

# CONTENTS

<i>Table of Cases</i>	<i>page vii</i>	
<i>Preface</i>	xi	
1	Introduction	1
2	A historical constitutional approach	7
	Dicey's analytical approach	7
	A descriptive analytical legacy	9
	Dicey's methodological predicament	11
	The historical constitution	15
	Towards a methodological reformation	24
	Aims and method	26
	The liberal normativist alternative	29
	The political constitution	33
	Complementary and competing points of view	39
	The historical constitution's relevance	41
3	The Crown: evolution through institutional change and conservation	46
	The medieval European matrix	47
	The Crown as a corporation sole	50
	English constitutional adaptation	54
	Later European influences: Maitland and modernisation	58
	The impact of Community law	64
	Domestic English resources	67
	English peculiarities and European influences	69
	Sources of rationality and legitimacy	70
4	The separation of powers as a customary practice	74
	The French standard	76
	Early English advocacy	78
	Historic legislation on judicial power and judicial tenure	80
	Doctrinal scepticism	83

	Doctrinal inconsistency	86
	Evolving judicial practice	87
	The recent constitutional reforms	94
	The English paradox	100
5	Parliamentary sovereignty and the European Community: the economy of the common law	103
	Dicey's orthodoxy	105
	Rules of manner and form	107
	Judicial revolution	110
	Principles of legal and political morality	119
	The economy of the common law	123
	Resilience through change and continuity	126
6	The brief rule of a controlling common law	128
	Coke's common law of reason	131
	Contrasting interpretations	132
	<i>Rex . . . sub Deo et lege</i>	141
	The European and the English in reason and rhetoric	143
	A controlling common law and a transcendent Parliament	148
	The eclipse of Coke's controlling common law	150
	The historical constitutional significance of Coke's common law	156
7	Dicey's progressive and reactionary rule of law	157
	The formality of Dicey's three meanings	158
	The sway of a sovereign Parliament	161
	A constitutional conundrum	164
	Progressive whig history	165
	English reactions and Continental comparisons	172
	Dicey's appeal	184
8	Beyond Dicey	186
	Dicey's continuing influence	188
	A substantive rule of law	191
	Bi-polar sovereignty	216
	The Human Rights Act 1998	221
	Formation of doctrine in the historical constitution	234
9	Conclusions and implications	237
	<i>Bibliography</i>	245
	<i>Index</i>	264