

Contents

List of Contributors	ix
----------------------	----

Foreword by Sir Stephen Sedley	xi
--------------------------------	----

Introduction	xv
--------------	----

1 Administrative Law's Reaction to the Changing Concepts of Public Service — Rodney Austin	1
--	---

Summary — Introduction — The historical perspective: subjects not citizens: the top-down tradition — The revolution of the right: the creation of the citizen/consumer, the privatisation of the state and the imposition of the market on the provision of public services — The contracting state and the new public management: the implications for public law — Conclusion

2 Mitigating the Democratic Deficit? Judicial Review and Ministerial Accountability — Mike Radford	35
--	----

Summary — Introduction — Political accountability — Access to information — The nature of judicial review — The reach of judicial review — The contribution of judicial review to government accountability — Conclusion

3 Delegated Legislation: A Necessary Evil or a Constitutional Outrage? — Gabriele Ganz	60
--	----

Summary — Introduction — Skeleton acts — Henry VIII clauses — Deregulation orders — Parliamentary control — Judicial control — Quasi-legislation — Conclusion

4 The Ombudsman: Parochial Stopgap or Global Panacea? — 83 **Gavin Drewry**

Summary — Ombudsmen and administrative law — The development of ombudsmen: a worldwide movement — Persuasion versus enforcement — Sweden: the benchmark case — Twentieth century developments: the ombudsman movement — Ombudsman Westminster-style: the Parliamentary Commissioner for Administration — The efficacy of ombudsmen — Conclusion

5 A Woolf in Sheep's Clothing? Shifts Towards Informal Resolution 107 **of Complaints in the Health Service — Linda Mulcahy and Judith Allsop**

Summary — Introduction — Neglect of the lower strata of the civil justice system — Alternative models of grievance handling — The current context: general shifts towards informalism — The shift towards informalism in NHS complaint systems — Criticisms of the procedure — Reforming the complaints system — A Woolf in sheep's clothing? — Conclusion

6 The Public Law–Private Law Distinction: A Comparative and 136 **Philosophical Approach — Nicholas Bamforth**

Summary — Introduction — The descriptive claim — The normative claim — Two criticisms — Conclusion

7 Obsolescence and Renewal: Judicial Review in the Private Sector — 160 **John Alder**

Summary — Introduction — The courts' supervisory jurisdiction — The interpenetration of the public and the private — The courts' approach to the public-private distinction — The substantive law of judicial review — Conclusion

8 Surveying the Grounds: Key Themes in Judicial Intervention — 184 **Michael Fordham**

Summary — Introduction — Vigilance and restraint — Substance and procedure — Soft and hard-edged questions — Functional insight — Beyond *vires* — Fundamental rights — Conclusion

9 No Standing Still on Standing — Chris Himsworth 200

Summary — Introduction — Standing now — Standing ahead — Conclusion: no standing still

10 Withdrawing: A Problem in Judicial Review? — Maurice Sunkin 221

Summary — Introduction — The background: the growth in legal challenge — Withdrawals, dispute resolution and accountability — Conclusion: a new approach to withdrawal

**11 The Constitutional Basis of Judicial Remedies in Public Law — 242
Peter Cane**

Summary — The public law remedies — The place of remedies in the law — A criterion for assessing the constitutional basis of judicial remedies — Mandatory and prohibitory orders — Quashing orders — Orders for the payment of money — Substitutionary orders — Declarations — Bargaining around judicial remedies — Conclusion

**12 The Impact of Community Law on Domestic Public Law — 271
Paul Craig**

Summary — EC law: the impact on constitutional doctrine — EC law and judicial review — EC law and remedies — Conclusion

**13 Judicial Review of Prerogative Power in the United Kingdom 297
and France — David Pollard**

Summary — Introduction — The United Kingdom — France — Conclusion

**14 Public Interest Immunity: Freedom of Information and Judicial 321
Discretion — Adam Tomkins**

Summary — Public interest immunity and administrative law — Public interest immunity and ministerial discretion — Public interest immunity and judicial discretion — Towards greater openness? — Sounding the retreat — Public interest immunity in context: police cases — Public interest immunity in context: criminal trials — The aftermath of Scott: a new approach — Conclusion: towards greater freedom of information

**15 Civil Liberties and Judicial Review: Can the Common Law 347
Really Protect Rights? — Fiona Donson**

Summary — Introduction: the Diceyan approach to protecting civil liberties — *Wednesbury* unreasonableness: a practical example of human rights based judicial review? — Human rights and judicial review: a coherent approach? — Conclusion

**16 Public Law History and Theory: Some Notes Towards a
New Foundationalism: Part 1 — Peter Leyland and Terry Woods** 374

Summary — Introduction — Public law in historical and theoretical perspective
— A new way forward: public law and the functionalist critique of the formalist
control paradigm — Conclusion

**17 Public Law History and Theory: Some Notes Towards a
New Foundationalism: Part 2: Some Contemporary Developments
and a Sketch for the Future — Peter Leyland and Terry Woods** 405

Summary — Introduction — T.R.S. Allan: public law and liberal normativism —
Norman Lewis: 'Choice and the Legal Order' — Paul Craig: a new foundationalism
for public law? — Carol Harlow: 'Changing the Mindset' — Martin Loughlin: the
search for a new unifying thesis — Jurgen Habermas and Michel Foucault: two
perspectives on law's place in the modern world — Conclusion: administrative law
theory: a new foundationalism?

Index 451