

Index

- access to justice, rule of law and 55
- accountability
 - control, and 37
 - Information Commissioner, and 273–6
 - inquiries, and 660
 - process of 63–4
 - see also* openness; transparency
- Administrative Court
 - institutional reform, and 823–9
 - judicial review procedure 830
 - Upper Tribunal, and 600
- administrative discretion *see* discretion
- administrative justice
 - ‘bottom-up’ perspective on 547, 550
 - complaint-handling systems 549, 550
 - decision-making, and 549
 - definition of 545–52, 625
 - inquiries, and 660
 - ‘internal law of administration’ 548
 - models of 548
 - scope of 549
 - see also* internal reviews; ombudsmen; tribunals
- administrative law
 - clash of legal theories 53–7
 - emergence of modern 2
 - historical development of 4–7
 - procedure *see* procedure
 - purpose of 3
 - thematic overview of 1–11
 - theories of 4, 7–11
 - theory of the state, and 1
 - see also* government administration
- agencies
 - accountability 378–97
 - agency model 346–59
 - audit of 381–4
 - duty of care 505, 507
 - European Union, and 347
 - executive agencies 47
 - growth of 347
 - importance of 345
 - judicial review, and 384–93
 - legitimacy of 348–52
 - maturation of UK agency model 353–9
 - multiple and network accountabilities 378–81
 - ‘new public management’, and 426
 - non-use of, reasons for 346
 - Ofwat as case study 360–78
 - political accountability 381–4
 - privatisation, and 347
 - regulatory agencies 47, 347, 353
 - statutory review and appeal 394–7
 - transfer of central government functions to 46–9, 83
 - US system compared 346
- algorithms *see* information technology
- appeals
 - internal reviews, and 553
 - statutory appeals 394–7
 - statutory reviews, and 394–7
- artificial intelligence *see* information technology
- Attlee, Clement 37
- audit
 - ‘4 Es’ principles of VFM 51
 - agencies, of 381–4
 - expansion of public audit 50–3
 - local authorities 51
 - ‘new public management’, and 50, 61, 410
 - private finance initiative 472
 - ‘value for money’ (VFM) 50
- authoritarianism
 - administrative discretion equated with 259
- Bell Report on supplementary benefit appeal tribunals (1975) 592–3

- benefits *see* welfare state
 Bentham, Jeremy 4
 'better legislation' 191, 200
 'better regulation'
 agencies, and 345, 349, 355, 366, 368, 375,
 378, 381, 383, 386, 388
 civil service, and 188
 Coalition government 2010–15 334–43
 concept of 78, 311
 European Union, and 110
 franchising, and 477, 482
 freedom of information, and 356
 impact assessment, and 195
 juridification, and 305
 New Labour 322–34
 progression of 302, 304
 proportionality, and 388, 752
 rule-making, and 191
 secondary legislation, and 219
 transparency, and 65
 Beveridge Report on social insurance (1942) 38
 bias
 impartiality, and 696
 predetermination, and 701–3
 'reasonable person' standard, and 697–701
 rule against 696
 Blair, Tony 57–8
 blame, assignment by inquiries 661
 'blue rinse' *see* monetarism; Thatcher, Margaret
 Brexit
 contract, and 441, 446–8
 devolved administrations, and 176–7
 effect of 11, 116–32
 future EU/UK relationship, 132–7
 judicial review, and 176–7
 juridification, and 79, 127
 referendum (2016) 11
 reform, and 78
 royal prerogative, and ('Brexit' cases) 28–32
 Brown, Gordon 31, 58
 bulk interception *see* interception of
 communications
 business
 contract, and 415
 co-operative regulation, and 339–43
 'ethical business regulation' 316
 Cameron, David
 austerity-driven policies 81, 86
 Brexit, and 11
 contractual governance 428–30
 co-operative regulation 339–43
 deregulation 335–9
 devolved administrations, and 89–92
 'English votes for English laws' (EVEL) 94
 local government reforms 92–5
 main themes of reforms 334–5
 see also Coalition government 2010–15
 Carillion plc, collapse of 430–5, 474–6
Carltona principle 38, 48
 Carr, Cecil 2, 13
 central government, privatisation of functions
 of 46–9
 certainty, and rule of law 55
 Chadwick, Edwin 2
 Citizens Charter 550
 civil service
 'better regulation', and 188
 Judge over Your Shoulder (JOYS) 753, 788
 Northcote-Trevelyan Report (1853) 6
 Thatcherite reforms 45, 49–53
 Coalition government, 2010–15
 austerity-driven policies 81–6
 budget deficit reduction 81
 civil service reforms 83
 local government reforms 84, 92
 welfare reforms 82
 codes of practice
 publication of 244
 'soft law', as 245
 'common law constitutionalism' 55–7
 common law rights, judicial review and 164–7
 compensation
 ad hoc approach to 504–5
 'compensation culture' 504–5
 criminal injuries compensation 528–33
 duty of care, and 505, 507
 ex gratia payments 526–7
 justice, and 505
 negligence, and 506
 'no taking' principle, and 504
 no-fault compensation 506, 524
 rule of law, and 505
 tradition of statutory compensation 504
 welfare, and 505–6
 see also Windrush affair
 complaints
 administrative justice, and 549–50
 Citizens Charter 550
 complaints service, development of 578–81
 due process, and 551
 Information Commissioner 272–3

