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**Multi-Layered and multi-levelled?  
Public law architectures  
for the 21<sup>st</sup> century**

**Review essay:  
N. Bamforth und P. Leyland (Hrsg.): Public Law in a  
Multi-Layered Constitution,  
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Franz C. Mayer

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## **Multi-Layered and multi-levelled? Public law architectures for the 21<sup>st</sup> century**

*Public Law in a Multi-Layered Constitution*, edited by Nicholas Bamforth and Peter Leyland, Hart Publishing, 2003, 433 pp.

*Reviewed by* Franz C. Mayer \*

Since the 19<sup>th</sup> century the world has changed. Some aspects of life have changed more, others less. The means of communication, technology and transportation of the 21<sup>st</sup> century, for example, are light-years away from those of the 19<sup>th</sup> century.

Public law concepts have not kept pace. In the words of an author of the book reviewed here, reflecting on the concept of ‘the state’ and the problem of sovereignty: in political as in constitutional legal theory, we still need to cut off the King’s head,<sup>1</sup> as we are still entrenched in the philosophical and constitutional language of the 19<sup>th</sup> century.<sup>2</sup> But recently, with European integration and globalisation, change has also occurred in the traditional concepts of public law such as “state” or “constitution”. The book edited by Bamforth and Leyland is about this change over the last thirty years or so.<sup>3</sup>

“Public Law in a Multi-Layered Constitution” is a significant contribution to a better understanding of how public law is transformed, in Great Britain and elsewhere. The title of the book as well as its introduction (pp. 1-26) state that its central theme is the transformation of the British constitution into a “multi-layered constitution.” This is meant to refer to a constitution that “contains multiple, but interconnected and sometimes overlapping European and national layers”,<sup>4</sup> where “power (both legislative and political) has been spread away from the Westminster Parliament, both ‘upwards’ to the European Union and ‘downwards’ to the devolved assemblies.”<sup>5</sup>

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\* Dr. jur., LL.M. (Yale), Associate Professor (Privatdozent), Humboldt University Berlin, Law Faculty, Walter Hallstein-Institute for European Constitutional Law.

<sup>1</sup> John Morison, ‘Modernising Government and the E-Government Revolution: Technologies of Government and Technologies of Democracy’, in Nicholas Bamforth and Peter Leyland (eds.), *Public Law in a Multi-Layered Constitution* (Hart Publishing 2003) p. 158, paraphrasing a line by Foucault.

<sup>2</sup> *Id.* at p. 163.

<sup>3</sup> Nicholas Bamforth and Peter Leyland, ‘Public Law in a Multi-Layered Constitution’, in Bamforth and Leyland (eds.), *supra* note 1, at p. 2, emphasizing that there is a new dimension of change since 1997. The time-span of thirty years obviously refers to the UK accession to the European Communities in 1973.

<sup>4</sup> Nicholas Bamforth, ‘Courts in a Multi-Layered Constitution’, in Bamforth and Leyland (eds.), *supra* note 1, at p. 278.

<sup>5</sup> Nicholas Bamforth and Peter Leyland, ‘Public Law in a Multi-Layered Constitution’, in Bamforth and Leyland (eds.), *supra* note 1, at p. 2.

The editors' claim is that this restructuring of the constitutional architecture of the United Kingdom is occurring while there is also a rebalancing of the roles of the courts and parliament in holding the executive accountable, an alteration of government by the process of privatisation, and techniques such as "new public management". How then should the shape of the state and the appropriate methods of regulating state power be understood? The aim of the book is to analyse the ways in which different aspects of the contemporary multi-layered constitution interrelate.

Beyond that, it is possible to distinguish two major underlying themes. The first is Dicey.<sup>6</sup> Central questions raised in the book refer to the Diceyan model of law: What about Parliamentary sovereignty? What about the courts and the administration? What about the distinction between public law and private law? Dicey's 19<sup>th</sup> century, Victorian view on public law is referred to in almost every chapter,<sup>7</sup> with most of the authors being critical. Still, one cannot help but think that what Philip Allott once considered to be the "central complex of German constitutional psychology"<sup>8</sup> – the *Staat* (state) – has a British equivalent. Arguably, such a "central complex" of constitutional psychology can be detected in most countries. The book's other central theme is the impact of recent developments on the United Kingdom's traditionally "political constitution" and the shift towards a more legalistic model of constitutionalism.

