

Cambridge University Press & Assessment
978-1-009-27775-4 — The Cambridge Constitutional History of the United Kingdom
Volume 1: Exploring the Constitution
Edited by Peter Cane , H. Kumarasingham
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THE CAMBRIDGE CONSTITUTIONAL HISTORY OF
THE UNITED KINGDOM
*
VOLUME I
Exploring the Constitution

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HISTORY OF
THE UNITED KINGDOM

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VOLUME I

Exploring the Constitution

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Edited by

PETER CANE

Christ's College, Cambridge and Australian National University

H. KUMARASINGHAM

University of Edinburgh



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CAMBRIDGE
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India
103 Penang Road, #05-06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment,
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www.cambridge.org
Information on this title: www.cambridge.org/9781009277754

DOI: 10.1017/9781009277778

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First published 2023

Printed in the United Kingdom by TJ Books Limited, Padstow Cornwall

9781108474214
9781009277754
9781009277099

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

ISBN 978-1-009-27775-4 Hardback

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A cumulative index of both volumes is available for download on Cambridge Core
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Contributors

RICHARD BELLAMY is Professor of Political Science at University College, London. He is a Fellow of the British Academy and of the Academy of Social Sciences. His many publications include *Political Constitutionalism: A Republican Defense of the Constitutionality of Democracy* (Cambridge University Press, 2007) and *A Republican Europe of States: Cosmopolitanism, Intergovernmentalism and Democracy in the EU* (Cambridge University Press, 2019). With Jeff King he is co-editing *The Cambridge Handbook of Constitutional Theory*.

LUKE BLAXILL is College Lecturer in Modern British History at Hertford College, University of Oxford. His expertise is British electoral politics, and the computational and traditional analysis of political language in the nineteenth and twentieth centuries. He has previously published on the local and national dimensions of electoral politics, and published his first book *The War of Words: the Language of British Elections* with the Royal Historical Society in 2020.

VERNON BOGDANOR CBE is Professor of Government, King's College London, and was formerly Professor of Government at Oxford University. He is a Fellow of the British Academy, an Honorary Fellow of the Institute for Advanced Legal Studies, a Fellow of the Royal Historical Society and a Fellow of the Academy of the Social Sciences. He has been an adviser to a number of governments, including Albania, Czech Republic, Hungary, Kosovo, Israel, Mauritius, Slovakia and Trinidad. He has written widely on constitutional issues and is a frequent contributor to TV, radio and the press. In 2008, he was awarded the Sir Isaiah Berlin Award by the Political Studies Association for Lifetime Contribution to Political Studies. He is a Chevalier de la Legion d'Honneur, an Honorary Fellow of the Queen's College, Oxford, an Honorary D. Litt. of the University of Kent, and an Honorary Bencher of the Middle Temple.

PETER CANE is Senior Research Fellow at Christ's College, Cambridge, and Emeritus Distinguished Professor of Law at the Australian National University. His main interests are in public law and its theory, diversity and history. He is a Corresponding Fellow of the British Academy and a Fellow of the Academy of the Social Sciences in Australia and the Australian Academy of Law. Recent publications include *Controlling Administrative Power: An Historical Comparison* (Cambridge University Press, 2016).

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PIPPA CATTERALL is Professor of History and Policy at the University of Westminster and editor of *National Identities*. Her publications include *Labour and the Free Churches 1918–1939: Radicalism, Righteousness and Religion* (Bloomsbury, 2016), and her current research explores the intellectual and constitutional history of ecumenism.

EDWARD CAVANAGH was a scholar who researched and wrote at the crossroads of history and law.

ALAN CONVERY is Senior Lecturer in Politics at the University of Edinburgh. He writes about conservatism, the Conservative Party and territorial politics in the UK.

ROBERT CROWCROFT is Senior Lecturer in History at the University of Edinburgh. He works on modern political history and statecraft. His most recent book is *The End is Nigh: British Politics, Power, and the Road to the Second World War* (Oxford University Press, 2019), and he co-edited *The Oxford Handbook of Modern British Political History, 1800–2000* (Oxford University Press, 2018).

BRICE DICKSON is Emeritus Professor of International and Comparative Law at Queen's University Belfast. He was Chief Commissioner of the Northern Ireland Human Rights Commission from 1999 to 2005 and an independent member of the Northern Ireland Policing Board from 2012 to 2020. He has also served as a custody visitor to police stations. His latest book is *International Human Rights Monitoring Mechanisms: A Study of their Impact in the UK* (Elgar Publishing, 2022).

K. D. EWING has been Professor of Public Law at King's College London since 1989, having taught previously at the Universities of Edinburgh (1978–83) and Cambridge (1983–89). His research and writing focus in part on the boundary between constitutional law and labour law, and the contribution of trade unions to economic and political democracy.

JOSHUA GETZLER is Fellow of St Hugh's College, Professor of Law and Legal History at the University of Oxford, and Conjoint Professor at UNSW Law. Educated in law and history at the Australian National University and Oxford, he researches on land and water law, native title, trusts, equity, companies and financial law, combining doctrinal, historical and economic analysis. He co-edits *Oxford Legal History* and the *American Journal of Legal History*.

