

Detailed Contents

<i>Foreword by Saira Salimi, Speaker's Counsel</i>	v
<i>Summary Contents</i>	vii
<i>List of Contributors</i>	xv
1. Introduction	1
<i>Alexander Horne and Gavin Drewry</i>	
Part 1: Privilege, Exclusive Cognisance and Conduct	
2. Privilege, Exclusive Cognisance and the Law	7
<i>Paul Evans</i>	
I. Introduction: Roots and Purposes	7
II. The Four Ancient Privileges.....	9
III. To Legislate or not to Legislate	10
IV. Freedom of Speech	17
A. Comity and the <i>sub judice</i> Rule.....	23
V. Freedom from Arrest.....	28
VI. Exclusive Cognisance.....	31
A. Control of Membership	32
B. Recall	34
C. Mental Health	35
D. The Application of Statutes to Parliament	36
VII. Punishment for Contempt of Parliament	38
VIII. Conclusion	41
3. The Law and the Conduct of Members of Parliament	43
<i>Richard Kelly, Matthew Hamlyn and Oonagh Gay</i>	
I. Introduction	43
II. Electoral Matters.....	45
A. Determination of Election Disputes by the House of Commons.....	45
III. The Declaration and Registration of Members' Interests	47
IV. The Committee on Standards in Public Life and a Code of Conduct for Members of Parliament.....	48
A. The Parliamentary Commissioner for Standards	50
B. Standards Committee—Addition of Lay Members.....	52
V. Party Funding and Donations and Loans to Members	53
VI. Consultant Lobbying and Members.....	54
VII. Members' Expenses and IPSA.....	54

A.	Arrangements in the House of Commons in Relation to Members' Allowances	55
B.	The MPs' Expenses Scandal 2009	57
C.	The Passage of the Parliamentary Standards Act 2009	59
D.	Compliance.....	61
VIII.	Investigation of Members' Expenses—Questions of Jurisdiction—The Legg Review.....	62
	A. Convictions for Expenses Fraud: The Aftermath.....	64
IX.	Recall of MPs	64
X.	The House of Lords.....	65
	A. Appointment of the House of Lords Commissioner for Standards.....	66
	B. Disciplinary Powers of the House of Lords.....	67
	C. Suspension and Expulsion of Members of the Lords.....	68
XI.	Reflections.....	69
Part 2: Parliament: Select Committees and Internal Arrangements		
4.	The Governance of Parliament.....	75
	<i>Ben Yong</i>	
	I. Introduction	75
	II. The Separation of Powers and the Internal Complexity of the Branches of Government	77
	III. The Peculiar Nature of Parliament	79
	IV. The House of Commons.....	82
	A. Key Actors in House of Commons Governance	87
	V. The House of Lords.....	91
	A. Key Actors in House of Lords Governance	95
	VI. Restoration and Renewal	98
	VII. Conclusion.....	101
5.	Select Committees: Powers and Functions.....	103
	<i>Christopher Johnson</i>	
	I. Introduction: Committees and the Chamber	103
	A. Origins	103
	B. Developments in the Late Twentieth Century	106
	II. The Main Types of Committee.....	108
	A. Ad hoc Committees.....	108
	B. Investigative Committees	109
	C. Legislative Committees	109
	D. Domestic and Statutory Committees	110
	III. The Functions of Committees	111
	A. Legislative Scrutiny.....	111
	B. Holding the Government to Account.....	112
	C. Promoting Public and Parliamentary Debate	113
	D. Limitations to Committee Work: The <i>sub judice</i> Rule.....	114

IV.	Committee Powers	114
A.	Power to Report	115
B.	Power to Appoint Sub-committees.....	115
C.	Power to Send for Persons, Papers and Records.....	115
D.	Power to Take and Publish Evidence	116
E.	Power to Travel	117
F.	Power to Appoint Specialist Advisers	118
V.	Reflections.....	118
6.	Relationship between the Two Houses	125
<i>Lord Norton and Lucinda Maer</i>		
I.	Constraints.....	126
A.	Statutes	126
B.	Conventions.....	127
C.	Practices	130
II.	Cooperation	137
A.	All-Party Parliamentary Groups (APPGs)	141
B.	Party Groups	142
C.	Social Space.....	144
III.	Conclusion	145
7.	Public Legal Information and Law-making in Parliament.....	147
<i>Jack Simson Caird</i>		
I.	The Government's PLI	150
A.	Explanatory Notes	152
B.	Explanatory Memoranda for Bills	158
C.	Explanatory Notes and Memoranda for SIs.....	160
II.	Parliament's PLI.....	164
A.	Committee Reports	164
B.	House of Commons Library Briefing Papers.....	167
C.	House of Lords Briefing Papers	168
III.	A Case Study of PLI as Constitutional Dialogue—The European Union Referendum Act 2015	169
A.	<i>The Miller Case</i>	170
IV.	The Constitutional Value of PLI	173
Part 3: Devolution and the English Question		
8.	Devolution and the UK Parliament.....	181
<i>Sir Paul Silk</i>		
I.	Introduction	181
II.	What has Happened in Scotland?	181
III.	What has Happened in Wales?	186
IV.	Developments in Northern Ireland	190
V.	Devolution's Different Path in England	194
VI.	Some Issues	196

