# Contents

*List of Contributors*  xi

1. Public Law in a Multi-Layered Constitution  
   *Nicholas Bamforth and Peter Leyland*  
   The Multi-Layered Constitution: An Overview  4  
   The Multi-Layered Constitution: the features, as outlined in the essays  10  
   Conclusion  25

2. Constitutional Law: the Third Order of the Political  
   *Martin Loughlin*  
   The Concept of the Political  30  
   Politics and the State  33  
   Politics as Statecraft  35  
   The Third Order: Constitutional Law  40  
   Constitutions  42  
   Constitutional Legalism  46  
   Conclusion  50

3. What is Parliament For?  
   *Adam Tomkins*  
   Introduction  53  
   Some History: What was Parliament For?  55  
   Parliament Since 1990  58  
   Parliament and Improving Scrutiny  61  
   Future Developments: A Proposal  74

4. European Governance and Accountability  
   *Carol Harlow*  
   Questions About Accountability  79  
   Democratic and Political Accountability  81  
   Audit and Accountability  90  
   Accountability Through Law  94  
   Conclusions  97

5. Devolution and England: What is on Offer?  
   *Richard Cornes*  
   Introduction  103  
   Devolution and New Labour  105
viii  Contents

Defining Devolution 107
What is England Being Offered? 122
Conclusion: Could the English Question be Answered by
Addressing the Union Question? 130

6. Does the Devolved Northern Ireland Need an Independent Judicial
   Arbiter? 133
Brigid Hadfield
   Introduction 133
   Devolution and the Judges: Earlier Versions 134
   Robinson v Secretary of State for Northern Ireland 148
   Conclusion 154

7. Modernising Government and the E-Government Revolution:
   Technologies of Government and Technologies of Democracy 157
John Morison
   Introduction 157
   Governmentality and Constitutional Theory 158
   Government, Governance and Governmentality 163
   Modernising Government 168
   E-Government: UK Online as a Technology of Governance 173
   E-Government: a Technology of Democracy 182
   Conclusion 187

8. UK Utility Regulation in an Age of Governance 189
Peter Leyland
   Introduction 189
   From Public to Private Ownership/Standard Form of Nationalisation 192
   Privatisation and Regulation 194
   Regulation and New Labour: Correction, Repair and Consultation 202
   Utility Regulation and Devolution 205
   Utility Regulation, Concordats and Environmental Protection 212
   Co-ordinating Regulation 215
   Conclusion 219

Stephanie Palmer
   Background 223
   Principles of Freedom of Information 227
   The New Freedom of Information Legislation 232
   The Exemptions 234
   The Information Commissioner and Independent Scrutiny 245
   Conclusion 246
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Author</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Accountability and the Public/Private Distinction</td>
<td>Peter Cane</td>
<td>247</td>
</tr>
<tr>
<td></td>
<td>Introduction</td>
<td></td>
<td>247</td>
</tr>
<tr>
<td></td>
<td>The Public/Private Distinction in Operation</td>
<td></td>
<td>249</td>
</tr>
<tr>
<td></td>
<td>Critiques of the Public/Private Distinction</td>
<td></td>
<td>261</td>
</tr>
<tr>
<td></td>
<td>Conclusion</td>
<td></td>
<td>275</td>
</tr>
<tr>
<td>11</td>
<td>Courts in a Multi-Layered Constitution</td>
<td>Nicholas Bamforth</td>
<td>277</td>
</tr>
<tr>
<td></td>
<td>The Reception of EC Law within the United Kingdom</td>
<td></td>
<td>279</td>
</tr>
<tr>
<td></td>
<td>The Human Rights Act 1998 and the Courts</td>
<td></td>
<td>290</td>
</tr>
<tr>
<td></td>
<td>The ‘spill over’ effect</td>
<td></td>
<td>293</td>
</tr>
<tr>
<td></td>
<td>The Multi-Layered Constitution and Public Law Theory</td>
<td></td>
<td>301</td>
</tr>
<tr>
<td></td>
<td>Conclusion</td>
<td></td>
<td>309</td>
</tr>
<tr>
<td>12</td>
<td>Reinventing Administrative Law</td>
<td>Michael Taggart</td>
<td>311</td>
</tr>
<tr>
<td></td>
<td>The Classic Model of Administrative Law</td>
<td></td>
<td>312</td>
</tr>
<tr>
<td></td>
<td><em>Wednesbury</em>: the Case</td>
<td></td>
<td>313</td>
</tr>
<tr>
<td></td>
<td><em>Wednesbury</em> Today</td>
<td></td>
<td>323</td>
</tr>
<tr>
<td></td>
<td>Towards a Culture of Justification</td>
<td></td>
<td>332</td>
</tr>
<tr>
<td></td>
<td>Conclusion</td>
<td></td>
<td>334</td>
</tr>
<tr>
<td>13</td>
<td>Sovereignty’s Blight: Why Contemporary Public Law Needs the Concept of ‘Due Deference’</td>
<td>Murray Hunt</td>
<td>337</td>
</tr>
<tr>
<td></td>
<td>Introduction</td>
<td></td>
<td>337</td>
</tr>
<tr>
<td></td>
<td>The Problem: What Does <em>Daly</em> Require?</td>
<td></td>
<td>341</td>
</tr>
<tr>
<td></td>
<td>The False Step: Emergence of the Spatial Metaphor</td>
<td></td>
<td>344</td>
</tr>
<tr>
<td></td>
<td>‘Due Deference’ as an Alternative Approach</td>
<td></td>
<td>349</td>
</tr>
<tr>
<td></td>
<td>Practical Examples of Why ‘Due Deference’ Matters</td>
<td></td>
<td>354</td>
</tr>
<tr>
<td></td>
<td>Conclusion</td>
<td></td>
<td>369</td>
</tr>
<tr>
<td>14</td>
<td>Civil Liberties and Human Rights</td>
<td>Conor Gearty</td>
<td>371</td>
</tr>
<tr>
<td></td>
<td>Introduction</td>
<td></td>
<td>371</td>
</tr>
<tr>
<td></td>
<td>Civil Liberties, ‘Human Rights’ and the ECHR</td>
<td></td>
<td>372</td>
</tr>
<tr>
<td></td>
<td>Civil Liberties in Britain</td>
<td></td>
<td>380</td>
</tr>
<tr>
<td></td>
<td>Civil Liberties, the Judiciary and the Political Process</td>
<td></td>
<td>382</td>
</tr>
<tr>
<td></td>
<td>Conclusion</td>
<td></td>
<td>389</td>
</tr>
<tr>
<td>15</td>
<td>Standing in a Multi-Layered Constitution</td>
<td>Joanna Miles</td>
<td>391</td>
</tr>
<tr>
<td></td>
<td>A Case Study: Greenpeace at Home and Abroad</td>
<td></td>
<td>392</td>
</tr>
</tbody>
</table>
## Contents

A. Standing Rules 393  
B. Intervention Rules 398  
The Foundations of Standing and Intervention Rules 400  
Standing and Intervention Rules and the Constitutional Role of the Courts 407  
Conclusion 419

Index 421