### ***1. The structure of the book***

The first chapter, "Public Law in a Multi-Layered Constitution" (pp. 1-25), is by the editors, *Nicholas Bamforth* and *Peter Leyland*. It is extremely helpful. It goes beyond a mere introduction by giving a substantial overview of the concept of a multi-layered constitution and of the following fourteen chapters.

These essays can be roughly divided into four parts: Three contributions relating to general issues of constitutionalism (the concept of constitution in general, Parliamentary sovereignty, EU accountability); two contributions dealing with devolution as an aspect of vertical diffusion of power; four essays dealing with the sideways diffusion of power (ranging from Foucault's governmentality approach to the public/private distinction); and, finally, five essays related to the role and function of courts.

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<sup>6</sup> Albert Venn Dicey, *An Introduction to the Study of the Law of the Constitution* (10<sup>th</sup> edition MacMillan 1959).

<sup>7</sup> See for example pp. 4-10, 54, 58, 253, 262, 339.

<sup>8</sup> Philip Allott, 'The Crisis of European Constitutionalism', 34 *CMLRev.* 439, 444 (1997).

### 1.1 Constitutionalism

“Constitutional Law: the Third Order of the Political” (pp. 27-51) by Martin Loughlin deals with the relationship between the political and the legal, between politics as statecraft and constitutional legalism. He starts from the observation that there is a regeneration of interest, sometimes a skeptical interest, in constitutional matters, putting an end to a 20<sup>th</sup> century trend which considered constitutions as being dry and dreary matters (p. 28); he says, “we are all constitutionalists now” (p. 29). Loughlin concludes that the political provides the foundation for the constitutional (p. 50). Given the title of the book, one would have expected to obtain more information on the concept of a multi-layered constitution in this chapter. But the link between the overarching theme of a multi-layered constitution and more classical concepts of a constitution is established in the introductory chapter by the editors only (pp. 11-2), reflecting on the legalistic nature of a multi-layered constitution as opposed to the traditionally ‘political constitution’ of the United Kingdom (p. 11). “What is Parliament For?” (pp. 53-78) by Adam Tomkins offers an account of how what is often considered the cornerstone of British constitutional law has evolved over the years. To place this issue so prominently at the beginning of the book is in line with the British view of what a constitution is all about.<sup>9</sup> The foreign reader is impressed by the *longue durée* of British public law: the article covers the time-span between the 16<sup>th</sup> century and 1990, some 500 years. Starting with the question, “What [was] Parliament For?”, Tomkins ends up suggesting that we consider contemporary Parliament less as a legislator, and to conceive of it instead as an overseer of the executive (p. 77). The fourth chapter, “European Governance and Accountability” (pp. 79-101) by Carol Harlow, deals with democratic and political accountability at the European level. Harlow helpfully acknowledges that accountability translates badly into other languages (pp. 78-9). Her central claim is that there is a political “accountability gap” in the EU system of governance, related to two forms of “perversion of democracy”: On the one hand, the transfer of power towards the EU layer arguably weakens national political mechanisms for maintaining the accountability of executive bodies. On the other hand, there is a transfer within the EU layer towards an autonomous and unrepresentative judiciary. Clearly, this assessment is inspired by a preference for political (as opposed to legal) accountability. The blind spot in Harlow’s analysis of the European level is the European Council, whose role seems much more problematic than the role of the European Court of Justice. This is a recurring phenomenon across the entire book. Unlike parliament or the courts, the changing role of the

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<sup>9</sup> In a book on the multi-layered constitution written by German authors, this place would probably be occupied by a piece on fundamental rights.

government and the executive in a multi-layered constitution, in particular through actions at the EU level that affect the national level, remains unchallenged.

