

Cambridge University Press

978-0-521-18511-0 - British Government and the Constitution: Text and Materials: Seventh edition

Colin Turpin and Adam Tomkins

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British Government and the Constitution

Like the immensely successful previous edition of this highly respected work, this seventh edition of *British Government and the Constitution* has been jointly prepared by Colin Turpin and Adam Tomkins. The book has been thoroughly updated. It takes fully into account constitutional developments under the Coalition Government and examines the most recent case law of the Supreme Court, the European Court of Justice and the European Court of Human Rights. While it includes extensive material and commentary on contemporary constitutional practice, Turpin and Tomkins is a book that covers the historical traditions and the continuity of the British constitution as well as the current tide of change. Designed principally for law students, the book includes substantial extracts from parliamentary and other political sources, as well as from legislation and case law. As such it is also ideal for politics and government students. With its fresh design the book provides a full yet accessible account of the British constitution at a fascinating moment in its ongoing development.

From *Public Law's* review of the 6th edition:

‘Turpin and Tomkins provide a guide that is both immensely detailed and admirably clear [but they also] ... aid the reader who is looking for more depth. In this, *British Government and the Constitution* has always been immensely useful ...

Turpin and Tomkins have produced a textbook ... which is masterly in its treatment of a convoluted and evolutionary area of cross-disciplinary impact. It should be essential reading for students of constitutional law, and a valuable resource for those looking to think about the British constitution in more depth. Law and politics are never more intertwined than when investigating the constitution, and it is a measure of the mastery of both by the authors that the two fade in and out without undue confusion. Any reader looking for the British constitution, how it works and where it does not, will find no better introduction than *British Government and the Constitution*.’

Colin Turpin is a Fellow of Clare College and Reader Emeritus in Public Law at the University of Cambridge.

Adam Tomkins is the John Millar Professor of Public Law at the University of Glasgow.

Regular updates and occasional commentary on topics covered in this book are available via www.adamtomkins.net.

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Text and Materials

Seventh edition

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University Printing House, Cambridge CB2 8BS, United Kingdom

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Information on this title: www.cambridge.org/9780521185110

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First published by Weidenfeld & Nicholson 1985

Second edition published by Northwestern University Press 1991

Third edition published by Butterworths 1995/2015

Fourth edition published by Butterworths 1999

Fifth edition published by Butterworths 2002

Sixth edition published by Cambridge University Press 2007

Seventh edition published by Cambridge University Press 2012

4th printing 2015

Printed by Grafos SA, Arte sobre papel, Barcelona, Spain

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data

ISBN 978-0-521-18511-0 paperback

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‘Government without a Constitution is power without a right’

Thomas Paine, *Rights of Man* (1792)

To Monique, our sons and grandchildren CCT

To Lauren, Oliver, Leo, Phoebe and Jasper AT

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Preface

This book is concerned with the organisation, powers and accountability of government in the British constitution. It has been written from a lawyer's perspective, modified by an awareness that the British constitution is far from being exclusively the handiwork of lawyers. Judges and other practitioners of the discipline of law have made a notable contribution to it, but so have political actors, controversialists of many hues, party organisations, peers, rebels in and out of Parliament and the legions of special interests. Yet lawyers sometimes pretend that the constitution is theirs, teaching and writing about it in myopic isolation.

We have written this book in the conviction that the law student will arrive at an incomplete and fragmentary view of the constitution unless encouraged to take account of ideas, practices and relationships that occur outside the strict limits of the *law* of the constitution. The law student has much to learn from writers and practitioners in politics, government and public administration, just as students of these subjects can enrich their studies by learning something of the values, constraints and possibilities of the law. If asked a question, say, about the power of Parliament, a lawyer and a political scientist may give very different answers. But they are describing the same institution, and for a full understanding of its place in the constitution each of them needs to take the other's perspective into account.

We have set out in this book to present essential features of British government and the constitution in a way that offers a wider range of views to students of law and, we hope, also to students of politics and government. The materials in the book are taken not only from law reports, statutes and legal works but from a variety of official and unofficial publications, and from the writings of political scientists, parliamentarians and other commentators on the constitution and the practice of government. We have tried in this way to show the variegated texture of a constitution which consists not only of rules – legal, quasi-legal and customary or conventional – but of ideas, habits of mind and shared understandings: a constitution continually re-shaped in the daily practice of politics and administration as well as by the deliberate law-making of legislators and judges.

The student of the British constitution soon finds that there are present in it two opposite principles: a principle of change and a principle of continuity. Until quite recent times, studies of the constitution generally over-emphasised the latter principle, presenting the constitution as something stately and settled, secure in its foundations, strong in its continuity and consistent in its slow evolution. By contrast, a good deal of the more recent literature focuses overly on the changing constitution at the expense of the continuing, the historical and the traditional. For all the reform we have seen to the British constitution in the last thirty years or so, there is much that remains of the old order (see further chapter 1). The ‘venerable constitution’ is still, in all sorts of respects, an apt description. What is needed – and what we hope we have provided here – is a balanced account that addresses both the elements of change and continuity that we find at the heart of the British constitution today.