- complaints (*cont.*)
 - jurisdictional assessment of 569
 - objective of complaint-handling 551
- compulsory competitive tendering (CCT) 45
- computer technology *see* information technology
- constitutional law
 - 'common law constitutionalism' 55
 - Crown, and 23
 - Dicey's legal theory, and 3
 - see also* royal prerogative
- consultation
 - juridification, and 69
 - parliamentary consultation 194
 - pre-legislative 192–5
 - rights of 69–71
 - stages of 194
 - types of 193
- contract
 - activities and functions excluded from 414
 - adaptation of contracting methods 415–19
 - after Brexit 441, 446–8
 - AI procurement 418–19
 - classification of 402
 - 'commissioning state' 403–4, 414
 - common law of 415
 - compulsory competitive tendering (CCT) 45
 - conceptual understandings of 400, 407–11
 - 'contract culture' 45, 400
 - 'contractualisation' under Thatcher 44
 - Crown, and 411–12
 - Dicey's legal theory, and 416
 - fettering of discretion 448–50
 - French *contrat administratif* 416
 - further reform of 435–8
 - good faith, and 461–3
 - government contract, law of 415
 - growth of government contracting 402, 404–7
 - human rights, and 454–61
 - judicial review, and 450–3
 - jurisprudence 448
 - limitations of 401, 498
 - local authorities, and 413–14
 - 'new public management', and 403, 424
 - pathways model 441–5
 - policy instrument, as 421–4
 - presentation of 419–21
 - processes for 424–38
 - reforms after Carillion plc collapse 430–5
 - regulatory reform, and 401
 - relationality of 419–21, 461–3
 - specification 417
 - strategies for 424–38
 - summary overview of development of 463–5, 498
 - Supplier Code of Conduct 436–8
 - techniques for 466–7
 - technology 415–19
 - see also* franchising; individuals, contractual governance of; outsourcing; private finance initiative
- control
 - accountability aspect of 37
 - meaning of 36
 - policy-setting aspect of 36
- coronavirus (Covid-19) pandemic 79–81
 - benefits system, and 495
 - data analysis 249, 254
 - devolved administrations, and 86
 - discretion, and 233
 - emergency legislation 79
 - 'furlough' scheme 505, 544
 - government debt 476
 - home working 249
 - human rights, and 207
 - official responses to 79
 - outsourcing, and 437
 - secondary legislation 190, 222
 - 'virtual Parliament' 70
- coroners
 - inquests 636–41
 - 'inquisitorial' and 'investigatory' procedure 639–41
- Court of Justice of the European Union (CJEU)
 - 95, 148, 281, 441, 666, 726, 797, 844
- courts
 - constitutional role of 811
 - Courts and Tribunals Service 597
 - tribunals, relationship with 584
 - see also* judicial review
- Crown
 - constitutional role of 23
 - contract, and 411–12
 - rule of law, and 22–4
 - separation of powers, and 22
 - see also* royal prerogative
- damages *see* compensation
- data protection
 - Data Protection Act 1998 278
 - Data Protection Act 2018 282–3
 - definition of 277