JEFFREY GOLDSWORTHY is an Emeritus Professor at Monash University; a Professorial Fellow at the University of Melbourne; and an Adjunct Professor at the University of Adelaide. His expertise is in constitutional law, theory, and history, and legal philosophy. He is the author of *The Sovereignty of Parliament, History and Philosophy* (Oxford University Press, 1999) and *Parliamentary Sovereignty, Contemporary Debates* (Cambridge University Press, 2010), and the editor of *Interpreting Constitutions, A Comparative Study* (Oxford University Press, 2006).

MICHAEL GORDON is Professor of Constitutional Law, School of Law and Social Justice, University of Liverpool. Michael specialises in constitutional law, theory and reform, with

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a focus on the UK and particular expertise relating to parliamentary sovereignty, political constitutionalism, and democratic accountability.

EMILY JONES is Lecturer in Modern British History at the University of Manchester. She is the author of *Edmund Burke and the Invention of Modern Conservatism, 1830–1914: An Intellectual History* (Oxford University Press, 2017), which was awarded the Longman-History Today prize in 2018. She is currently writing a history of the construction of ‘One Nation’ conservatism following the death of Disraeli in 1881.

MICHAEL KEATING is Emeritus Professor of Politics at the University of Aberdeen and a Fellow of the Royal Society of Edinburgh, the British Academy, the Academy of Social Sciences and the Academia Europea. He has published widely on European politics, nationalism, and territorial politics. His most recent book is *State and Nation in the United Kingdom: The Fractured Union* (Oxford University Press 2021).

H. KUMARASINGHAM is Senior Lecturer in British Politics at the University of Edinburgh. His work and interests cover the history and politics of the United Kingdom, the late British Empire and the Commonwealth. His publications include the collections *Constitution-Maker – Selected Writings of Sir Ivor Jennings* (Cambridge University Press, 2015) and *Viceregalism – The Crown as Head of State in Political Crises in the Postwar Commonwealth* (Palgrave Macmillan, 2020). He is Co-Editor of the *Transactions of the Royal Historical Society*.

JANET MCLEAN is Professor of Law at the University of Auckland where she specialises in constitutional history and theory. She is a King’s Counsel (KC) and a Fellow of the Royal Society of New Zealand.

JAMES MITCHELL is Professor of Public Policy at the University of Edinburgh. His areas of interest include government, devolution, the constitution, and public policy.

TONY PROSSER is Professor Emeritus of Public Law at the University of Bristol, having previously been John Millar Professor of Law at the University of Glasgow and visiting professor at a number of European universities. His interests are in regulation, especially economic regulation, and the relationship between regulation and public law in a comparative perspective. His teaching interests are in public law, and social and legal theory.

STEPHEN SEDLEY practised as a barrister, principally in public law. In 1992 he was appointed a judge of the Queen’s Bench, and in 1999 a Lord Justice of Appeal. He also sat as a judge ad hoc on the Judicial Committee of the Privy Council and the European Court of Human Rights. On retirement in 2011 he was appointed a visiting professor of law at Oxford.

ASANGA WELIKALA is a Senior Lecturer in Public Law and the Head of the Public Law subject area at the School of Law, University of Edinburgh, and the Director of the Edinburgh Centre for Constitutional Law. His teaching and research interests lie in British and Scots public law, comparative constitutional law and theory, and Commonwealth constitutional history.

Editors' Preface

The History, Law and Politics of the Constitution

One of our main motivations for undertaking this large project was a conviction that constitutional history is a subject that receives less attention than it deserves from lawyers, historians and students of politics alike. This is not to say that lawyers are uninterested in the constitutional past; but they tend to focus on its legal aspects and their relevance to, and significance for, constitutional law present and future, rather than on the history of the constitution as a topic of interest and importance in its own right. As a disciplinary group, historians have neglected the constitution for the past fifty years and more. Constitutional and political history were pre-eminent strands of British historical studies in the nineteenth and early twentieth centuries. New approaches to history that examine cultural, social, environmental and regional themes, and focus on issues such as gender and race, were as much a reaction against constitutional and political history as a concerted attempt to enhance under-researched fields of historical enquiry. While the emergence of these new areas is obviously welcome, the decline of constitutional history has meant that knowledge of the political and legal workings, and the historical foundations, of government and society is no longer within the expertise of many modern practitioners and students of history. Nevertheless, in a broad sense of 'constitution', covering the whole system of government including its norms, usages and traditions, its history lies at the core of the discipline because the constitution frames and regulates the political, the political frames and shapes the social, and the social frames and shapes the personal.

As for students and scholars of politics, they typically start with the day-to-day practice of politics and the quotidian conduct of government. They are also often concerned with ethical and moral aspects of government and politics. The modern progenitor of this sort of approach was, perhaps, Walter Bagehot, who famously distinguished between the 'dignified' and

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‘efficient’ parts of constitutions.¹ As understood by A. V. Dicey, Bagehot’s concern with how politics and government ought to be conducted, as opposed to the way it actually was conducted, extended only to norms of political conduct (which Dicey dubbed ‘conventions of the constitution’), and did not embrace legal norms, which were the object of Dicey’s interest.² The legal framework of politics is typically left to the lawyers.