### *1.2 Devolution: establishing new layers of the constitution*

From the perspective of a federal state such as Germany, the vertical diffusion of public power is nothing new. Moreover, “vertical separation of powers” is one of the central concepts of the federal state. Devolution is not equivalent to federalism, but it shares with federalism the aspect of vertical diffusion of public power. “Devolution and England: What is on Offer?” (pp. 103-132) by Richard Cornes is helpful in explaining the difference between devolution and federalism. Cornes looks at the particular problem of England’s role (“the English Question”) and suggests that the Union between England, Scotland, Wales and Northern Ireland be reformulated so that they become co-operating but distinct and individual members of the EU (p. 132). The sixth chapter of the book, “Does the Devolved Northern Ireland Need an Independent Judicial Arbiter?” by Brigid Hadfield (pp. 133-156), also offers a comparison between federalism and devolution. Its focus, however, is on devolution and the judges. It considers the varying perceptions of the judicial role within the different patterns of devolution in Northern Ireland up to the Northern Ireland Act 1998.

### *1.3 Sideways: the horizontal dimension of the multi-layered constitution*

“Modernising Government and the E-Government Revolution: Technologies of Government and Technologies of Democracy” (pp. 157-188) by John Morison takes Michel Foucault’s governmentality approach as a conceptual starting point. Acknowledging that this approach presents a challenge to legal scholarship even in its most interdisciplinary forms (p. 167), Morison is probably the author in the book who insists most on overcoming traditional concepts (“We need to cut off the kings head”, p. 159, referring to Foucault). After considering the differences between the concepts of government, governance and governmentality, Morison turns to the UK modernising government initiative and examines to what extent tools of e-government such as UK Online can be regarded as a technology of governance and democracy. “UK Utility Regulation in an Age of Governance” (pp. 189-220) by co-editor Peter Leyland examines utility regulation (gas, electricity and water) to illustrate how trends and processes related to privatisation and devolution have influenced public law. The impact of European Law is mentioned only briefly (p. 203). “Freedom of Information: A New Constitutional Landscape?” by Stephanie Palmer (pp. 221-246) looks at the new freedom of information legislation as another field of reference to understand how public law is modified. This part of public law is closely linked to basic ideas about the role of the state. The background provided on the secrecy ethos of British governments

(pp. 223-7) is particularly interesting for the foreign reader. Chapter 10, “Accountability and the Public/Private Distinction” (pp. 247-276) by Peter Cane, is dedicated to an in-depth analysis of the public/private distinction in law. He points to the paradox that on the one hand, this distinction is deeply embedded in the law, but on the other hand is widely rejected as a way of understanding social life. The examples he gives in that context is that there is now a specialist Administrative Court in England which indicates that there is now a public/private distinction in English administrative law (which Dicey famously rejected), he also points to state action doctrines and the important place of the distinction in EU law, for instance in the context of direct effect of directives. This contrasts with results of ‘Thatcherism’ or ‘Reaganism’ such as new public management or the regulatory state, with privatisation, the contracting-out of public services, joint public/private infrastructural projects etc.

#### 1.4 Courts

A considerable part of the book deals with the role of courts in a multi-layered constitution. In the word of the editors, these chapters are about the appropriate remit of legal as opposed to political control over public power in different layers of the constitution.<sup>10</sup> “Courts in a Multi-Layered Constitution” (pp. 277- 310) by co-editor Nicholas Bamforth addresses comprehensively both the constitutional layer beyond the UK and the multi-layer concept in general. He focuses on the reception of EC Law within the United Kingdom on the one hand and the Human Rights Act 1998 and the courts on the other. Referring to a “spill over” effect, he undertakes an assessment of the impact of these developments – for example, the recognition of proportionality as a basis for review -- on traditional public law. “Reinventing Administrative Law” (pp. 311-335) by Michael Taggart is likely to be of particular interest to the foreign reader. It offers a nutshell version of what has been called the classic model of administrative law (*inter alia*, restricted grounds of review, judicial restraint, absence of any substantive distinction between public/private law, remedy-orientation), exploring the famous *Wednesbury* case<sup>11</sup> in great detail (pp. 313 *et seq.*). Taggart suggests moving towards a culture of justification and a “rights-centred” approach. The thirteenth chapter, “Sovereignty’s Blight: Why Contemporary Public Law Needs the Concept of ‘Due Deference’” (pp. 337-370) by Murray Hunt also deals with the changes induced into substantial administrative law and how to conceptualise them. “Civil Liberties and Human Rights” (pp. 371-390) by Conor Gearty is about Civil Liberties, Human Rights, the ECHR and the role of the judiciary and the political process in that context. The final

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<sup>10</sup> Nicholas Bamforth and Peter Leyland, *supra* note 3, at p. 20.