- harmonisation 279–82
- Henry VIII clauses, and 283–4
- Lindop Committee and recommendations 278
- public law, as 264
- transparency, and 284–6
- Younger Committee and principles 277
- see also* interception of communications
- Data Protection Commissioner 271
- Davis, Kenneth Culp 142, 230–4
- ‘decentred regulation’ 313
- decision-making
 - administrative justice, and 549
 - complexity of legal demands as to 753
 - computerised 248–57, 258
 - rationality, and 154–7
 - see also* discretion
- delegated legislation *see* secondary legislation
- democracy, public participation and 67–9
- devolved administrations
 - Brexit, and 176–7
 - divergence among 86
 - human rights, and 90
 - judicial review, and 173–8
 - juridification, and 88
 - see also* Northern Ireland; Scotland; Wales
- Dicey, A.V. (Albert Venn)
 - administrative discretion and
 - authoritarianism, equation of 259
 - administrative law theory 11–22
 - constitutional law, and 3, 11
 - contract, and 416
 - equality before the law, and 18, 20–2
 - French *droit administratif*, and 12, 19
 - judicial independence, and 20
 - parliamentary sovereignty, and 12
 - political theory, and 3
 - private law model of public law 9
 - royal prerogative, and 23, 30
 - rule of law state, and 12–18
 - sceptical view of administrative law 12, 18–20
- discretion
 - complexity of legal demands as to 753
 - Dicey’s legal theory, and 259
 - discretionary character of judicial
 - review 775
 - equality, and 257
 - fettering of 448–50
 - individuation, and 754–7
 - judicial discretion 727
 - juridification, and 257
 - legitimate expectation, and 757–67
 - mandatory structuring of 767–70
 - ministerial discretion 150–2
 - procedural reviews, and 723
 - rules, and 257, 259
 - see also* decision-making
- discrimination
 - direct discrimination and indirect
 - discrimination defined 792
 - discriminatory enforcement of rules 233, 235–7
 - EU law, in 795–8
 - human rights, and 799–809
 - human rights cases, analytical framework for 800–5
 - judicial review, and 776–80
 - UK law, in 792
- Donoughmore Committee and Report on Ministers’ Powers (1932) 7, 190
- droit administratif* *see* France
- due process
 - complaints, and 551
 - internal reviews, and 554
 - judicial review, and 148–9
- Duguit, Léon 33
- duties and powers, liability as to 507–10
- duty of care
 - negligence, and 505
 - novel duty 505, 507
 - police, and 512–13
- Dworkin, Ronald 13
- ECHR *see* human rights
- ECtHR *see* European Court of Human Rights
- employment tribunals, judicial review of
 - introduction of fees 741–6
- England
 - directly elected mayors 92
 - ‘English votes for English laws’ (EVEL) 94
 - local government reforms 92–5
 - reform in 77
- equal treatment
 - judicial review, and 781–4
 - justiciability of 781
- equality
 - Dicey’s legal theory, and 18, 20–2
 - discretion, and 257
 - judicial review, and 809
 - juridification, and 810
 - multiple sources of law 810
 - rule of law, and 18, 55
 - see also* public sector equality duty

- 'ethical business regulation' 316
- European Convention on Human Rights (ECHR) *see* human rights
- European Court of Human Rights, judicial dialogue model 180–2
- European Union
 - accumulation of power 95–7
 - agencies, and 106, 347
 - 'better regulation', and 110
 - contract, and 438–48
 - discrimination, and 795–8
 - governance structures and mechanisms 103–8
 - infringements of EU law, classification of 102
 - international law and relations 108–16
 - juridification, and 104, 110, 302, 305
 - 'new public management', and 108
 - supremacy of EU law 98
 - UK legal framework for membership 97–103
 - UK withdrawal *see* Brexit
- evidence
 - evidence-based legislation 190–7
 - pre-legislative consultation 192–5
- executive agencies *see* agencies
- executive law-making *see* secondary legislation
- fairness
 - judicial review, and 726
 - procedural 726
 - tribunals 613–16
- 'fast-track' tribunal procedure 604–6
- fettering of discretion
 - contract, and 448–50
 - private finance initiative, and 471
- financial crisis 2007/8 79, 81
- FOIA (Freedom of Information Act)
 - see* freedom of information
- foreign affairs *see* international relations
- formalism, 'administrative state' and 3
- France
 - contrat administratif* 416
 - droit administratif* 12, 19
- franchising
 - adaptability of 477
 - allocation of contracts 479–81
 - 'better regulation', and 477, 482
 - evaluation of 482–4
 - features of 477
 - importance of 498
 - limitations of 478
 - management of 481–2
 - National Lottery 480–4
 - 'new public management', and 476
 - policy instrument, as 477
 - 'price bidding franchising' 479
- Franks Committee on tribunals and inquiries (1955) 587–8, 590
- freedom of information
 - before Freedom of Information Act 265–6
 - 'better regulation', and 356
 - effectiveness of Freedom of Information Act 276–7
 - exceptions 267–8
 - following Freedom of Information Act 266–7
 - ministerial veto 268–70
 - public interest tests 270–1
- Friedman, Milton 8, 44
- 'furlough' scheme 505, 544
- globalisation
 - reform, and 77
 - regulation, and 315
- good faith, contract and 461–3
- governance *see* government, theory of; government administration
- government, theory of
 - function of government 48
 - good governance values 63–71
 - historical development of 4–7
- government administration
 - Carltona* principle 38, 48
 - statutory empowerment 38
 - see also* civil service; judicial review; reform; regulation; welfare state
- government ministers *see* ministers
- Griffith, J.A.G. 3, 33, 35, 36
- guidance *see* codes of practice
- Hayek, Friedrich 8, 13, 41, 44
- Health Services Ombudsman 565
- hearing, right to 606–16
- Henry VIII clauses
 - Brexit, and 119
 - data protection, and 283–4
 - emergency legislation, and 79
 - European Union law, and 98
 - 'fast-track' procedure, and 203
 - interception of communications, and 294
 - judicial review, and 739, 749
 - uses of 217–22