In planning this constitutional history our aim was to bring together the disciplines of history, law and politics in understanding the way public power is created, allocated, exercised and controlled. In our view, the politics of a society cannot be adequately understood without taking account of its constitution; and neither the constitution nor the law of the constitution can be adequately understood without studying the constitution’s history and its surrounding politics. Politics, law and history are inextricably intertwined. The over-arching objective of *The Cambridge Constitutional History of the United Kingdom* is to bring the disciplinary preoccupations, methods and insights of history, law and politics together to enable readers to appreciate not only the historical development, legal nature and political importance of the constitution but also its general relevance to all aspects of human social life. Very recently, Brexit and Covid-19 (for instance) have borne stark witness to the ubiquitous and continuous significance of public power, its creation, allocation, exercise and control, to social and personal life. The history of the constitution is also part of public affairs. Within hours of his accession to the throne in September 2022, King Charles III in his first public address as monarch spoke of valuing dearly ‘the precious traditions, freedoms and responsibilities of our unique history and our system of parliamentary government’. The new King, in the style of sovereigns past, ‘solemnly’ pledged ‘to uphold the constitutional principles at the heart of our nation’. This constitutional history seeks to uncover what those changing principles are and the history and context behind them and more.

Innovation

In seeking insights from law, politics and history, the *Cambridge Constitutional History of the United Kingdom* aims to innovate in various ways. First, this is

¹ Walter Bagehot, *The English Constitution*, Miles Taylor, ed. (Oxford: Oxford University Press, 2001 [1867]), 7–13.

² A. V. Dicey, *The Law of the Constitution*, J. W. F. Allison, ed. (Oxford: Oxford University Press, 2013), 18.

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the only book-length ‘constitutional history’ of Britain to have been published for more than fifty years. We think that an updated account, incorporating recent developments in legal, political, historical and historiographical research, is both justified and needed.

Second, the volume breaks new ground in extending its gaze to the United Kingdom. Typically, monographic constitutional histories have been concerned primarily or exclusively with England. An important reason for extending the focus to encompass the other components of the UK is that some of the most important constitutional developments and issues of the last twenty-five years have related to the internal structure of the UK. Put crudely, it is difficult properly to appreciate the process of ‘devolution’ to units of the UK without understanding the evolution of the UK. However, space considerations (alone) rule out providing constitutional histories of the various components of the UK of the length, breadth and depth that each deserves. Perhaps inevitably, and certainly predictably, England receives preferential treatment. However, in addition to many chapters that cover themes and viewpoints of other parts of the UK, there are two chapters specifically devoted to the constitutional histories, respectively, of Ireland, Scotland and Wales – one dealing with the period before, and a second dealing with the period after, amalgamation or union with England.

Third, traditional constitutional histories have little or nothing to say about empire. Yet colonisation is an integral part of the history of British and UK constitutionalism – and vice versa. Once again, however, space has not allowed us to provide a comprehensive history of the constitution of the empire and colonisation. The two chapters on empire focus particularly on the relationships between constitutionalism at the centre and constitutionalism at the periphery.

Fourth, from the legal perspective, this *Cambridge History* is innovative in its approach to control of political power. For over a century, lawyers have distinguished, within public law, between constitutional and administrative law. Administrative law is typically understood as being concerned particularly with administrative (executive) power and, especially, control of its exercise. The identification of this discrete area of public law can be explained historically as a product of the growth of the ‘administrative state’ since the mid-nineteenth century. However, for this project, the distinction between constitutional law and administrative law is of no relevance. A constitution is as much concerned with administrative power as with legislative, judicial, and other, public power. Indeed, the very idea that there are different types of public power can itself be historically situated (in the seventeenth and eighteenth centuries) and is part of the history of the constitution.

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Finally, the *Cambridge Constitutional History of the United Kingdom* aims to revive history's role in constitutional studies. However, unlike previous accounts from the nineteenth century, it will employ history to investigate power and society from multiple perspectives. A critical objective is to demonstrate that constitutional history is relevant for all fields of history. By bringing together scholars of wide-ranging expertise in law, politics and history, we hope to have shown the reach and relevance of constitutional history, its centrality to understanding the governmental and political world of the United Kingdom and its influence on society.

The Shape of This *Cambridge History*

This two-volume *Cambridge History* is obviously the work of many minds and hands. Traditionally, constitutional histories were the work of a single author. However, in the present intellectual climate it is hard to imagine that any single scholar would be brave – or foolhardy – enough to attempt to bring historical, political, and legal perspectives to bear on a millennium of the governance of a particular polity. Some will, no doubt, also question the wisdom of recruiting more than forty scholars to participate in such a project. How even to begin to give some shape to such a kaleidoscope of human social life? Changing the metaphor, our solution to this problem has been to cut the cloth in various different ways and, as it were, to produce several different garments. Inevitably, because we had only rather undeveloped ideas about how each garment should look and gave the manufacturing scholars correspondingly vague instructions, the final result is a patchwork rather than piece of finely tailored *haute couture* – but all the more versatile and stimulating for that. These volumes are not meant, in any sense, to be comprehensive or 'authoritative' or the last word. The best way to describe the final result may be as a set of essays contributing to our understanding of the history of the UK constitution. For this reason, alone, it may be helpful to provide the reader with brief summaries of each chapter.

