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Preface

The European context in which our domestic public law is developing – and by public law I include constitutional law, administrative and regulatory law and human rights – has established the conditions for a series of striking developments in our public law. Legal sovereignty, principles of judicial review and human rights protection have all been fundamentally and permanently affected by our membership of the European Union and our presence in Europe. Many features of our domestic public law are unrecognisable from ten years ago, let alone thirty when the United Kingdom acceded to the European Economic Community, as it then was. A constitution for the European Union, economic and monetary union, the growing implications of devolution and subsidiarity within the state and the impact of the Human Rights Act 1998 will effect further transformations. To fail to appreciate the European context in which our domestic law is developing is to fail to comprehend our public law.

Context is one thing. Questions are another. Is the influence of European law and legal thought on domestic law a one-way process? Has our domestic law influenced European legal thought including the law of the European Community, the jurisprudence of Member States and the jurisprudence of the Court of Human Rights at Strasbourg? To what extent are other national systems influencing Community law and, either directly or indirectly, each other? This book asks if such reciprocal influences are taking place; to what extent is a European public law emerging? I can only speak of the position with respect to English and Welsh public law. Similar questions are being asked in other Member States. I make reference to developments in other countries, but I have to concentrate my attention on the system I know best. Is there something called European public law

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emerging? Is there something which is quite distinctive although not a 'system' possessing its own jurisdiction, courts and tribunals? Is European public law a body of thought, practice and principles reflecting an increasingly shared perspective on the relationship between power, its exercise and its control in Europe today?

I am grateful to the many friends and colleagues who assisted me in this present endeavour. Jurgen Schwarze, Roger Errera, Mario Chiti, Jeffrey Jowell and Douglas Lewis have in different ways, and along with countless others, provided instruction. Tony Prosser, Chris Kerse, John Bell, Ian Harden, Stephen Tierney, David Bonner and Gordon Anthony read chapters and/or offered valued and valuable advice. The fact that it may not always have been totally accepted left me weaker. To my colleagues Mike Feintuck, Martina Kunnecke, John Hopkins, Gary Edles and Mike Varney I am grateful in particular for their advice in specific areas. The imperfections in the final product are mine alone.

Chapter 4 had its origins as a chapter in Professor Schwarze (ed) *The Birth of a European Constitutional Order* (2000) and Chapter 8 was originally a co-authored chapter with Professor Jowell in Schwarze (ed) *Administrative Law Under European Influence* (1996). Both chapters have been substantially rewritten and updated.

Patrick Birkinshaw
2 January 2003

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