

The term constitutional law has been a subject of various definitions. According to Hood et al (constitutional and administrative law, 5th edition), constitutional law is the law relating to the constitution of the state.

The key features of this definition are the employment of terms such as law, state and constitution.

What is a constitution?

The word constitution can be used in a broad sense and in a narrow sense.

Using the broader sense, it can be defined as a body of fundamental rules, principles, practices, conventions, understandings, attitudes, usages relating to the system of government of a country. This definition defines the nature of a constitution.

The constitution is defined broadly according to Sir Kenneth Wheare as "the whole system of government of a country, a collection of rules which establish and regulate or govern the government."

These rules may be legal or non-legal. It may be legal in the sense that it is recognized and applied by the courts and it is non-legal because it takes the form of usages, understandings, customs, or conventions which the courts do not recognize.

This makes a distinction between hard and soft laws. Hard laws refer to the rules or principles which judges' use and can enforce in the courts. Soft laws, although important may not be enforced.

According to Marshall, the institutions of government are put in place by the Constitution. This definition tells us that the institutions of government are not just created but are also given power to function. The rule of the constitution regulation these institutions. It provides the rules that will govern the relationship between the institution of government and the governed as well as the relationship between a citizen and another citizen.

A constitution is a document having special legal sanctity which sets out the framework and the principal functions of the organs of government of a state and declares the principles governing the operation of those organs.

According to the narrow sense, the word constitution is used to describe not the whole collection of rules, legal and non-legal but rather a selection of them which has been usually be embodied in one document or in a few closely related documents. What is more, this selection is almost invariably a selection of legal rules only. It should however be noted that most constitutions do not spell out in full, all the powers and functions of government. The constitution merely provide for powers of the organs of government only in broad and general terms. Indeed when we speak of the British or English constitution it refers to the collection of legal and non-legal rules which govern the government of Britain. The legal rules are embodied in statutes like the act of settlement which regulates the succession to the throne, orders and regulations issued under the prerogative or under statutory authority, may be embodied in the decisions of the courts. The non-legal rules are found in the customs and conventions. This definition defines the form of the constitution. In the narrow definition, the emphasis is on the form in which the constitution is presented i.e. a document and a premium is placed on writing.

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Kern Alexander, M. David Alexander



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Table of Contents Constitutional Law Amer Const Const R L 05 Suppl

1. Understanding the eBook Constitutional Law Amer Const Const R L 05 Suppl
 - The Rise of Digital Reading Constitutional Law Amer Const Const R L 05 Suppl
 - Advantages of eBooks Over Traditional Books
2. Identifying Constitutional Law Amer Const Const R L 05 Suppl
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Constitutional Law Amer Const Const R L 05 Suppl
 - User-Friendly Interface
4. Exploring eBook Recommendations from Constitutional Law Amer Const Const R L 05 Suppl
 - Personalized Recommendations
 - Constitutional Law Amer Const Const R L 05 Suppl User Reviews and Ratings
 - Constitutional Law Amer Const Const R L 05 Suppl and Bestseller Lists
5. Accessing Constitutional Law Amer Const Const R L 05 Suppl Free and Paid eBooks
 - Constitutional Law Amer Const Const R L 05 Suppl Public Domain eBooks
 - Constitutional Law Amer Const Const R L 05 Suppl eBook Subscription Services
 - Constitutional Law Amer Const Const R L 05 Suppl Budget-Friendly Options
6. Navigating Constitutional Law Amer Const Const R L 05 Suppl eBook Formats
 - ePub, PDF, MOBI, and More
 - Constitutional Law Amer Const Const R L 05 Suppl Compatibility with Devices
 - Constitutional Law Amer Const Const R L 05 Suppl Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Constitutional Law Amer Const Const R L 05 Suppl
 - Highlighting and Note-Taking Constitutional Law Amer Const Const R L 05 Suppl
 - Interactive Elements Constitutional Law Amer Const Const R L 05 Suppl
8. Staying Engaged with Constitutional Law Amer Const Const R L 05 Suppl

-
- Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Constitutional Law Amer Const Const R L 05 Suppl
9. Balancing eBooks and Physical Books Constitutional Law Amer Const Const R L 05 Suppl
- Benefits of a Digital Library
 - Creating a Diverse Reading Collection Constitutional Law Amer Const Const R L 05 Suppl
10. Overcoming Reading Challenges
- Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine Constitutional Law Amer Const Const R L 05 Suppl
- Setting Reading Goals Constitutional Law Amer Const Const R L 05 Suppl
 - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Constitutional Law Amer Const Const R L 05 Suppl
- Fact-Checking eBook Content of Constitutional Law Amer Const Const R L 05 Suppl
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning
- Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
14. Embracing eBook Trends
- Integration of Multimedia Elements
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