The Cambridge Constitutional History of the United Kingdom was originally conceived as a single volume. However, for technical reasons, the decision was made to distribute the various chapters between two separate volumes available both individually and as a set. In the original plan, the chapters now in Volume II were located between Parts I and II of what is now Volume I. This positioning was intended to suggest to the reader that the surrounding 'contextualising' chapters were, in our minds, as important as the periodised, chronological chapters in painting a rounded picture of the history of the

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constitution as a dynamic and evolving phenomenon. However, when it came to allocating chapters and parts between two volumes, the neatest, most practical solution seemed to be to transfer the periodised accounts into a volume of their own. At the same time, by allocating the ‘contextualising’ chapters to Volume I we hope to encourage readers to take them as seriously as the chapters in Volume II. Both volumes contain this Preface and list the contributors to both. In our minds, each of the two volumes is an integral component of a single project.

Volume I

The chapters in Part I of Volume I explore various aspects of and approaches to the constitution and constitutionalism. In Chapter 1 (‘The Historical Constitution’), H. Kumarasingham explains the central place of the constitution in British history through three interrelated themes: that the constitution is as much a matter of culture and ideas as of documents and legislation; that its history underpins traditions of governance and understandings of power across society; and that its practices have long been matters of contestation. In Chapter 2 (‘Law and the Constitution’), Peter Cane tells a story about the complex interplay, over a millennium, between law understood as both norm and artefact, and constitution understood both organically and synthetically. He argues that law has always played a significant role in the constitution and increasingly so since the mid-twentieth century. He also suggests a positive correlation between the invention of the written constitution and the constitutional role of law.

In Chapter 3 (‘Political Constitutionalism’), Richard Bellamy sketches the genesis of three main versions of political constitutionalism based on parliamentary sovereignty: the mixed constitution, parliamentary government, and representative democracy. Today, he says, political constitutionalism is mainly identified with representative democracy. However, he argues that this version is currently challenged on one side by ideas of popular sovereignty and, on another, by the growing dominance of law in constitutional thinking; and that it is currently unclear whether it will be replaced by one of the other versions or a new form of political constitutionalism. Tony Prosser’s argument in Chapter 4 (‘The Economic Constitution’) is that the economic focus of the UK constitution has always been on scrutiny of government financial activity rather than on regulation of the economy. He examines the role of various scrutineers, including Parliament, the courts, and the executive itself. Prosser also discusses the development of regulatory

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bodies that operate at arm's length from government and the impact of EU membership on the UK's 'economic constitution'.

In her two contributions, Chapters 5 ('Religion and the Constitution to 1688') and 6 ('Religion and the Constitution since the Glorious Revolution'), Pippa Catterall traces the history of relations between Church and State and between religion and the constitution. Although those relations have changed dramatically over the past millennium in response to factors such as the Reformation, the Glorious Revolution and the rise of secularism, phenomena such as the Global War on Terror witness to the continuing constitutional significance of religion. In Chapter 7 ('The Social Democratic Constitution'), K. D. Ewing traces the birth, life and death of social democratic structures of government, and the constitutional position of trade unions; and he examines tensions between liberal constitutional values of the nineteenth century and social democratic values of the twentieth century. The high-water mark of representation of workers' interests in government was the Social Contract of the 1970s. The chapter concludes with an assessment of the reasons for the decline and collapse of the social democratic constitution.

Peter Cane's main argument in Chapter 8 ('The Constitution of Rights') is that in historical terms, constitutional rights may be understood as claims (always political and sometimes legal) made by the governed on the governors; but, also, that the content and foundations of such claims are moulded by circumstances of time and place. As ideas change about the nature, make-up and functions of political communities, so do claims, in the name of rights, for inclusion within, and good governance of, the community. In Chapter 9 ('The People and the Constitution') Vernon Bogdanor starts with the claim that although democracy is sometimes defined as government by the people, in almost every democracy – including Britain – the role of the people is very limited. Nevertheless, he explains, there has been limited acceptance of the doctrine of the mandate, and a long debate on whether the referendum is or is not compatible with the British constitution. Further, there have been experiments with primary elections, recall of MPs, and e-petitions. However, in Bogdanor's opinion there is probably more scope for direct democracy at local level than nationally.

Part I of Volume I is rounded out by Jeffrey Goldsworthy's survey in Chapter 10 ('Constitutional Theory and Thought') of constitutional theory since the twelfth century. He shows how contending theories have attempted to reconcile the need for strong central authority to maintain order and justice with the desire to control that authority. He describes a gradual transition from theories of monarchical rule to theories of mixed

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government and, finally, theories of parliamentary democracy; and he explains how each theory understood the place and role of the monarch, the Church, the Houses of Parliament, statute and common law, ‘the community’, and ‘the people’.