A.	The Problems of Two Legislatures.....	196
B.	Legislative Consent.....	198
C.	Brexit.....	200
D.	Role of the Supreme Court.....	202
E.	Rebalancing the Constitution.....	204
9.	'English Votes for English Laws'	207
	<i>Liam Laurence Smyth</i>	
I.	Introduction.....	207
II.	English Votes for English Laws.....	209
A.	The Return of EVEL.....	209
B.	The Grayling Approach.....	209
C.	Debating EVEL.....	210
III.	Extent and Application.....	212
IV.	The EVEL Standing Orders	212
V.	Select Committee Scrutiny	214
VI.	Certification of Bills.....	216
VII.	Budget Procedure.....	219
VIII.	Certification of Statutory Instruments.....	219
IX.	Conclusion	224
Part 4: Rights, Justice and Scrutiny		
10.	Parliament and Human Rights.....	231
	<i>Alexander Horne and Megan Conway</i>	
I.	Introduction.....	231
II.	Human Rights and Political Constitutionalism	232
III.	The JCHR.....	236
IV.	The JCHR and Legislative Scrutiny.....	238
A.	Introduction	238
B.	Meetings with Bill Teams	239
C.	Information Provided to the Committee: Explanatory Notes and Human Rights Memoranda.....	240
V.	Thematic Inquiries, Human Rights Treaty Monitoring, and the Scrutiny of Remedial Orders	241
A.	Thematic Inquiries	241
B.	Human Rights Treaty Monitoring.....	242
C.	Scrutiny of Remedial Orders	243
VI.	The Effectiveness of the JCHR	245
A.	How can Effectiveness be Measured?	245
B.	The Impact of Thematic JCHR Reports on Government Policy	247
C.	Pre-appointment Hearings	249
D.	Conclusions on the Thematic Work of the JCHR	250
E.	The Impact of JCHR Reports on Government Legislation....	251

F.	Constraints on Impact	262
G.	Room for Improvement?.....	263
VII.	Reflections.....	264
11.	Parliamentary Accountability for the Administration of Justice.....	267
	<i>Gavin Drewry</i>	
	I. The Constitutional Territory of Accountability.....	267
	II. A Negative Tradition of Accountability—The View from the Lord Chancellor's Window	270
	A. Non-accountability in the 1980s.....	272
	B. Enter Lord Mackay—The Green Paper Furore.....	273
	III. New Public Management and the Administration of Justice	275
	IV. The Constitutional Reform Act 2005—Redrawing the Boundaries.....	278
	A. Some Implications for Parliamentary Accountability	280
	V. The Ministry of Justice and Parliament	283
	VI. The Role of Select Committees.....	285
	VII. Conclusions	289
12.	Parliament and the Courts: A Pragmatic (or Principled) Defence of the Sovereignty of Parliament.....	293
	<i>Dawn Oliver</i>	
	I. The Doctrine of the Sovereignty of Parliament.....	293
	A. Sovereignty vs Privilege.....	296
	B. The Special Position of European law	298
	C. A Democratic Principle?	298
	II. A Choice for the UK: Constitutional Supremacy or Parliamentary Sovereignty and Pragmatism?.....	300
	A. Towards Judicial Striking Down of Statutory Provisions?	301
	B. Parliamentary Sovereignty—A Doctrine, not a Democratic Constitutional Principle.....	303
	III. Conflict, Comity and Culture in Relations between the Courts, Parliament and the Executive	307
	IV. Deterrents Against Abuse of Parliamentary Sovereignty	309
	A. Political Cultural Capital.....	309
	B. International and European Standards	310
	C. The Roles of Civil Servants and Government Lawyers.....	311
	D. The Houses of Parliament: The Roles of Select Committees	313
	E. Some Reflections	315
	V. What More is to be Done about Parliamentary Sovereignty?	315
	A. Written Constitution?	316
	B. Stronger Parliamentary Committees.....	317
	C. A Greater Role for the Courts?.....	318
	D. Towards an Independent Scrutiny Commission?	319
	VI. Summary and Conclusions.....	321

13.	Financial Control and Scrutiny	323
	<i>Colin Lee and Phil Larkin</i>	
	I. Introduction.....	323
	II. The Three Dimensions of Financial Control	324
	A. The Constitutional Foundations of Control	324
	B. The Procedural Rules for Financial Business.....	327
	C. The Politics of Fiscal Control	329
	III. Formal Authorisation of Taxation and Spending	333
	A. The Budget Statement and Ways and Means Resolutions	333
	B. The Finance Bill and Scrutiny of Tax Measures	335
	C. The Estimates and Supply Procedure	337
	IV. Select Committee Scrutiny	339
	A. Introduction.....	339
	B. The Public Accounts Committee	339
	C. Other Select Committees.....	341
	V. Conclusions.....	343
14.	Parliamentary Scrutiny of Delegated Legislation	347
	<i>Adam Tucker</i>	
	I. Introduction.....	347
	II. The Nature and Significance of Delegated Legislation	349
	A. The ‘Bedroom Tax’	351
	B. ‘Workfare’	351
	C. The Scope of Legal Aid	352
	D. Banking Failures in the Financial Crisis	353
	E. Sunset Clauses in Anti-Terror Legislation	354
	F. New Criminal Offences	355
	III. The Case for Parliamentary Scrutiny of Delegated Legislation.....	357
	A. Parliamentary Sovereignty.....	358
	B. The Separation of Powers.....	360
	C. The Need for Scrutiny.....	361
	IV. The Adequacy of Parliamentary Scrutiny of Delegated Legislation	363
	V. Conclusion	370
	<i>Index</i>	373