- Hobbes, Thomas 21
- human rights
- contract, and 454–61
 - culture of 210–11
 - declarations of incompatibility with ECHR 166
 - devolved administrations, and 90
 - discrimination, and *see* discrimination
 - government ministers' role 202
 - incorporation of ECHR by HRA 1998 58–60
 - inquiries, and 207–8, 654–7
 - Joint Committee on Human Rights 202–11
 - judicial deference, and 182–3
 - judicial review, and 161–3, 750–3, 810
 - just satisfaction 520–4
 - liability, and 520–4
 - Parliament's role 202
 - procedural reviews, and 703–17
 - surveillance, and 286–92
 - terrorism prevention and investigation measures, and 208–10
 - see also* common law rights
- Human Rights Act 1998 ((HRA 1998)
- see* human rights
- Ibbs Report on improving management in government (1988) 47
- Immigration Rules
- complexity of 237
 - flexibility of 242
 - growth of 245
 - hybrid of hard law and soft law 237
 - incorporation of guidance into 243
 - Law Commission proposals for simplification of 246–8
 - parliamentary approval of 242
 - publication of 243
 - rights created by 242
 - rule-making powers 241
 - status as rules or guidance 242
 - statutory basis of 237–40
 - transparency, and 243
- impact assessments *see* regulatory impact assessments
- impartiality
- bias, and 696
 - tribunals 613–16
- Independent Review of Administrative Law*, 875
- individuals, contractual governance of
- administrative tool, as 485
 - authoritarianism, and 485, 498
 - children and young people 486–92
 - emergence of 484
 - growth of 484, 486
 - ideology of 485
 - 'new public management', and 486
 - welfare contractualism 492–7
- individuation, discretion and 754–7
- information
- e-government, growth of 262
 - growth of government use of 262
 - negative aspects of 263
 - ombudsmen's powers as to 568
 - positive aspects of 263
 - state as information manager 261–5
 - see also* data protection; freedom of information; Information Commissioner; interception of communications
- Information Commissioner
- accountability, and 273–6
 - Brexit, and 272
 - complaints-handling system 272–3
 - Data Protection Commissioner, and 271
 - duty to consult with 271
 - effectiveness of 276–7
 - enforcement powers of 272
 - international representation role of 272
 - overview of 271
 - public interest tests 273–6
- information society, definition of 261
- information technology
- AI procurement 418–19
 - algorithms and artificial intelligence 251–5
 - computer-generated rules and regulations 255–6, 259
 - decision-making, and 248–51, 258
 - 'new public management', and 249
 - online tribunal hearings and decision-making 617–23
 - principles and standards for regulatory uses of 257
 - public sector equality duty, and 791
 - 'surveillance society', and 264
- inquests *see* coroners
- inquiries
- accountability, and 660
 - administrative justice, and 660
 - blame, assignment of 661
 - definition of 641
 - follow-up inquiries 662
 - formal and informal procedures 661
 - Franks Committee (1955) 587–8, 590

- inquiries (*cont.*)
 functions of 641, 659–60, 662
 growth of 663
 human rights 207–8, 654–7
 Inquiries Act 2005 649–52
 ‘inquisitorial’ and ‘investigatory’ procedure
 625, 645–7
 internal inquiries 644–5
 judicial inquiries 652–4
 justice, and 625
 lessons from 662
 ‘public inquiry’, meaning of 641
 public participation in 625, 657–9
 statutory inquiries 644
 transparency, and 625
 see also coroners; planning inquiries
- instructions
 publication of 244
 ‘soft law’, as 244
- interception of communications
 bulk interception 298–300
 Data Retention and Investigatory Powers
 Bill 2014 295
 EU Directive 295
 Henry VIII clauses 294
 Investigatory Powers Act 2016 296–8
 prerogative power, as 292
 Regulation of Investigatory Powers
 Act 2000 293–5
- internal reviews
 administrative process, as 552
 advantages of 552
 court proceedings contrasted with 554
 due process, and 554
 first stage in appeal process, as 553
 judicialisation of 553
 mandatory reviews 558–60
 social security 554–60
- international relations, royal prerogative
 and 26–8
- IT *see* information technology
- JCHR *see* Joint Committee on Human Rights
- Jennings, W.I. 20
- Johnson, Boris
 Brexit 117
 end of austerity 86
 prorogation of Parliament 29
- Joint Committee on Human Rights
 declarations of incompatibility with ECHR,
 and 206–7
- European Court of Human Rights decisions,
 and 206–7
 government ministers’ human rights role 202
 human rights culture, and 210–11
 inquiries by 207–8
 Parliament’s human rights role 202
 review of UK human rights implementation
 206–7
 scrutiny function 203–6
 terrorism prevention and investigation
 measures, and 208–10
- Judge over Your Shoulder (JOYS)* 753
- judicial independence 20
- judicial inquiries 652–4
- judicial review
 agencies, and 384–93
 alternative perspectives on 875–81
 ‘clamping down’ on 879–81
 combination of substance with
 procedure 812
 common law rights, and 164–6
 constitutional role of 811
 contract, and 450–3
 declarations of incompatibility 166
 devolved administrations, and 173–8
 discretionary character of 775
 discretionary power, of *see* discretion
 discrimination, and 776–80
 due process 148–9
 empowerment by HRA 1998 166–7
 equal treatment, and 781–4
 European Court of Human Rights decisions,
 and 180–2
 evidence base 850–9
 executive law-making, and 738–53
 fairness, and 148–9, 726
 forceful approaches to 738–41
 formal responses to 869–72
 functions of 812
 general influence on administrative
 decision-making 872–5
 growth of 774
 Henry VIII clauses, and 739, 749
 human rights, and 161–7, 750–3, 810
 ideal-types 816–23
 impact of 868–75
 *Independent Review of Administrative
 Law*, and 875
 institutional reform, and 823–9
 interconnecting developments in case law
 738–41