<sup>11</sup> *Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1948] 1 KB 223 (CA).

chapter, “Standing in a Multi-Layered Constitution” (pp. 391-420) by Joanna Miles, introduced by a case study on Greenpeace at home and abroad, turns to an issue that at first sight appears to be of a technical nature, but which on closer investigation helps the reader to understand the constitutional role of the courts, raising once more the question of the appropriate division between legal and political accountability. Miles’s focus is on modifications of legal rules on standing brought about by directly effective EU law and by principles related to European Convention rights and how they interact with common law principles.

## ***2. Beyond national public law?***

One of the virtues of this book may also be considered by some as a weakness: it is first and foremost a book about British public law. Comparative aspects are few and far between. There are occasional glimpses at French administrative law (e.g., it influenced Dicey, particularly his view on the public/private distinction, pp. 5 and 253), and there are rare references to US law. A non-British European reader like myself will miss references to other public law traditions, although the developments and questions discussed in the book are similar to discussions among, for example, German public lawyers.<sup>12</sup> Fair enough, the book doesn’t claim to go beyond the national scope. And the foreign reader will learn a lot about British public law, either through the recurring references to Dicey, or by explicit statements, such as the detailed re-iteration of the *Wednesbury* case in the contribution by Taggart (pp. 313 et seq.).

The title of the book implies that it looks at different layers of the British constitution: the sub-national layer established by devolution, the national layer and the European layer. The focus, however, is clearly on the national layer and how its public law has been transformed. While much of the book is dedicated to devolution, some readers will probably find too sketchy the analysis of the layer beyond the national layer. The focus is limited to the impact of Britain’s EU and ECHR-membership; the question of additional layers in the realm of public international law, e.g., stemming from world trade law and the WTO-system is not raised.<sup>13</sup> And the chapter on standing rules could have gained by

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<sup>12</sup> See the more recent work of Eberhard Schmidt-Assmann, ‘Allgemeines Verwaltungsrecht in europäischer Perspektive’, 55 *ZÖR* 159, 164 (2000) Rainer Wahl, *Verfassungsstaat, Europäisierung, Internationalisierung* (Suhrkamp 2003); and Udo Di Fabio, *Das Recht offener Staaten* 139 (1998). See also the literature on the impact of European law on German administrative law, in particular Stefan Kadelbach, *Allgemeines Verwaltungsrecht und europäischem Einfluss* (Mohr Siebeck 1999). The most recent trend is to look at the impact of globalisation on public law, see Matthias Ruffert, *Globalisierung als Herausforderung an das Öffentliche Recht* (Boorberg 2004).

<sup>13</sup> With the exception of Morison, *supra* note 1, at p. 166, who seems to refer to multiple layers beyond the national.



examining the rules imposed by the Århus-convention -- arguably another layer of the multi-layered constitution. Occasionally there is a curious conflation of EU and ECHR, and even the contributions that emphasize the difference between EU-law (an increasingly state-like entity) and the ECHR (limited to protecting individuals human rights) seems underplayed.<sup>14</sup>

### ***3. Multi-layered and multi-levelled***

The premise of the book, the multi-layered structure of the contemporary constitution, is intriguing and thought-provoking. Clearly, the idea of a multi-layered constitution is more easily accessible to a British constitutional lawyer because the relevant layers are all grounded in parliamentary acts (European Communities Act, Human Rights Act, Devolution Acts). This is different in other countries, where a decentralised (federal) structure and the relationship with the European level are ascribed by a constitution distinct from an act of parliament. Critics may assert that the concept of a multi-layered constitution as such remains underdeveloped in the book. It is mainly in the introduction by Bamforth and Leyland and in Leyland's essay that the concept is dealt with in detail, where there are interesting thoughts about the architecture of multi-layered public law and the role of courts in such an architecture. And the distinction established by Bamforth (p. 279) between the acknowledgement that multiple layers are present within the contemporary constitution on the one hand and the question of how these layers relate to one another is helpful. Most of the book, however, seems to deal only with the former aspect.

