

The Constitution

Every country has a constitution of some kind. There are many definitions of the term, such as that provided by the Oxford English Dictionary: **‘the system or body of fundamental principles according to which a nation state or body politic is constituted and governed’**. Constitutions declare the existence of the state and express the most important principles, rules and procedures of the political system.

The UK does not have a written constitution in the sense of a single written document, though substantial elements of it are written in various places. It is largely because of its ancient origins that the British Constitution is so unsystematic

Sources of the British Constitution

- ❖ **Magna Carta (1215)** asserted the view that a monarch could and should be controlled by his subjects:
- ❖ **the Act of Settlement (1701)** strengthened Parliament’s control over the sovereign, by determining the succession to the throne.
- ❖ **Major statutes** : There are some major statutes that have an impact on the constitutional structure, in that they have changed the way people are governed or the relationships within the state: e.g. the Parliament Acts (1911 and 1949), both of which trimmed the powers of the House of Lords; the Scotland Act (1998) that established the Scottish Parliament
- ❖ **The prerogative powers of the Crown** : The Royal Prerogative comprises a number of powers or privileges performed in the past by the monarch, but now performed in his or her name by ministers. Their authority derives from the Crown, rather than from Parliament, so that parliamentary authority is not required by the Executive as it conducts these tasks.
- ❖ **The law and customs of Parliament** : The rules relating to the procedures of the House and the privileges of its members are set out in the book consulted by the Speaker.
- ❖ **Common and case (judge-made) law** : Common law is the immemorial law of the people (such as the claim to the right of free speech and free assembly), which in practice has been determined and implemented by judges. Court decisions affect the Constitution by interpreting statutes that might be unclear or establishing individual rights in relation to those in authority

- ❖ **Constitutional Conventions** : These are unwritten rules of constitutional behaviour, customs of political practice that are usually accepted and observed: for example, that the choice of prime minister should be made from the House of Commons .
- ❖ **European Union law** : European Union law comprises primary legislation, as is to be found in the Treaty of Rome and the other treaties, and secondary law, as is to be found in EU regulations and directives. European law takes precedence over UK law, is binding on the UK and applicable by UK courts.

The Characteristics of the British Constitution

The British Constitution is:

- **uncodified**, there being no single document in which most of the rules concerning the government of the country are brought together.
- **unitary rather than a federal**. Parliament at Westminster makes laws for all parts of the United Kingdom. Parts of the UK may have powers devolved to them, nonetheless all parts of the kingdom are subject to the legislative supremacy of Parliament.
- **flexible. Being unwritten**, in a formal sense, it can be easily amended, and even drastic changes can be made by passing an Act of Parliament, though there is a developing custom that fundamental changes would probably require a referendum if they have not already been submitted to the electorate in a general election.

The basic elements of the Constitution rest on three major constitutional principles:

- 1. The sovereignty of Parliament** – the idea that Parliament theoretically possesses and exercises unlimited authority
- 2. The rule of law** – the principle that no one is above the law, that ministers, public authorities and individuals are subject to it
- 3. The fusion** (rather than the complete separation) of powers – government ministers who head executive departments sit as members of the legislature and are responsible to it.