- Judge over Your Shoulder (JOYS)* 753, 788
 judicial deference, and 144, 182–3, 222
 judicial discretion, and 727
 juridification, and 774
 jurisdiction, multiple sources of 728, 815
 legality principle, and 164–6, 746–50
 mixture of established and new approaches 727–34
 models of 812, 816–23
 natural justice, and 148–9
 new model form of 728–9
 ‘new public management’, and 860, 873
 objectives of 812
 ouster clauses, of 152–7
 parliamentary sovereignty, and 143
 permission (leave) for 814
 policy development and implementation, and 753–70
 pressure points within 815
 procedure 823–9
 ‘process review’, and 725, 775
 proportionality, and 167–72, 727, 750–3
 purpose of 143
 rational decision-making, and 154–7
 reform of 147–57
 relevant considerations 736–8
 remedies 814, 863–7
 rules, and 259
 secondary legislation, and 738
 standing 840–7
 systemic substantive review (‘system check’) 771, 775
 tailored approach to 859–62
 third-party intervention 847–50
 types of case 729
 Upper Tribunal, and 600–2
Wednesbury unreasonableness, and 145–7, 726
 juridification
 agencies, and 356, 362, 386, 398
 ‘better regulation’, and 305
 Brexit, and 79, 127
 consultation, and 69
 contracts, and 441, 464
 courts, and 774, 810
 cycles of 46, 138, 258, 770, 791
 deregulation, and 337
 European Union, and 104, 110, 302, 305
 excess of 869
 legality, and 754
 licensing, and 321
 outsourcing, and 425
 Parliament, and 224
 procedural reviews, and 665, 667, 720
 proceduralisation, and 137, 325, 331, 665
 regulation, and 309, 328
 rule of law, and 71–3
 secondary legislation, and 214
 theme of 737
 tribunals, and 594
 universality of 10
 just satisfaction 520–4
 justice
 compensation, and 505
 definition of 550
 see also access to justice; administrative justice
 justiciability
 equal treatment 781
 royal prerogative, of (‘prerogative two-step’) 24–6
 Law Commission, simplification of Immigration Rules 246–8
 legal aid, judicial review of restrictions on 738–41
 legality
 judicial review, and 164–6, 746–50
 juridification, and 754
 rule of law, and 55
 legislation
 constitutional law, and 187
 consultation 192–5
 devolved administrations, by 187
 evidence-based 190–7
 executive law-making 186
 formal (‘hard law’) and informal (‘soft law’) procedures distinguished 226–30
 Joint Committee on Human Rights 202–11
 judicial deference, and 222
 Parliament, and 188, 197–202
 parliamentary committees 197–9
 process of lawmaking and rule-making 187
 regulatory impact assessments 195–7
 rule-based discretion 230–7
 secondary legislation 190, 211–22
 separation of powers, and 188
 statute law 187
 see also rules
 legitimate expectation, executive discretion and 757–67
 liability
 duty of care, and 505
 human rights, and 520–4
 negligence, and 505, 507–16