A significant questions remain open: What qualifies as a constitutional layer? Is there a difference between a layer and a level? Semantically, "layer" seems to suggest the idea of an addition to something like a core, whereas a "level" can probably be something meaningful in its own right. Some of the authors seem to use "layer" and "level" interchangeably,<sup>15</sup> and one of the authors introduces yet another term by referring to "tiers of public power".<sup>16</sup> How do we establish the boundaries of constitutional layers? What exactly is a layer in terms of constitutionalism? The chapter on the concept of a constitution<sup>17</sup> does not address this question. Are there still differences between the body of constitutional law and other law modifying this body of constitutional law, an idea neatly captured in

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<sup>14</sup> See the opening of Bamforth's chapter as an example, *supra* note 4, at p. 277.

<sup>15</sup> See for example Morison, *supra* note 1, at p. 166.

<sup>16</sup> Brigid Hadfield, 'Does the Devolved Northern Ireland Need an Independent Judicial Arbiter?', in Bamforth and Leyland (eds.), *supra* note 1, at p. 133.

Christian Tomuschat's concept of *völkerrechtliche Nebenverfassungen*<sup>18</sup> (best translated as 'complementary public international law constitutions' or 'international supplementary constitutions'<sup>19</sup>). Are there hierarchies among the different layers? The way the editors describe the diffusion of power "upwards" and "downwards" (pp. 2-3) seems to indicate that there are hierarchies, and this raises the question whether the driving forces behind this multi-layered constitution should be seen in a "top down" or a "bottom up" fashion (p. 3.). The contribution of John Morison gives a plausible answer: "Ideas of multi-level government have evolved from a simple recognition that there are layers beyond the national state to more sophisticated ideas of how power is dispersed into a multiplicity of sites, constituting nodes in a heterarchical network rather than layers in a hierarchical pyramid, which operate in a relationship of mutual influence rather than control".<sup>20</sup>

### 3.1 The European Union as a multilevel system

Most of the authors seem to be public law scholars who are not specifically focused on EU law. The most recent developments around the drafting of a European constitution by the European convention<sup>21</sup> are not dealt with in the book,<sup>22</sup> although the European layer is a significant part of the concept suggested by Bamforth and Leyland. Looking at EU law, the question arises whether the layer or level of EU-law is more than a simple addition – couldn't it also be considered a reference point for the European multi-layered constitution? Couldn't we also speak of a multi-layered constitution of the EU? The question arises to what extent Bamforth and Leyland's concept of a multi-layered constitution relates to the debate on the shape of and adequate concept for a European constitution.

In recent years the term 'multilevel system' or *Mehrebenensystem* has increasingly been used<sup>23</sup> to describe and explain the entity established by European integration.<sup>24</sup> The multilevel metaphor stems

<sup>17</sup> Martin Loughlin, 'Constitutional Law: the Third Order of the Political', in Bamforth and Leyland (eds.), *supra* note 1, at p. 27-51.

<sup>18</sup> Christian Tomuschat, 'Der Verfassungsstaat im Geflecht der internationalen Beziehungen', *Veröffentlichungen der Vereinigung der deutschen Staatsrechtslehrer* 36 *VVDStRL* 7, 51 et seq. (1978); Christian Tomuschat, 'Die staatsrechtliche Entscheidung für die internationale Offenheit', in Josef Isensee and Paul Kirchhof (eds.), *Handbuch des Staatsrechts*, vol. VII, § 172 para. 73 (C.F. Richter 1992); see also Ernst Ulrich Petersmann, 'Wie kann Handelspolitik konstitutionalisiert werden?', *EA* 55, 62 (1989); Robert Uerpmann, 'Völkerrechtliche Nebenverfassungen', in Armin von Bogdandy (ed.), *Europäisches Verfassungsrecht. Theoretische und dogmatische Grundzüge* 339 (Springer 2003).