Part II of Volume I contains chapters that variously examine aspects of the historical development of constitutional offices and institutions. As Edward Cavanagh points out in Chapter 11 (‘Monarchy’), monarchy is a medieval institution that has become subject to statutory and legal limitations. Between the thirteenth and nineteenth centuries, first in England and then across the United Kingdom, the most important of these limitations were imposed during periods of regency administration or uncertainty and/or crisis surrounding the succession. This history has unfolded in sometimes startling ways to leave us with the ‘constitutional monarchy’ that we have today. Cavanagh explains how this has happened and hints at how the crown might advance into a future of possibly uncertain constitutional politics. In Chapter 12 (‘Legislatures’) Michael Gordon identifies core functions of a legislature, considering how these various functions emerged and developed in the case of the UK Parliament. Gordon argues that while its functions, legislative authority, and democratic legitimacy have evolved, the Parliament at Westminster has provided a degree of continuity in the UK’s political system. Yet, he continues, there has recently been momentous change: the UK Parliament has dispersed some of its power through devolution so that it is now the central legislature within a wider constellation. Although this new paradigm for legislative activity has become quickly embedded in the UK’s constitutional architecture, wider uncertainties about the trajectory of devolution mean that the stability of the relationships between the UK’s legislatures cannot be taken for granted.

Moving on to the executive, Janet McLean (in Chapter 13 ‘The Executive and the Administration’) considers changing understandings, from the seventeenth century onwards, about the nature of executive power itself and the relationship between executive power and administration. She identifies the concept of ‘office’ as a central organising principle for pre-democratic administration, and discusses the relationship between sovereignty and office, the incomplete separation of those office-holders who make the law from those who execute it, and the messy distinction between high political office and subordinate office-holders. McLean then focuses on those subordinate officials and their relationship with the centre, and the changes wrought to these relationships with the advent of modern democracy. In Chapter 14 (‘Judiciaries’) Joshua Getzler suggests that judiciaries in England emerged from four interacting historical sources. At the foundation lay the authority

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of monarchs empowered, by virtue of regal office, to judge their subjects' rights, duties and status. The second source was royal delegation to dedicated judges sitting in permanent courts of common law, or to executive courts with a more political mandate. A third source was local and widely distributed decision-making by groups or associations or sub-units of government, contributing to the particular entity's self-direction. The fourth source was Parliament, which issued legislation, conducted trials, and reviewed and settled points of law from all other jurisdictions. The dialogue between royal, common-law, local, and parliamentary justice drove the constitutional development of the nation, as principles had to be devised to distribute the wielding of power in the various law-making and law-enforcing institutions. The constitutional role of the courts was often contested, particularly during times of political and social tension, from the medieval period down to the present day.

In Chapter 15 ('Coercive Institutions'), Brice Dickson reviews the development of the UK's armed forces and police services from a constitutional point of view. He charts how these coercive institutions began to be regulated, highlighting the consequences for the army of the civil wars of the seventeenth century and of the reforms introduced in the early twentieth century. Dickson outlines the concepts of martial law and military law, and discusses constitutional issues concerning the deployment of armed forces abroad. He also briefly outlines the history of policing, emphasising the principles promoted by Robert Peel, the perceived need for police officers to be politically independent, and the frequency with which public confidence in policing was easily shaken. Dickson sketches present-day police powers and the system for holding the police to account for their actions through the investigation of complaints, regular inspection and auditing, and the pursuit of litigation.

Luke Blaxill's claim in Chapter 16 ('Locality, Regionality, and Centrality') is that the evolution of local institutions, principles and precedents, laws and governance, form a major pillar of the evolution of the British constitution. Local governance bodies were frequently integral to the lived constitutional experience of British subjects. While the rise of the modern British state has generally been a story of centralisation and the corresponding disempowerment of local government, the role of Parliament – sitting between the centre and the localities – has always remained somewhat ambiguous. Blaxill traces the development of local government, its rise, brief Victorian apogee, and twentieth-century decline. He then explores the analytical concept of 'constitutional communities', reflecting the fact that the constitution could mean

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different things to different groups, even at times when all were, in theory, stakeholders in a single national constitution. Finally, Blaxill focuses on the relationship between Parliament and the localities, paying special attention to the Member of Parliament as a bridge between them, and how this role has changed and evolved.

Rounding off Part II, in Chapter 17 ('Political Parties') Robert Crowcroft turns our attention to political parties. He argues that parties have been a primary vehicle for constitutional contestation and innovation. As Edmund Burke grasped, parties are integral to the practical operation of the constitution and the parameters within which politics are carried out. Deep antagonisms could be fought to a resolution – and a legitimate one at that – through the mechanism of party conflict. Constitutional questions summoned parties into existence, tore them asunder, and proved a natural hunting ground for ambitious individuals. Crowcroft examines the highly interactive relationship between parties and the constitution; demonstrates the primacy of high-political manoeuvring in constitutional conflict; and ponders the impact of individual leaders on the constitution-party linkage. He concludes that party-political competition has strengthened Parliament as a national institution in ways that have contributed to the stability of British life.

The chapters in the final Part III of Volume I adopt historical perspectives on political concepts at the heart of constitutional history and constitutionalism. In Chapter 18 ('Conservatism'), Asanga Welikala offers a conservative approach to British constitutionalism. He argues that conservatism has provided the intellectually dominant conception of constitutional self-understanding in British constitutional history, both in terms of substantive ideology and the approach to constitutional change. He outlines a history of British conservative ideas about self, state, and society as they were shaped by the crucial debates of the European Enlightenment, and how those ideas formed the basis of a constitutional ideology that evolved through successive stages of constitutional development from absolutism to constitutional government and mass democracy. Welikala's central thesis is that British constitutional conservatism is defined more by its incrementalist theory of constitutional evolution than by its commitments to any particular set of institutions. In the view of Emily Jones (in Chapter 19, 'Liberalism'), the significance of liberalism in the constitutional history of the United Kingdom stretches deep into the past, extending not merely to the giants of the historic Liberal Party in the nineteenth century, but also to the Whig inheritance from seventeenth- and eighteenth-century constitutional disputes. Hence,