- liability (*cont.*)
 opening up of 505–7
 policy factors as limitation of 507
 statutory authority, and 502–4
 suing the state 500–2
 tests of 507
 torts, and 516–20
 see also compensation; Windrush affair
- liberalism
 challenges to welfare state 40–2
 classical liberalism 32, 41
 economic (Hayekian) liberalism 41
 influence of 41
 neo-liberalism 38, 44
 ‘New Right’ philosophy, and 43
 positivism, and 32
 progressive liberalism 41, 55, 58
 licensing, juridification and 321
- local authorities
 audit, expansion of 51
 Cameron government reforms 92–5
 contract, and 413–14
 directly elected mayors 92
 public sector equality duty 790
 ‘value for money’ (VFM) 51
 welfare state, and 39
- Local Government Ombudsman 229, 521
- London School of Economics 32
- Maitland, F.W. 3, 23
- maladministration, redress for 527–8
- managerialism 44
- Marshall, T.H. 37
- May, Theresa 48, 86
- mayors, direct election of 92
- Megarry, Robert 226
- ministerial responsibility, control and 37
- ministers, and human rights 202
- misfeasance in public office 519–20
- monetarism
 ‘New Right’ philosophy, and 43
 private law model of public law, and 8
- National Health Service, welfare state and 40
- National Lottery
 award of franchise 480
 establishment of 480
 growth of 480
 importance of 498
 management of 481–2
 refranchising of 482–4
- NDPBs *see* non-departmental public bodies
- negligence
 duty of care, and 505
 liability, and 505, 507–16
 limitations to law of 505
 omissions to act, and 510–12
 police, and 512–13
 powers, rights and duties, and 507–10
 tort of 516
 wrongful acts of third parties 514–16
- New Deal *see* United States
- New Labour ‘third way’ reforms
 ‘administrative constitutionalism’ 58
 change and continuity as to
 Thatcherism 57
 contractual governance 404, 425–8
 flagship legislation 325–30
 main themes of reforms 322
 ‘Modernising Government’
 programme 60–3
 progressive liberalism 57, 58
 reviews of regulation 325–30
 risk-based regulation 57, 322–5
 ‘war against terror’, and 60
 ‘new public management’
 agencification, and 426
 audits, and 50, 61, 410
 ‘better legislation’, and 191
 contracts, and 403, 424
 contractual governance of individuals,
 and 486
 European Union, and 108
 franchising, and 476
 information technology, and 249
 judicial review, and 860, 873
 ombudsman investigations, and 581
 performance indicators, and 51
 proceduralisation, and 138
 risk-based regulation, and 311
 Thatcherite reforms, and 317, 318
 tribunals, and 583
 ‘New Right’ philosophy 43
- non-departmental public bodies, abolition of
 46–9, 83
- Northcote-Trevelyan Report on civil service
 (1853) 6
- Northern Ireland
 human rights, and 90
 institutional development 91
 reform in 77
- NPM *see* ‘new public management’

- Ofwat
 early years (1989–2003) 363–7
 economic regulation case study, as 360–78
 future of 378
 periodic reforms (2003–2017) 367–73
 ombudsman investigations
 format of 568
 high-profile cases 575–8
 informal methods 571–3
 information powers 568
 ‘inquisitorial’ and ‘investigatory’ procedure 568, 570, 582
 investigation phase 569
 jurisdictional assessment 570
 jurisdictional assessment of complaints 569
 ‘new public management’, and 581
 publication of reports 571
 recommendations 570
 rejection of complaints 569
 stages of 569
 transparency of 571
 ombudsmen
 Health Services Ombudsman 565
 information powers 568
 investigations by *see* ombudsman investigations
 Local Government Ombudsman 229, 521
 ‘MP filter’, and 562–3
 origin of 561
 Parliament, and 561
 Parliamentary Commissioner (PCA) 561
 redress for maladministration 527–8
 role of 561, 563–5, 579–81
 types of 565–8
 omissions to act, negligence and 510–12
 openness, tribunals and 613–16
 ouster clauses, judicial review of 152–7
 outsourcing
 first-choice solution, as 414
 Outsourcing Playbook 435–7
 privatisation, and 45
 Parliament
 human rights, and 202–11
 juridification, and 224
 legislation, and 188, 197–202
 ombudsmen, and 561
 post-legislative scrutiny 201–2
 pre-legislative scrutiny 199–201
 parliamentary committees 197–9
 parliamentary sovereignty
 Dicey’s legal theory, and 12
 judicial review, and 143
 ‘parliamentary prerogative’ 31
 prorogation of Parliament 29
 royal prerogative, and 25
 rule of law, and 13
 supremacy of EU law, and 98
 participation *see* public participation
 performance indicators, ‘new public management’ and 51
 PFI *see* private finance initiative
 planning inquiries
 adjudication by 628–31
 ‘Big Planning Inquiries’, demise of 634–6
 central planning inspectorate (PI) 628
 model for inquiries, as 625
 public participation in 631–4
 role of 628
 statutory basis of 628
 police, duty of care 512–13
 populism 73–6
 positivism
 ‘administrative state’, and 3
 judicial review, and 142–3
 powers and duties, liability as to 507–10
 PPP *see* public–private partnerships
 preclusive clauses *see* ouster clauses
 predetermination *see* bias
 private finance initiative
 advantages of 468
 audits 472
 Carillion plc collapse, and 474–6
 complexity of PFI project design 470
 conditions for use of 468
 controversies as to 472
 decline of 473
 distinctiveness of 467
 failure of 498
 fettering of discretion, and 471
 inflexibility of 473–4
 origin of 467
 PF2 473
 policy reviews of 469
 public–private partnership, as 467
 termination of contracts 471
 types of 467
 private law model of public law 9
 private property *see* property
 private interest theory of regulation 308
 privatisation
 agencies, and 347

