upon public bodies, and if the body is not meeting the duty, their approach is unlawful!
- Do not abuse their powers – public bodies are often given wide powers by laws to pursue those duties, but they must not overstep the boundaries of that power, or use their powers to do something improper
- Must act reasonably;
- Must follow fair procedures;
- Do not infringe on the human rights of those affected by their actions and decisions.



## PROS

Judicial review is an important check on public power

The court *might*:

- set aside the decision complained of;
- order the public body to stop acting unlawfully;
- make a declaration clarifying the law's application to public bodies;
- make an order compelling the public body to do something;
- (rarely) award damages

Starting the process might cause the public body to reflect on their decision and change their mind

## CONS

You must **act fast** to bring a judicial review (within 3 month of the decision)

Judicial review is **complicated** - It is better to have legal assistance and advice

Judicial review is **costly** - if you lose a judicial review, you normally have to pay the other sides' legal costs



There are lots of wonderful organisations across the UK that could help figure out options.

**WHERE** can I go for help?

**FRU**  
1972 - Celebrating 50 years - 2022  
Free Representation Unit

**Law Centres Network**

**citizens advice**

# The Constitution & INTERNATIONAL LAW



## Monism vs Dualism

Monism involves international law **automatically** forming part of national law

Dualism means the opposite- international law has to be **incorporated** to become part of national law

The UK has a **dualist** system to allow Parliament to enact international law as they see fit

This is meant to protect **parliamentary sovereignty**

Therefore, even if the Government signs a treaty, it can only form part of UK law when its content is **incorporated via statute**

For example, the UK did not enter the EU until it passed the **European Communities Act 1972**. It then left the EU by repealing that Act.

Similarly, the UK is a signatory of the European Convention on Human Rights but it only formed part of UK law once Parliament incorporated it via the **Human Rights Act 1998**

So how does this affect international law???

## International law

Parliament can hence legislate **against** international treaties signed by the Government. This means they can technically **violate** international law!

But what does international law itself have to say?

Article 27 VCLT says that international law should be **supreme**- it cannot be breached through national law

...Where does this leave us?

## International **customs**

### What are international customs?

Customary international law (CIL) consists of **unwritten practices** that states adopt with the intention for it to be a binding rule (known as **opinio juris**)

Ex. Asylum seekers cannot be sent back to their country where they face persecution (known as **principle of non-refoulement**)

Some cases suggest that customs, unlike Treaties, **automatically** form part of national law **unless** it goes against Parliamentary legislation. The courts have also suggested that customs can be viewed as **one of the many sources of English law**.

But this still leaves many unanswered questions:

- Is there a **presumption** of incorporation unless there is contrary legislation or **automatic incorporation**?
- Should **judges or Parliament** decide which approach is best?



## TREATIES

As shown, treaties only take effect when Parliament enacts their content into national law. **But the courts can try to interpret cases in line with treaties.**

However, courts must do so **within the limitations of existing UK law**. So if a treaty contradicts national law, the courts would be limited in their interpretations by national law. It gets a bit more complicated with international customs...

VCLT- The Vienna Convention on the Law of Treaties



# The European Convention on Human Rights



If countries don't comply with the Convention, victims of human rights violations can complain to the European Court of Human Rights against their country. The Court sits in Strasbourg in France. It can award damages to victims if it finds a violation.



Following World War II, countries in Europe decided to create an international agreement to RESPECT & PROTECT everyone's human rights.



The Court is made up of one judge from each of the member countries, but cases are decided by smaller panels of judges. The UK judge always sits in cases against the UK.



Rights such as the right to life, the prohibition of torture, freedom of expression became part of this new international treaty called the European Convention on Human Rights. It came into force in 1953 and 46 countries have signed up to it.

The UK played a very important role in creating the ECHR, but until 2000 people in the UK could not rely on the ECHR to protect their rights in UK courts. They had to travel to Strasbourg.

Foreign travel advice  
**France**



The Human Rights Act 1998 changed that. It is an Act passed by the UK Parliament to allow individuals to bring ECHR claims to UK Courts.

But the Human Rights Act has been very controversial...some argue it is a problematic law. Let's fight it out to see who's right. It's time to.....



LIPSYNC FOR YOUR RIGHTSSSSSSSSSS!!!!

Please welcome to the stageeee our two queens:  
Liz Truss & Brenda Hale

It also requires all public authorities (like the police or your local council) to respect people's human rights





Human rights only protect criminals and terrorists

Human rights protect All of Us



I'VE MADE MY DECISION!



Human rights undermine policies the majority of people support

SLAY, BRENDA!

Human rights protect minorities that might not have a strong political voice



Brenda, shantay you stay!

The Human Rights Act allows our courts to use European case law to meddle with UK matters

Our Courts shape the interpretation of rights and apply them to domestic issues



Thank you Ru!!!



