The fundamental legal and institutional changes of recent decades – the development of European Community law, the devolution of government, the passing of human rights legislation, and the modification of the Lord Chancellor’s office, *inter alia* – have brought the constitution itself into question. Accompanying issues have been the extent to which its traditional character and main features have been changed, lost their former appeal and retained their distinctness amidst the developing legal and political structures of the European Union. They are not readily addressed in everyday thinking about a constitution simply conceived as unwritten or in constitutional accounts variously preoccupied with analysing changing legal doctrines at fleeting moments of analysis, with emphasising the primacy of politics or with identifying principles applicable to Western liberal democracies in general. The English Historical Constitution addresses these issues by developing a historical constitutional approach and thus elaborating on continuity and change in the constitution’s main doctrines and institutions. From an English legal perspective, it offers a complement or corrective to analytical, political and normative approaches by reforming an old conception of the historical constitution and of its history, partly obscured and long neglected through the modern analytical preoccupation with its law as an abstract scheme of rules, principles and practices.

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THE ENGLISH HISTORICAL CONSTITUTION

Continuity, Change and European Effects

J.W.F. ALLISON
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In my first book *A Continental Distinction in the Common Law* (Oxford: Oxford University Press, rev. edn, 2000), I advocated a historical-comparative jurisprudence to reconsider the development in recent decades of an English public law distinct from private law. I sought to explain related problems by elaborating upon systemic interconnections between an autonomous public law and other features of its legal and political context. Completion of that book and responses to it left me with two abiding concerns. One is the extent to which English public law is sufficiently understood as itself systemic and operating within a larger legal and political system. Another is the theoretical detachment or limited engagement pursuant to adopting a historical comparative method. Both of these concerns are reflected in the chapters below.

This, my second book, attempts to put forward a historical constitutional understanding of basic doctrines and institutions of English constitutional law, not preoccupied with their supposedly systemic character. One feature of its historical constitutional approach is recognition of the constitutional significance of both internal and external points of view. Voltaire’s doubt about the effect of detachment may be compared with De Lolme’s confidence. ‘[H]ow was it possible for a Foreigner to pierce thro’ their Politicks, that gloomy Labyrinth, in which such of the English themselves as are best acquainted with it, confess daily that they are bewildered and lost?’ was the rhetorical question posed in the preface to Voltaire’s *Letters Concerning the English Nation* (London: C. Davis and A. Lyon, 1733). In contrast, De Lolme, coming to England from Geneva, confidently laid claim to ‘a degree of advantage’ over the English themselves, who ‘having their eyes open … upon their liberty, from their first entrance into life, are perhaps too much familiarised with its enjoyment, to inquire, with real concern, into its causes’ (*The Constitution of England* (Dublin: W. Wilson, 1775), pp. 2–3). For De Lolme, the English were ‘like a Man who, having always had a beautiful and extensive scene before his eyes, continues for ever to view it with indifference’ or ‘like the recluse inhabitant of a Palace, who is perhaps in the worst situation for attaining a complete idea of the whole, and
never experienced the striking effect of its external structure and elevation’ (ibid. p. 3). Although De Lolme’s glowing approbation has long been anachronistic, his claim to the insight of an outsider remains relevant. I hope that the following chapters will help dispel doubts about the significance of detachment and interaction between internal and external points of view, both in the past and in present political communities formed from what have become highly mobile constituents. They are written in recognition of the many who, from varying points of view, contribute to constitutional formation and, in particular, for someone who has done what she could in adverse circumstances.

Chapters Four and Five on the separation of powers and parliamentary sovereignty were developed from chapters that have already been published but are not readily accessible. I originally wrote them with this book in mind, and they have been updated and related to the other chapters in an attempt not to detract unduly from their original content and overall character. For comments on early drafts of these or of other chapters, I would like to thank Trevor Allan, John Bell, Roger Cotterrell, David Dyzenhaus, Christopher Forsyth, Jeffrey Goldsworthy, Carol Harlow, Richard Helmholtz, Jeffrey Jowell, Matthew Kramer, Martin Loughlin, Rose Melikan, Dawn Oliver, Amanda Perreau-Saussine, Mike Taggart, Colin Turpin and Reinhard Zimmermann as well as the late Geoffrey Marshall and Sir William Wade.

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