

Optimize Public Law, Podcast 1: What is Public Law about? General Principles of Constitutional Law – Transcript

Welcome to the *Optimize* series. This is a podcast which accompanies [*Optimize*] *Public Law* by Ursula Smartt.

This book and podcast are designed to help you with your revision for both your coursework in public law and to gain higher marks in your exams. *Optimize Public Law* is a revision text and you do well if you read at least one of your recommended textbooks as well as law reports and public law journals [e.g. *Public Law*], particularly when you are preparing for a coursework essay, which requires correct referencing and a wider bibliography, compared with answering exam questions.

A brief note then about the legal subject matter ‘public law’. Also sometimes called constitutional and administrative law, this area of law requires an understanding of the way in which a country is governed and how democracies work. You’ll do well if you also read newspapers (or their online editions) in the ‘politics’ sections, because you need to be aware of the difference between government and parliament, for instance.

In part 1 of the public law course, you will generally learn about the constitution, the separation of powers and the rule of law. These can be very abstract subjects and tend to rely on old legal scholars, such as Albert Venn (or A. V.) Dicey [1835 – 1922]. You do well if you cite some of these scholars and their academic writings in your coursework and in exams. Dicey, for example, defined the fundamental principle of the English Constitution.

We will be concentrating on the UK Constitution and the UK Parliament. At times, we will make comparisons with other countries. One of the best ways to help yourself understand this area of law is that you demonstrate in your coursework and exams that you have read widely, so that you can reference well and gain extra marks during the discussion and analysis in your essays.

So, what is ‘public law’ about? This area of law deals with public rights – that is an individual’s rights within the country he or she lives in. Public law includes public authorities, such as your local council and Ministerial Departments, like the health service, housing, social benefits, the police, the prison services, state education (including the university sector) and how Governments spend public money, such as taxes. When an individual challenges a public body or authority, this is known as judicial review. Chapters 8 and 9 deal with this area of administrative law in great detail.

Let us begin with the Constitution. Why do countries need a Constitution? One of the typical exam or coursework questions centres on the fact that the United Kingdom does not have a written Constitution. You are then asked to compare this fact with other countries,

most countries, in fact, that do have a written Constitution. Chapter 1 of the *Optimize Public Law* text by Ursula Smartt provides some examples, such as the United States or France. So, how does Great Britain possibly survive without a written Constitution?

It is best to start your discussion by describing the UK's constitutional monarchy. This has what is known as a bicameral Parliament composed of the House of Commons [HC] and the House of Lords [HL] – often referred to in textbooks as 'both houses of Parliament'. Executive power is vested in the Crown – often referred to as 'the Crown in Parliament'. This means the Sovereign – that is Queen Elizabeth II or the future King. Nowadays, central government is carried out 'in the name of the Crown' by ministers of state.

The point you need to make when writing about the UK Constitution is that it is constantly changing, in a state of flux: it is constantly evolving. Some legal commentators see this as a positive development, particularly in times of crisis or war. Others think that the Constitution should be codified and written down in a single document, as it is already the case in many democratic countries such as Germany, Spain, Hungary or Latvia. The American Constitution of 1781 is often cited as the leading example which has led many other countries to think that it is necessary to have a written Constitution.

Wheare is an academic author whom you should quote in your essays on the Constitution. Sir Kenneth Clinton Wheare was an Australian academic who spent most of his adult scholarly life at Oxford University, comparing and contrasting Constitutions of various countries. In his seminal text of 1966, *Modern Constitutions*, Wheare argued that Constitutions are there to limit the powers of Government. Most importantly, he argued, a Constitution can limit the Executive, and by the Executive we mean Government, such as the Cabinet but also subordinate bodies, such as local authorities.

Another purpose of the Constitution, according to Wheare, is that it can limit the powers of the Legislature or the Legislative that is Parliament itself.

There are other learned legal writers who have written about the British Constitution, such as **A.V. Dicey**. Dicey, a British jurist and constitutional lawyer, who lived from 1835 to 1922, argued in his famous *The Law of the Constitution* of 1885, that Britain does not need a written Constitution or 'Bill of Rights', because the general principles of the Constitution are the result of judicial decisions determining the rights of private persons.

This means that Dicey firmly believed in the rule of law, in judicial decisions, that is precedent, and that no man should be above the law, and that the authorities, such as the executive power of government, must be subject to the ordinary rules of the law – that is the rule of law.

This means that the UK Constitution is a **whole system of government** with a collection of Constitutional rules which establish and regulate Government. The UK constitutional system is then based on a combination of Acts of Parliament and judicial decisions (common law), political practice (such as conventions) and detailed procedures established by various organs of Government which are there to carry out their tasks.

We will next discuss Parliament. What is Parliament? Most importantly you should never confuse Parliament with Government.

The Government is the **Executive**, it doesn't make laws. Government engages in the day-to-day business of the state. In the UK it's the Cabinet and it's Ministers of State who make decisions about the running of the country.

The main work of Parliament is to make laws. Parliament is also known as the **Legislative** (or some textbooks call it the **Legislature**). It engages in parliamentary debate and questions Governments on how taxes are spent to help run the country. The main issues of the Westminster Parliament are usually health, education, the environment, transport, employment and criminal justice. At times, the Parliament discusses constitutionally important issues, such as the invasion of Iraq in 2003, or whether a 'robust military response' is necessary against the use of chemical weapons in Syria. This was discussed during a special House of Commons debate, when Parliament was recalled by Prime Minister David Cameron during the summer recess in August 2013.

So, who works in Parliament? In a constitutional democracy, such as the United Kingdom, Members of Parliament or MPs are democratically elected by the people in a General Election, which usually takes place every five years. The last one was in May 2010 after which a coalition Government was formed made up of Conservatives and Liberal Democrat MPs.

MPs represent the views of the electorate in the **House of Commons** [HC], the lower house of Parliament which actually has the greatest political power. The second part of Parliament is the **House of Lords** [HL] whose *unelected* members complement the work of the House of Commons. The third and final part of Parliament is **The Monarch** (currently Queen Elizabeth II), who signs the laws that Parliament votes for; this is known as **Royal Assent**. Along with the House of Commons and the House of Lords, the **Crown** is an integral part of the institution of Parliament.

So, please do not confuse Parliament and Government! This is a basic mistake which shows up the weak student. You must show that you know the difference between the two. Just remember these facts:

1. **Government runs and manages the country**, that is, the Government decides how our taxes are spent, for example.
2. **Parliament makes laws**, it debates topical issues and looks at how our taxes are spent to help run the country. For example, Parliament debates and votes on how long people can be arrested on suspicion of terrorism; how long suspects can be held without being charged for a criminal offence. Parliament's main responsibility is lawmaking (also known as the **Legislature**). It is responsible for approving and changing the country's laws. To pass a new law both the House of Commons and the House of Lords must agree. If a bill before Parliament is agreed, this will then receive Royal Assent by the Monarch, and will then be known as an Act of Parliament, or Statute.