## EU LAW AND THE UK CONSTITUTION

In the 1970s, the famous judge Lord Denning once described EU law as “the incoming tide”.

These pages will use the metaphor of the tide (“high tide” and “low tide”) to explain how the relationship between the UK Constitution and EU Law has evolved from the 1970s to 2024.



### HIGH TIDE I: EU MEMBERSHIP (1973-2020)

- The UK joined the EU in 1973
- Because the UK has a **dualist approach** to international law, it had to create a special mechanism for EU law to be applicable in the UK
- The **European Communities Act 1972** created the “gateway” for EU law to have “direct effect” and to enjoy “supremacy” over inconsistent UK law
- As an EU Member State, the UK participated in the **making of EU law**
- UK citizens enjoyed **free movement rights** in the EU's internal market



### LOW TIDE I: LEAVING THE EU (2016-2020)

- In the **Brexit referendum** in 2016, UK citizens voted to leave the EU
- As a result, in 2017, the UK had to tell the EU that it wanted to leave the EU and initiate the so-called “Article 50 TEU process”
- The EU and the UK then started to negotiate the terms of the “divorce”, and they had to think about what their **new relationship** would look like
- This process raised various complicated questions about the use (or abuse) of prerogative powers by the UK Government (the *Miller I* and *Miller II* cases)

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/>
Leave the European Union	<input type="checkbox"/>

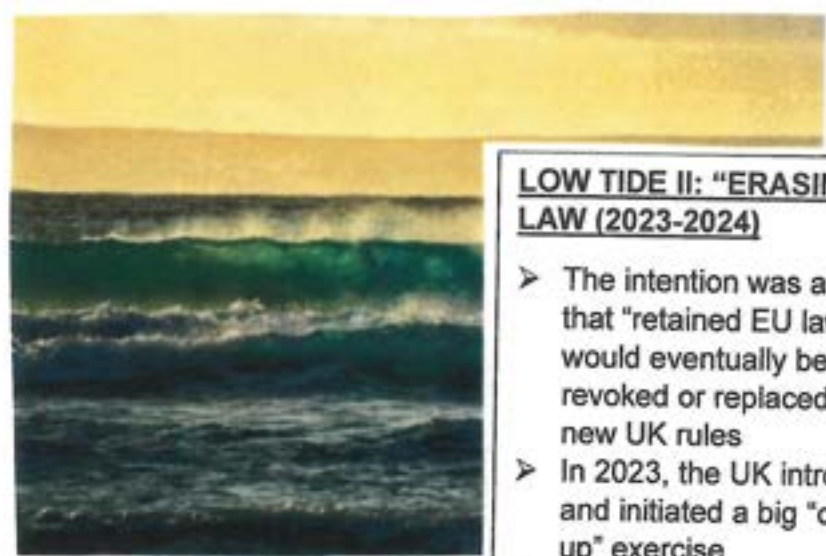




## THE EBB AND FLOW OF EU LAW IN THE UK

### HIGH TIDE II: AGREEING THE TERMS OF THE DIVORCE AND THE NEW RELATIONSHIP (2019-2020)

- In 2019, the EU and the UK agreed the terms of the separation in the so-called **"Withdrawal Agreement"**
- In 2020, the new relationship between the EU and the UK was given shape by the **"Trade and Cooperation Agreement"**
- Because so much law in the UK originally came from the EU, the UK decided to keep most EU law as **"retained EU law"** as a way of turning it into UK law
- To protect the **Good Friday Agreement**, and to maintain open borders between Ireland and Northern-Ireland, special provisions had to be made for Northern Ireland



### LOW TIDE II: "ERASING" EU LAW (2023-2024)

- The intention was always that **"retained EU law"** would eventually be revoked or replaced by new UK rules
- In 2023, the UK introduced and initiated a big **"cleaning up"** exercise
- From 2024, retained EU law has been renamed **"assimilated EU law"**
- This exercise **"stripped"** retained EU law from its old EU law **"characteristics"** – it no longer enjoys supremacy or a special status in comparison with **"regular"** UK legislation
- It has also become easier to change assimilated EU law



### TOWARDS HIGH TIDE III: A NEW APPROACH TO THE EU AND EU LAW?

- With the start of a new **Labour Government** in the summer of 2024, it is possible that the UK might adopt a more positive approach to the EU and to EU law



# WHAT IS A 'U.K.'? Just like its Constitution, the U.K. was made up as it went along...

1066 - England invaded by Normans.

1707 - Act of Union Creates a UNITED KINGDOM OF WALES, ENGLAND & SCOTLAND.

1800 - Act of Union Creates a U.K. of Great Britain + Ireland

1284 - English Conquest of WALES.

+ its Colonies shared & spread their own Constitutions, which they often wrote down on independence.

1922

1800

1707

1284

1922 - INDEPENDENCE OF IRELAND leaving U.K. of Great Britain + N. Ireland

1066