<sup>19</sup> The latter is the translation suggested by Robert Uerpmann, *International Law as an Element of European Constitutional Law. International Supplementary Constitutions*, Jean Monnet Working Papers 9/2003.

<sup>20</sup> Morison, *supra* note 1, at p. 166.

<sup>21</sup> <<http://european-convention.eu.int>>. For the final text of the Draft Treaty establishing a Constitution for Europe see the document of the Intergovernmental Conference which had to endorse the Convention's work with the number CIG 87/04.

<sup>22</sup> Harlow briefly mentions the Convention at p. 97, she clearly states that her chapter was completed before the Convention started to publish working papers and drafts and that no attempt has been made to incorporate these or the draft Constitution into the text (p. 100). This seems to apply for all the chapters.

<sup>23</sup> At least in the German and in the English language context, interesting enough not in the French context.

from social science, typically related to the term “multilevel governance”.<sup>25</sup> In Germany, legal scholars such as *Gunnar Folke Schuppert*, *Rainer Wahl* and *Udo Di Fabio* have adopted the multilevel metaphor in the context of European integration,<sup>26</sup> and at least the concept of *multilevel constitutionalism* (*Ingolf Pernice*<sup>27</sup>), goes beyond a merely descriptive use of the level-metaphor.

This development and the quest for new concepts is probably best explained by the fact that many see the EC/EU to be slipping away from established, traditional typologies of public international and constitutional law.<sup>28</sup> The traditional repertoire of terms and concepts appears to be incapable of adequately explaining the specifics of this new “organisational reality” -- the EC/EU.<sup>29</sup> In the words of *Ernst Wolfgang Böckenförde*,<sup>30</sup> this is a period of transition, when traditional categories and structures capture the changing realities only in part or not at all. This has also to do with the dynamic nature of European integration<sup>31</sup> and the search for a concept that does not imply hierarchies between the entities involved. The image of distinct levels is not necessarily linked to authority and subordination. Levels may also be understood as platforms that may be at equal height in one case, at different heights in another, or even circling freely around each other.<sup>32</sup>

### 3.2 The rigidity of traditional concepts – cutting off the King’s head

<sup>24</sup> See the references in Franz C. Mayer, *Kompetenzüberschreitung und Letztentscheidung* (C.H. Beck 2000); Franz C. Mayer, ‘Europäische Verfassungsgerichtsbarkeit. Gerichtliche Letztentscheidung im europäischen Mehrebenensystem’, in Armin von Bogdandy (ed.), *Europäisches Verfassungsrecht. Theoretische und dogmatische Grundzüge 262 et seq.* (Springer 2003) (= ‘The European Constitution and the Courts. Adjudicating constitutional law in a multilevel system’, *Jean Monnet Working Paper* 9/03 (2003))

<sup>25</sup> See for example Liesbet Hooghe and Gary Marks, *Multi-Level Governance and European Integration* (Rowman and Littlefield Publishers 2001); Nick Bernard, *Multilevel Governance in the European Union* (Kluwer International 2002); for one of the earlier references see Gary Marks, Liesbet Hooghe, and Kermit Blank, European Integration and the State. Paper presented at the American Political Science Association Meeting, New York September 1-4, 1994, p. 7.

<sup>26</sup> Gunnar Folke Schuppert, ‘Zur Staatswerdung Europas’, *StWStP* 35, 60 (1994); Rainer Wahl, ‘Der Einzelne in der Welt jenseits des Staates’, *Der Staat* 45, 46 (2001); Udo Di Fabio, ‘Mehrebenendemokratie in Europa. Auf dem Weg in die komplementäre Ordnung’, Lecture given in the context of the FCE-series at Humboldt-University on 15. November 2001, <<http://www.whi-berlin.de/difabio.htm>>.