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while Jones concludes by referring to the modern Liberal Party – an alliance, from 1981, between historic Liberalism and the Social Democratic Party that fused formally in 1988 – she primarily considers the longer history of Liberalism and the British Constitution. In this ‘historic’ reading, Jones demonstrates the significance of Whig-Liberal ideas, people and histories to the construction of national and political identities that reached forwards far into the twentieth century, and which has had important consequences for current debates on sovereignty and the relationship between Britain, Northern Ireland, and Europe. In Chapter 20 (‘Socialism’), Stephen Sedley seeks to situate the movement for a more equitable society in the political and juridical history of a capitalist democracy. He considers the tension between constitutionalism and revolution, focusing on the electoral capture of power by the Labour government of 1945–1951, and contrasting it with both the neglected Co-operative Movement and the case for workers’ control.

In Chapter 21 (‘Unionism’) James Mitchell and Alan Convery neatly describe the UK as an evolved state that has become a devolved state; created by a series of bilateral arrangements, it has become a ‘state of unions’. The authors argue that the rationale for each union has changed over time, reflecting changing views of how the UK should stay together as a multi-national state. Over the centuries, unionism has been characterised by flexibility, ambiguity, and contingency. According to Mitchell and Convery, the UK has been strongest when and where national identity and loyalty to the state have been taken for granted, unquestioned, uncontested and requiring no name. Unionism has reflected the challenges it has faced, often mimicking but sometimes offering a mirror image of nationalist and other challenges. Unionists have supported diverse means of maintaining the UK state of unions. Finally, and on the other side of the coin, in Chapter 22 (‘Nationalism’) Michael Keating argues that although the concept of nation has no constitutional standing in the United Kingdom, it has featured in constitutional debates for some three hundred years. While the dominant view of the UK is that it is based on the absolute sovereignty of the Westminster Parliament, the constitution also creates a union of nations joined in different ways. While nationalists in the peripheral nations argue that the fact of nationality points to statehood, or at least self-government, for their own territories, unionists argue that it is consistent with membership of a wider British union. In recent years, Keating argues, British nationalism and that of the smaller nations have become competitors, putting strains on the union. The UK’s withdrawal from the European Union has increased centrifugal tensions within the UK’s own union and allowed nationalists in

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Scotland, Wales and Northern Ireland to appropriate the language of union, applied to the EU, to justify secession.

Volume II

The title of Volume II ('The Changing Constitution') reflects our understanding of the constitution as a 'living tree'. The rings that witness its past form an integral part of its present state and future life. Our tree has its roots in post-Roman, Anglo-Saxon soil. In his account of 'The Kingdoms of Anglo-Saxon England (450–1066)' (in Chapter 1), Simon Keynes uses diverse documentary, literary and archaeological evidence to piece together the political history of England from around 450 to the Norman Conquest (and, in a brief epilogue, its after-life in the English imagination). Perhaps the strongest and clearest themes running through the more or less shadowy events of this 600-year period are, first, the complex relationship between religious and secular power; and, second, the pivotal achievements of Alfred the Great in laying the foundations of the larger polity that the Normans would first conquer by force and then claim as theirs by lawful inheritance.

In 'England after the Conquest' (Chapter 2) George Garnett echoes F. W. Maitland's aphorism that land law and constitutional law were inextricably linked in the period after 1066. Central to William's claim to the throne was the assertion that the whole of the kingdom had been bequeathed to him by Edward the Confessor, thus establishing continuity of rule and the dependence of all titles to land on the king's inheritance. This, the most important consequence of the Conquest, was foundational to the inquiry that produced the Domesday Book. In the first decades of the reign of Henry II, new legal procedures were made available in royal courts to enforce tenurial continuity and dependence. These remedies benefitted sub-tenants at the expense of tenants-in-chief, who could not sue their lord, the king, in his own courts. King John's exploitation of this situation created the conditions for the transformation, in Magna Carta, of the inherited law from a source of royal legitimacy to a constraint on royal power.

In Chapter 3 ('England in the Thirteenth Century') Paul Brand focuses on the monarchy and its finances, and on the development of the main institutions of government: the royal courts, the council and Parliament. The goal of Christine Carpenter and Andrew Spencer in Chapter 4 ('England in the Fourteenth Century') is to locate the history of governance and politics within a constitutional frame. The authors examine, in turn, political ideas, the central and local institutions of government and law, and the political