- privatisation (*cont.*)
 outsourcing, and 45
 statutory basis of 44
 transfer of central government functions 46–9
 under Thatcher 44
- procedural review
 adjudicative model of 704–7
 bias, and 696–703
 consultation, and 687–96
 current approach to 675–8
 fairness, and 671–8, 717–23
 further development of 724
 human rights, and 703–17
 judicial assessment of risk 719–23
 judicial discretion, and 723
 judicial model of 711–17
 judicial power, and 723
 judicial ‘tailoring’ of procedures 671–4
 predetermination, and 701–3
 rationales for 667–71
 ‘reasonable person’ standard, and 697–701
 reasons for decisions, giving of 678–87
 risk, and 717–23
 rule of law, and 723
 structural procedural review 717–18
- procedure
 affirmative 213
 fairness, and 726
 negative 213
 ‘new public management’, and 138
 ‘process review’ and judicial review 725, 775
 role of 123–32
 scale of 139–41
 substance combined with 812
 super-affirmative 213
- property, ‘no taking’ principle 504
- proportionality
 applicability of 171–2
 ‘better regulation’, and 388, 752
 formulation of 167–9
 judicial review, and 167–72, 750–3
 test of 169–71
- prorogation of Parliament 29
- PSED *see* public sector equality duty
- public inquiries *see* inquiries
- public participation
 democracy, and 67–9
 inquiries, in 657–9
 tribunal appeals 609–11
- public policy
 challenges to 753
 control, and 36
 judicial review, and 753–70
 liability, and 507
- public–private partnerships
 continued use of 476
 growth of 470
 specification 417
 see also private finance initiative
- public sector equality duty
 automated data processing, and 791
 compliance with 787
 contextual approach to 787
 courts’ role in structuring of 786
 due regard for 787, 790
 failure to consider 789
 guidance on 788
 impact of 788
 level of application by courts 790
- public services
 audit, expansion of 50–3
 New Labour’s ‘third way’ 57–63
 ‘new public management’ (NPM) 50
 Thatcherite reforms 49–53
- public interest theory of regulation 308
- quasi-autonomous non-governmental
 organisations (quangos) *see* non-departmental public bodies
- ‘quasi-legislation’ *see* ‘soft law’
- RBR *see* risk-based regulation
- realism and ‘administrative state’ 3
- ‘reasonable person’ standard 697–701
- reasonableness
 rationality, and 157–60
 Wednesbury unreasonableness, and 145–7, 726
- reform
 Brexit, and *see* Brexit
 Cameron government 89–92
 Coalition government, 2010–15 *see* Coalition government 2010–15
 contract, and 401
 financial crisis 2007/8, and 79, 81
 globalisation, and 77
 institutional reform, judicial review and 823–9
 New Labour *see* New Labour ‘third way’
 reforms
 Thatcherite reforms *see* Thatcher, Margaret

- regulation
 ‘anticipatory regulation’ 316
 ‘better regulation’, aim of 311, 322, 334
 compliance costs of 304
 concept of 305
 concerns about 315
 contract, and 399
 co-operative approaches to 339–43
 ‘co-regulation’ 314
 ‘decentred regulation’ 313
 economic regulation 360–78
 ‘ethical business regulation’ 316
 globalisation, and 315
 governance, and 301, 305–17
 growth of 303
 juridification, and 305
 meta-regulation 315
 organisation of 304
 phases of regulatory reform 302
 policy instrument, as 302
 private interest theory of 308
 procedures for 305, 306
 public interest theory of 308
 ‘responsive regulation’ 309, 313, 344, 370
 risk-based regulation 57, 311–13, 325, 344
 scale of 303
 self-regulation 313
 ‘smart regulation’ 313
 theories of 307–11
 UK as ‘regulatory laboratory’ 302
 regulatory impact assessments 195–7
 ‘responsive regulation’ 309, 313, 344, 370
 right to tribunal hearing 606–16
 risk-based regulation 57, 311–13, 325, 344
 Roosevelt, Franklin D. 32, 34
 royal prerogative
 Brexit, and (‘Brexit’ cases) 28–32
 Crown and rule of law in relation 22–4
 Dicey’s legal theory, and 23, 30
 international relations, and 26–8
 justiciability of (‘prerogative two-step’) 24–6
 ‘parliamentary prerogative’, and 29
 parliamentary sovereignty, and 25
 prorogation of Parliament, and 29
 rule of law
 access to justice, and 55
 certainty, and 55
 compensation, and 505
 constitutional principle, as 173
 Crown, and 22–4
 Dicey’s legal theory, and 12, 13–18
 equality, and 18, 55
 legality, and 55
 parliamentary sovereignty, and 13
 procedural reviews, and 723
 substantive sub-rules for 17
 ‘thin’ (formal) and ‘thick’ (substantive)
 conceptions of 16
 see also juridification
 rules
 ‘better regulation’, and 191
 complexity of 237–48
 computer-generated 255–6, 259
 cycle of juridification 258
 discretion, and 257, 259
 discriminatory enforcement of 233, 235–7
 drafting of 247
 efficiency of 258
 judicial review, and 259
 juridification, and 71–3, 214
 process of rule-making 187
 rule-based discretion 230–7
 tribunal-made 602–4
 see also Immigration Rules; secondary
 legislation
 science and technology, ‘anticipatory
 regulation’ 316
 Scotland
 Brexit, and 176–7
 institutional development 91
 judicial review, and 173–7
 reform in 77, 89
 Sewel Convention, and 90
 ‘well-being’ policy 91
 secondary legislation
 approval of 213
 ‘better regulation’, and 219
 drafting of 214
 ‘framework Acts’, and 212
 growth of 213
 Henry VIII clauses 79, 83, 98, 119, 203, 217–22
 judicial review, and 738–53
 juridification, and 214
 laying before Parliament 244
 parliamentary scrutiny committees 215–17
 purpose of 211
 quality of 214
 statutory basis of 211
 types of 211
 uses of 212
 see also rules; statutory instruments