<sup>27</sup> Ingolf Pernice, ‘Constitutional Law Implications for a State Participating in a Process of Regional Integration. German Constitution and “Multilevel Constitutionalism”’, in Eibe Riedel (ed.), *German Reports. XV. International Congress on Comparative Law 40 et seq.* (Nomos 1998); see also Ingolf Pernice, ‘Multilevel constitutionalism and the treaty of Amsterdam’, 36 *CMLRev.* 703 (1998); Ingolf Pernice, Franz C. Mayer and Stephan Wernicke, ‘Renewing the European Social Contract. The Challenge of Institutional Reform and Enlargement in the Light of Multilevel Constitutionalism’, 12 *King's College Law Journal* 61 (2001).

<sup>28</sup> E.g., Josef Isensee, ‘Integrationsziel Europastaat?’, in Ole Due, Markus Lutter, Jürgen Schwarze (eds.), *Festschrift für Ulrich Everling zum 70. Geburtstag* 567 (Nomos 1995).

<sup>29</sup> Gunnar Folke Schuppert, ‘Zur Staatswerdung Europas’, *StWStP* 35, 53 (1994).

<sup>30</sup> Ernst-Wolfgang Böckenförde, *Staat, Nation, Europa* 8 (Suhrkamp 1999).

<sup>31</sup> Gunnar Folke Schuppert, ‘Zur Staatswerdung Europas’, *StWStP* 35, 60 (1994).

<sup>32</sup> Mayer, in Bogdandy, *supra* note 24, at p. 270.

The concept of a multi-layered constitution in Bamforth's and Leyland's book and the multilevel-debate have similar aspirations: overcoming the traditional repertoire of terms and concepts,<sup>33</sup> which in Britain may be associated with Dicey, in Germany with the state or statehood in the thick, continental sense of *Staat* and *Staatlichkeit*,<sup>34</sup> or in France with *Etat* with a capital E. The quest for neutral analytical concepts to elucidate new phenomena has also been taking place in the realm of social science, in part with the same motivation as in law -- to overcome the fixation with the state as the dominant form of political organisation.<sup>35</sup> The book uncovers the similarities as well as the differences in the German and the British approaches to the changing structure of public law.

Bamforth and Leyland are less concerned about another motivation that has contributed to the rise of the multilevel-approach. This is what *Gunnar Folke Schuppert* has called the potential "blueprint traps",<sup>36</sup> the distorting effect of traditional concepts such as "state" or even "constitution" on the analysis of European integration. Arguably, contemporary public law in Europe can be fully understood only by looking at both -- the multi-layered constitutions of states, which is the focus of the present book, *and* the multi-level constitution of the European Union.

### **Conclusion**

Bamforth and Leyland have provided an extremely valuable, informative and readable collection of essays. The book can be recommended to anybody who is involved with public law, as it helps our understanding how the structure of public law changes in the United Kingdom and elsewhere. By opening up an entire range of questions the book is an invitation to engage in further, and even more comparative, research on how and why public law in the 21<sup>st</sup> century will be different.

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<sup>33</sup> Schuppert, *supra* note 31, at p. 53.

<sup>34</sup> The "central complex of German constitutional psychology" according to Philip Allott, *supra*, note 8; see also J.H.H. Weiler, 'The State "über alles"', in: O. Due *et al.*, *supra*, note 28, at p. 1651.

<sup>35</sup> See Markus Jachtenfuchs and Beate Kohler-Koch (eds.), *Europäische Integration*, 11 *et seq.* (Leske und Budrch 1996); Markus Jachtenfuchs, 'Theoretical Perspectives on European Governance', 1 *ELJ* 115, 119 *et seq.* (1995), pointing to the parallel legal debate. See also Thomas König, Elmar Rieger and Hermann Schmitt (eds.), *Das europäische Mehrebenensystem 15* (Campus 1996).

<sup>36</sup> "Blaupausenfalle", see Gunnar Folke Schuppert, 'Anforderungen an eine Europäische Verfassung', in Hans-Dieter Klingemann and Friedhelm Neidhardt (eds.), *Zur Zukunft der Demokratie. WZB-Jahrbuch 2000*, 207, 216, 226 (Edition Sigma 2000).