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society of nobles, gentry, towns and church. Then they offer an account of the major problems of fourteenth-century kingship and how they were addressed: organising and paying for war while continuing to deepen the reach of royal government, both for war and in response to subjects' demands, all this in a time of great demographic, economic and social change. Carpenter and Spencer show that this resulted in a major governmental and constitutional transformation. In David J. Seipp's telling in Chapter 5 ('England in the Fifteenth Century'), difficulties in governing England, ambiguities about power and authority, and a fundamental lack of consensus about what constituted rule and who had a legitimate right to exercise it, persisted throughout the fifteenth century. Lacking the ordinary indicia of legitimacy, weak English kings needed to cobble together support where they could find or buy it. Local lords often wielded more effective power than a distant king. In the view of lawyers, there was a need to enhance, not to restrain, royal authority. The difficulty was to find a way to check the power of those whom chief justice Fortescue called 'over-mighty subjects'. Only at the end of the century could Henry VII begin to restore royal authority. However, argues David Chan Smith (in Chapter 6, 'England in the Sixteenth Century'), Henry's dramatic usurpation in 1485 ushered in a period in which dynastic crises raised new constitutional questions, about legitimacy and the authority of the monarch, that were aggravated by religious strife following the Reformation. Added to this instability were new issues raised by the expansion of the central legal system and the weaknesses of royal finance. Smith suggests that while the Tudors arguably created a stronger monarchy, it was also one whose powers were increasingly questioned.

Glenn Burgess continues the theme in Chapter 7 ('The English Constitution in the Seventeenth Century: Crises of Inadequacy'). He observes that England, culturally divided (especially by religion) and part of an unstable multiple monarchy, saw a bloody civil war, popular insurrection, and fear. These exposed the weakness of a constitution whose ambiguities and silences made it inadequate to restrain misgovernment and maintain peace. Constitutional weakness also spurred imaginative attempts – sometimes democratic or republican – to repair or replace the flawed constitution. From this process, argues Burgess, there emerged both a stronger sense of what a constitution was and a series of constitutional adjustments that made the nation more securely Protestant. Radical change was masked by the myth that all this was achieved by making only minimal alterations to the ancient constitution and preserving its long continuity.

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The next three chapters provide some ‘spatial’ context for the story of England told so far. In Chapter 8 (‘A European Perspective’) Tamar Herzog questions ideas of the exceptionalism of English constitutionalism by placing it in conversation with early developments in other parts of Europe. Herzog interrogates three aspects: the centrality of common law in most narratives of English legal history, its identification as an immemorial customary law, and the history of the English parliament. She demonstrates that the refashioning of local norms as customary, the insistence that they included a constitutional pact that was immemorial, and the wish to use both to place checks on kings as well as on the growing powers of parliament, were common throughout late-medieval and early-modern Europe.

Robin Chapman Stacey’s main aim in Chapter 9 (‘Wales before Annexation’) is to complicate the seeming inevitability of the constitutional order referred to in the chapter’s title. Instead of focusing on the usual constitutional hallmarks of the period, the Statute of Wales of 1284 and the Act of Union of 1536 (revised in 1543), Stacey challenges the teleology of the traditional narrative by examining not only what did happen but also what might have happened, both within native Wales and in its relationships with England and the March. Among other issues, she considers the complex nature of alliances and governance in the period leading up to 1284, in which ethnicity was not always the determining factor; the possibility that political fragmentation might have been able to survive as a long-term form of ‘nationhood’, both internally within Wales and externally with respect to England; and the increasing hybridity of identities and allegiances amongst inhabitants of Wales even before the Act of Union. In a similar vein, in Chapter 10 (‘The Scottish Constitution before 1707’) Laura A. M. Stewart argues that early modern Scotland, like many of its neighbours, witnessed intense debate over its constitutional forms and function. At the heart of these debates were contested views on the nature of royal power and what limits, if any, could legitimately be placed upon it. According to Stewart, what has been termed Scotland’s ‘aristocratic-conciliarist’ constitution, to which noble counsel-giving was integral, arguably reached its apogee in the 1638 National Covenant. The subsequent conquest of Scotland by an English army, and the aggressive reassertion of an absolutist ideology after the Restoration of the British monarchy, put such ideas under enormous strain.

R. A. Melikan’s Chapter 11 (‘The Eighteenth-Century Constitution: Settlement and Resettlement’) moves the story on into the eighteenth century. She argues that the Act of Settlement 1701 – which changed the royal succession, reinforced the other branches of government, and entrenched both the

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Anglican Church and individual liberties – was, perhaps, the most significant piece of constitutional legislation enacted in the eighteenth century. Some of its objectives were not achieved, however, as the Privy Council gave way to the cabinet, and Parliament was not insulated from royal or ministerial influence. The support offered to the Anglican Church and to individual liberties, moreover, was so broadly phrased that, in Melikan’s view, its effectiveness is difficult to judge. Nevertheless, the Act of Settlement responded to a looming threat by embracing necessary change while fortifying all that remained in an organic and gradualist fashion. Like England, as Thomas Bartlett points out in Chapter 12 (‘The Constitutional and Parliamentary History of Ireland till the Union’), Ireland lacked a written constitution in the centuries before 1800. It had a parliament consisting of a House of Commons and a House of Lords, and there were law courts modelled on those in England. However, what is striking is the contrast in constitutional development between the two countries. This divergence may be explained by Poynings’ Law which, for over four hundred years, governed the summoning, role and function of the Irish parliament. Bartlett explores the evolution of parliament in Ireland from an occasional event in the medieval and early modern periods to a key institution in the eighteenth century. He examines the reasons why that parliament voted itself out of existence in 1800.