- select committees, follow-up inquiries by 662
- self-regulation 313
- separation of powers, Crown and 22
- 'smart regulation' 313
- social security
 - Independent Review Service 554–8
 - internal reviews 554–60
 - mandatory reviews 558–60
 - Social Fund Commissioner 555
 - Social Fund Inspectorate 554
- 'soft law'
 - 'hard law' distinguished from 226–30
 - 'quasi-legislation' 226
 - types of 244
- standing for judicial review 840–7
- state, theory of
 - administrative law and 1
 - functions of state 62
- state interventionism, beginning of 2
- statutory appeals, agencies and 394–7
- statutory inquiries 644
- statutory reviews, agencies and 394–7
- Supreme Court
 - accessibility of 173
 - creation of 172
 - jurisdiction of 172
 - purpose of 172
- surveillance
 - human rights, and 286–92
 - IT and 'surveillance society' 264
- terrorism prevention and investigation measures
 - JCHR scrutiny of 208–10
 - procedural reviews, and 707–11
- Thatcher, Margaret
 - civil service reform 45, 49–53
 - contractual governance 404, 424–5
 - historical perspective on reforms 318
 - licensing, use of 320–2
 - 'lifting the burden' on business 318–20
 - main themes of reforms 317
 - 'new public management', and 317–18
 - 'New Right' philosophy, and 43
 - public service management reforms 49–53
 - roll-back of state 44–6
 - see also* monetarism
- third parties
 - intervention in judicial review 847–50
 - negligence and wrongful acts 514–16
- 'third way' *see* New Labour 'third way' reforms
- torts
 - alternatives to 524–6
 - liability, and 516–20
 - misfeasance in public office 519–20
 - tort law as ombudsman 543–4
 - see also* negligence
- transparency
 - 'better regulation', and 65
 - data protection, and 284–6
 - Immigration Rules, and 243
 - ombudsman investigations, and 571
 - process of 64–6
 - see also* accountability; openness
- tribunals
 - adversarial procedure 583
 - Bell Report on SBATs (1975) 592–3
 - centralised service for 597–602
 - courts, relationship with 584
 - Courts and Tribunals Service 597
 - face-to-face hearings 583
 - fairness 613–16
 - 'fast-track' procedure 604–6
 - First-tier Tribunal 597
 - formal and informal procedures 588–9
 - Franks Committee (1955) 587–8, 590
 - hierarchical system of 599
 - historical background to 585–9
 - impartiality 613–16
 - inquisitorial proceedings 582
 - judicialisation of 583, 589–91, 593–6
 - juridification, and 594
 - 'new public management', and 583
 - non-legally qualified members 609
 - online hearings and decision-making 617–23
 - openness 613–16
 - participation by claimants 609–11
 - professionalisation of 597–602
 - restructuring of tribunal system 596–606
 - right to a hearing 606–16
 - rule-making by 602–4
 - supplementary benefit appeal tribunals (SBATs) 591–2
 - unemployment assistance tribunals 589
 - welfare adjudication 589–91
 - workload 584
- 'UK Internal Market' (UKIM) 123–32
- United States
 - administrative procedures 231
 - agencies 346–8
 - New Deal 32, 34
 - realist theory of 'administrative state' 3, 4

Upper Tribunal	Sewel Convention, and 90
Administrative Court, and 600	‘well-being’ policy 91
chambers 597	<i>Wednesbury</i> unreasonableness, 145–7, 726
freedom of information, and 269	welfare state
judicial review, and 600–2	compensation, and 505–6
powers of 597, 600	entitlement to benefit 590–2
purpose of 597	growth of 37
tribunals 600	liberal challenges to 40–2
	local authorities, and 39
‘value for money’ (VFM) 50–3	National Health Service, and 40
Victorian social reform 5–6	statutory basis of 38
	welfare adjudication by tribunals 589–91
Wade, H.W.R. 7, 24	Wilson, Harold 41
Wales	Windrush affair
human rights, and 91	compensation 537–42
institutional development 91	institutional attitudes and culture 536–7
judicial review, and 175–6	institutional failure, as 533–6
legislation 90	lessons from 542–3
reform in 77, 89	wrongful acts of third parties 514–16