This edition – the second to have been jointly prepared by Colin Turpin and Adam Tomkins – adopts the same basic structure as the previous edition. The book is divided into four parts. Part I (chapters 1–5) deals with the fundamental ideas that govern the constitution (democracy, sovereignty, the rule of law and so forth) and with the multiplicity of sources, both domestic and European, that now contribute to it. In this Part, too, readers will find consideration of constitutional reform and of the structures of devolution that have transformed British government, at least in some parts of the UK, since 1998. Part II (chapters 6–7) is concerned with central government, with its institutions, personnel and powers. Part III (chapters 8–10) focuses on the various ways in which British government is subject to forms of accountability. In this Part we consider, in turn, the relative roles of the people, of Parliament and of the courts of law in this regard. When we come to the courts (in chapter 10), both the law of judicial review and the principles of liability are discussed. Part IV (chapter 11) considers the extent to which, and the means by which, the British constitution seeks to secure a degree of personal liberty. This is an element of the constitution that has been sorely tested in recent years in the face of a series of apparent threats to national and international security. We consider in some detail the ways in which British constitutional law has responded to this challenge. As we shall see, allegations of the implication of British officials in the despicable practice of torture have severely tested a number of our constitutional principles and institutions.

Colin Turpin gives especial thanks to Monique for her constant encouragement and practical help with work on the book. Once again he is grateful to the Master and Fellows of Clare College for collective, friendly stimulus and to the students whose enthusiasm, alertness and scepticism make the whole enterprise of teaching and writing about law exciting and worthwhile.

Adam Tomkins thanks Maria Fletcher for comments on chapter 5 and Harith Canna for assistance with chapter 8. Much more than mere thanks are owed to Lauren Apfel for her support and forbearance whilst this edition was in preparation.

Adam Tomkins is a legal adviser to the House of Lords Select Committee on the Constitution. His contribution to this book is made purely in a personal capacity: nothing in this book is to be taken to represent the view of any member, official or committee of the House of Lords unless the contrary is clear in the text.

We would both like to acknowledge the pleasure it has again been to work with our publishers at Cambridge University Press.

We have endeavoured to state the legal and constitutional position as at February 2011, although we have been able to take into account subsequent developments in one or two instances. Developments occurring after this date are outlined, along with occasional commentary on constitutional matters, at www.adamtomkins.net. Links to other resources are also available via this website.

Colin Turpin
Adam Tomkins
February 2011

Cambridge University Press

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Abbreviations

ACAS	Advisory, Conciliation and Arbitration Service
AFSJ	area of freedom, security and justice
AMS	additional member system
AV	alternative vote
BJ Pol S	British Journal of Political Science
CFSP	common foreign and security policy
CLJ	Cambridge Law Journal
CLP	Current Legal Problems
Cm	Command Paper (1986–present)
Cmd	Command Paper (1919–56)
CML Rev	Common Market Law Review
Cmdnd	Command Paper (1956–86)
COREPER	Committee of Permanent Representatives
Crim LR	Criminal Law Review
DUP	Democratic Unionist Party
EC	European Community
ECB	European Central Bank
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECJ	European Court of Justice
EEC	European Economic Community
EHRLR	European Human Rights Law Review
EL Rev	European Law Review
EP	European Parliament
EU	European Union
FPTP	first past the post
GCHQ	Government Communications Headquarters
HC	House of Commons Paper
HC Deb	House of Commons Debates
HL	House of Lords Paper
HL Deb	House of Lords Debates
HRA	Human Rights Act 1998
ICLQ	International and Comparative Law Quarterly

IPPR	Institute for Public Policy Research
JCHR	Joint Committee on Human Rights
JHA	justice and home affairs
JLS	Journal of Law and Society
JMC	Joint Ministerial Committee
JR	Judicial Review
LQR	Law Quarterly Review
LS	Legal Studies
MEP	Member of the European Parliament
MLR	Modern Law Review
MP	Member of Parliament
MSP	Member of the Scottish Parliament
NDPB	non-departmental public body
NEDC	National Economic Development Council
NILQ	Northern Ireland Legal Quarterly
NLJ	New Law Journal
OJLS	Oxford Journal of Legal Studies
Parl Aff	Parliamentary Affairs
PL	Public Law
PPB	party political broadcast
Pol Q	Political Quarterly
PR	proportional representation
Pub Adm	Public Administration
QMV	qualified majority voting
Quango	quasi-autonomous non-governmental organisation
SDLP	Social Democratic and Labour Party
SIAC	Special Immigration Appeals Commission
SNP	Scottish National Party
Stat LR	Statute Law Review
STV	single transferable vote
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UNSCR	United Nations Security Council Resolution
UUP	Ulster Unionist Party

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