Ewen A. Cameron’s Chapter 13 (‘The United Kingdom in the Nineteenth Century’) covers the years from 1800 to 1921, the period of the maximum extent of the UK resulting from the unions with Wales, Scotland and Ireland. Cameron’s main theme is the interplay between constitutional and political issues in the nations of the United Kingdom. He examines the relationship between the churches and the state; the extension of the franchise; local government; and the imperial dimension of constitutional debates. Cameron explores both elite and popular understandings of the constitution, and various attempts to widen the sections of society that were recognised as having constitutional rights. In doing so, he emphasises the ways in which the constitution was at the heart of politics in the long nineteenth century.

Andrew Blick takes the Parliament Act 1911 as the starting point of his discussion, in Chapter 14, of ‘The United Kingdom in the Twentieth Century’. Blick considers themes including House of Lords reform; referendums; devolution; the impact of war; European integration; and the possibility of movement towards a ‘written’ constitution – all within the context of the ascendancy of the concept of democracy and perceptions of threats to it. He argues that the traditional interpretation of the UK constitution, as having a capacity for piecemeal change that has enabled it to avoid more fundamental breaks in continuity, is unhelpful because the dichotomy between gradual and

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fundamental alteration fails to represent the subtle nature of constitutional change in the UK. Vernon Bogdanor's perspective on constitutional change, in Chapter 15 ('The Twenty-First Century Constitution'), is somewhat different from Blick's. He argues that the twenty-first century constitution, which he considers to have been inaugurated in 1997, would have been unrecognisable in the middle of the twentieth century. The new constitution's leitmotiv, says Bogdanor, is diffusion of power both territorially, through devolution, and centrally, as a result of the Human Rights Act, which has emphasised the separation of powers between the executive and legislature, and the judiciary. Diffusion of power, he argues, has been assisted by political developments, particularly the fragmentation of the party system, itself largely a product of the introduction of proportional representation for elections to subordinate bodies. In Bogdanor's opinion, the massive constitutional changes of the twenty-first century raise the issue of whether Britain can long remain one of just three democracies that lack a codified constitution.

Like Chapters 8–10, the last four chapters of Volume II add important context to those that have preceded. In Chapter 16 ('Wales since the Annexation') Matthew Cragoe traces the constitutional history of Wales from conquered medieval province to its contemporary state of – somewhat ambivalent – nationhood. He argues that the small size of Wales – it has only some 6 per cent of seats at Westminster – has ensured that its constitutional identity has been contingent on the activities of other partners within the shifting British state. England has naturally been a dominant influence but, in the nineteenth century, Ireland became a touchstone for those seeking constitutional reform in Wales, whilst in the twentieth, Scotland played this role. In constitutional terms, therefore, 'Wales' is a very 'British' creation. For Stephen Tierney in Chapter 17 ('Scotland in the Union') the constitutional union between England and Scotland is central to our understanding of the nature of the British state today. Tierney argues that the union of crowns in 1603 and of parliaments in 1707 left a legacy of Scottish national distinctiveness that began to play out dramatically only with the rise of Scottish nationalism in the 1960s. Tierney addresses how the creation of the parliamentary union produced a tradition of constitutional thinking that challenged the orthodox story of the British constitution and how, after 300 years, the Union continues to face an existential threat in the form of secessionist Scottish nationalism.

In Chapter 18 ('Ireland in the Union') Donal K. Coffey discusses both the development of constitutional rule within Ireland and the influence of Irish constitutionalism on the United Kingdom's constitution. The theoretically and technically complex constitutional arrangements developed to ensure Ireland's place within the Union created room for contestation over the

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franchise, land, Home Rule, independence, and other matters. The question of whether Britain was willing, or indeed able, to extend constitutionalism to Ireland was the subject of much debate at the time. Coffey ends with a brief consideration of the diverging constitutional histories of the Irish Free State, latterly Ireland, and Northern Ireland in the overall context of British and imperial legal history.

Empire is the subject of the last two chapters in Volume II. According to Coel Kirkby in Chapter 19 ('The Making of Empire'), the British constitution has always been an imperial constitution. The institutional structure and ideological discourse of the British constitution always extended beyond the pale of England and the English people. The British constituted themselves and their empire through institutions of government sustained by a single system of law; and they and their subjects constantly argued over the nature of their common constitution: its past, present and future. This British constitutional discourse connected metropole to colony in a complicated global network of ideological debate that shaped the institutional evolution of England's expansion into the British empire. In similar vein, in Chapter 20 ('Constitution and Empire') H. Kumarasingham suggests that the constitutional history of Britain would be drastically diminished in importance if not for empire. Concentrating on the period from the mid-nineteenth century until the last days of colonial rule in the twentieth century, he focuses on three key matters: first, the resonance of empire in British constitutional thinking as well as the contradictions and limitations of the late imperial constitutional project; second, the divergent ways in which Britain sought to govern its vast empire, especially the marked difference between the minority of increasingly autonomous settler-dominated states and the majority whose indigenous populations were deemed unable to govern themselves; and third, in the last stage of imperial rule when self-government was demanded, how British constitutional traditions, concepts and institutions fared in the colonial context and what this meant for those living under the British Empire.

As editors, we are delighted to be able to present to the reader a collection of essays of such depth, breadth and rigour. We are extremely grateful to and proud of all our contributors and trust that they, and other readers, will find the volume valuable and stimulating, and that some will be encouraged to join what we hope will be a twenty-first century renaissance of constitutional history in the UK and beyond.