

Contents

<i>Preface</i>	xv
<i>Acknowledgements</i>	xix
<i>Abbreviations</i>	xxi
<i>Table of Cases</i>	xxiii
<i>Table of Statutes</i>	xliii
<i>Table of European Treaties</i>	lv

Part I Constitution, state and beyond

1 The British constitutional order	3
1 Nature of the British constitution	3
(a) Fundamentals, fluidity and safeguards	6
2 The constitution, the state and the nation	10
3 Constitutional law beyond the state	19
4 Constitutional reform	24
(a) An outline	24
(b) Evaluation	35
2 The ideas of the constitution	48
1 Democracy and the constitution	49
(a) Representative democracy	50
(b) Participatory democracy	53
(c) Democracy and accountability	55
2 Parliamentary sovereignty	58
(a) Diceyan orthodoxy	61
(b) Territorial extent of sovereignty: post-colonial independence	66
(c) Continuing sovereignty and the ‘new view’	71
(d) Sovereignty re-appraised: three contemporary challenges	79
(e) Conclusions	95

3	The rule of law	96
	(a) Government under law	98
	(b) Equality before the law	112
	(c) Discretion and the rule of law	117
	(d) The rule of law: wider conceptions?	122
	(e) The rule of law and parliamentary sovereignty	126
4	Separation of powers	126
	(a) A political ideal or a legal principle?	130
	(b) The courts in the constitution: judicial review and judicial law-making	136
	(c) Judicial independence and the position of the Lord Chancellor	139
	(d) The courts and Parliament	150
	(e) Parliament and the executive	157
3	Constitutional sources	160
1	Legal rules	160
	(a) Statute	161
	(b) Subordinate legislation	168
	(c) Common law	172
2	Conventions	182
	(a) How do conventions arise?	189
	(b) Doubtful conventions	192
	(c) Conventions and laws	195
	(d) Patriation of the Canadian constitution: a case study	199
4	Devolution and the structure of the UK	210
1	The United Kingdom as a Union State	210
	(a) Federalism	211
	(b) Devolution	216
2	Scotland, Wales and Northern Ireland	221
	(a) Scotland	222
	(b) Wales	245
	(c) Northern Ireland	253
3	Local government	266
	(a) Structure of local government	267
	(b) Functions and powers	271
	(c) Central–local government relations	275

5	The European dimensions	277
1	The European Convention on Human Rights	277
	(a) The ECtHR and its impact on British constitutional law	279
	(b) Domestic influence of the ECHR	283
2	The European Union	288
	(a) Nature and development of the EU	288
	(b) Institutional structure and law-making powers	297
	(c) Principles of European law: supremacy, direct and indirect effect, state liability and fundamental rights	315
	(d) EU law in the UK	335
	Part II Government	
6	Crown and government	365
1	The Crown	365
	(a) Privileges and immunities of the Crown	368
2	Monarchy and the prerogative	377
	(a) Appointment of the Prime Minister	379
	(b) Dismissal of ministers	383
	(c) Dissolution of Parliament	384
	(d) Royal assent to legislation	385
3	Central government	386
	(a) Ministers	386
	(b) The Prime Minister	408
	(c) The Cabinet	415
	(d) Ministerial committees of the Cabinet	424
	(e) Government departments	427
	(f) Arm's length bodies	431
	(g) The civil service	439
7	The powers of government	450
1	Executive power	451
2	The government's powers	455
	(a) Parliamentary legislation	456
	(b) Delegated legislation	468
	(c) Prerogative legislation	483
	(d) Executive powers	485

	(e) Administrative rule-making (quasi-legislation)	496
	(f) Guidance and codes of practice	503
	(g) Voluntary agreement and self-regulation	508
	Part III Accountability	
8	Parties, groups and the people	517
1	The people in the constitution	517
2	Elections	519
	(a) Review of constituency boundaries	521
	(b) Fairness of the contest	523
	(c) The electoral system	533
3	The people and government	543
	(a) Referendums	544
4	Political parties and pressure groups	548
5	Open government	556
	(a) Freedom of information	559
9	Parliament and the responsibility of government	566
1	Introduction: responsible government	566
2	Individual ministerial responsibility	573
	(a) A convention of resignation?	576
	(b) Responsibility of civil servants	586
3	The power of Parliament	591
	(a) Opposition	594
	(b) Backbenchers	602
	(c) The House	607
4	Control and scrutiny	608
	(a) Policy and administration	610
	(b) Legislation	636
	(c) Finance	644
5	The House of Lords	649
	(a) Reform	656
10	The courts: judicial review and liability	661
1	Nature and foundations of judicial review	661
2	Grounds of review	668

(a) Illegality	669
(b) Irrationality	677
(c) Proportionality	685
(d) Procedural impropriety and unfairness	695
3 Scope and limits of judicial review	710
(a) Scope of judicial review	710
(b) Standing	711
(c) Ouster clauses	714
(d) Judicial review of prerogative powers	716
4 Conclusion: the advance of judicial review	720
5 Liability of the Crown	723
(a) Contractual liability	725
(b) Tortious liability	727
(c) Liability in restitution	729
6 Liability of public authorities	731
(a) Contractual liability	731
(b) Tortious liability	732

Part IV Liberty

11 Liberty and the constitution	743
1 Sources of protection	744
(a) Common law	744
(b) Statute	748
(c) Statutory interpretation	749
(d) Delegated legislation	751
2 Liberty and the HRA	752
(a) The Convention rights	752
(b) Convention rights and national security: a case study	771
3 Freedom of expression	789
(a) Freedom of expression and democracy	790
(b) The 'Spycatcher' cases	794
(c) Freedom of expression as a common law 'constitutional right'	797
(d) Freedom of expression and statute	800
(e) Freedom of expression and the HRA	803
(f) Conflict of rights	810

Cambridge University Press

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

Colin Turpin and Adam Tomkins

Table of Contents

[More information](#)

xiv

Contents

4	Freedom of assembly	815
	(a) Common law: the classic authorities	817
	(b) Common law preventive powers and breach of the peace	823
	(c) Freedom of assembly as a 'constitutional right'	832
	(d) Statutory restrictions on freedom of assembly	833