

Comparative Administrative Law Scholarship Corner

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The World Bank's Dispute Resolution Service: Procedural Reforms to Ensure Meaningful Access to Remedies for Project-Affected People

Written May 1, 2025; Posted in SSRN May 14, 2025.

Brousseau, Jonathan

In 2020, the World Bank established the Dispute Resolution Service (DRS) to address complaints from people adversely affected by its projects. The DRS enables them to engage directly with borrower States responsible for project implementation, using mediation, fact-finding, and other methods. As outlined in Section I, this paper examines how the DRS strengthens affected people's access to remedies and how the DRS should further strengthen such access.

Section II presents the standards that underpin the access to a remedy provided by the DRS. Legal standards derive from the Bank's founding treaty, customary international law, and potential immunities before national courts. Policy standards derive from the Bank's three remedial mechanisms. First, the 1993 Inspection Panel investigates the Bank's compliance with its policies, based on three principles: accessibility, effectiveness, and independence. Second, the 2015 Grievance Redress Service facilitates corporate-level dispute resolution. Third, the Bank created the DRS solely to enhance access to remedy through dispute resolution at the organization's highest level.

Section III proposes improvements to the DRS for each principle. Regarding accessibility, the Bank should expand participation opportunities for affected people, including by guaranteeing minimum access to project information. Regarding effectiveness, the Bank should require the "consistency" of dispute resolution agreements with its policies, the default publication of agreements, and mandatory verification of agreement implementation. Regarding independence, the Bank should ensure greater options in sequencing compliance review and dispute resolution processes and introduce concrete measures to mitigate the DRS' institutional interest in outcomes.

Section IV concludes that the DRS' procedural shortcomings raise doubts about its ability to meaningfully enhance access to remedies, aligning instead with the contemporary trend in international law toward flexible dispute resolution. More broadly, the DRS illustrates the relevance of refining global administrative law theory through a transnational perspective that considers the distinct political, institutional, and economic forces that shape enforcement mechanisms.

International Regulatory Cooperation in Agency Practice: Assessment and Best Practices

Written May 5, 2025; Posted in SSRN May 7, 2025.

**Chancko, Elena;
Claussen, Kathleen
Zaring, David T.**

This Report, commissioned by the Administrative Conference of the United States (ACUS), studies what could have been an inflection point in IRC—an executive order encouraging agencies to pursue that sort of collaboration—to take stock of the phenomenon in the United States, particularly over the 12 years since the Order was issued. We conclude that engagement with the Order has been fitful and confirm that agencies pursue international collaboration variably. We also identify some best practices and policy prescriptions for regulators who wish to pursue IRC.

The basis for fostering IRC is, on its face, compelling. Markets have globalized, but regulatory authority ends at national borders. Unless governments resort to extraterritorial application of domestic law—a practice discouraged by the U.S. Supreme Court and usually avoided by the U.S. Congress—alternative approaches are necessary. IRC provides a means for regulators to extend their influence internationally without overstepping jurisdictional boundaries.

Adjudication vs. Investigation in the Ombudsman Institution: A Comparative Study with Reference to Pakistan

Written January 16, 2025; Posted in SSRN May 23, 2025.

Chaudhry, Farrukh Mushtaq

The Ombudsman institution has played a pivotal role in governance systems across the world, focusing primarily on addressing grievances against public authorities and ensuring accountability. While the functions of the Ombudsman can vary from one jurisdiction to another, they generally include elements of investigation. In contrast to the original concept of ombudsman in Pakistan and India this institution fulfills a dual role—handling specific complaints and investigating broader administrative issues. However, while the Ombudsman has some adjudicative elements, the investigative function remains more prominent, especially within the context of public administration.

This article explores the Ombudsman system in Pakistan, comparing its adjudicative and investigative functions. Through an analysis of the Ombudsman's role in the light of court decisions, the emphasis on the investigative element becomes clear as the most defining feature.

Designing Policymaking Mechanisms for Regulatory Dynamism

Written May 7, 2025; Posted in SSRN May 28, 2025.

Cohen, Julie E

Edwards, Nina-Simone

Jones, Meg Leta

Ohm, Paul

The administrative state is struggling to counter the harms of today's information economy. Existing mechanisms for policymaking fall short both substantively and procedurally. Substantively, regulators face challenges translating decisions about public values—e.g., “protect sensitive personal information” or “avoid deceiving consumers”—into forms capable of being operationalized within networked digital processes and environments. Procedurally, the regulatory toolkit is reactive and poorly adapted to iteration and experimentation, and the results it produces—sometimes, results that are already outdated—can be difficult to revisit as the information available to regulators and the public evolves.

In this report, we develop a set of foundational principles for the design of a regulatory system that is nimble and effective. These include: jumpstarting the regulatory lifecycle by empowering regulators to act sooner, enabling experimental approaches to regulation, creating governance seams to facilitate regulatory oversight, mandating beneficial friction at key points in networked digital systems and processes, and extending regulatory authority in ways that mirror the scale and interdependence of digital supply chains.

Next, we propose an expanded regulatory toolkit that implements these principles. To act in ways that effectively address digital architectures, systems, and processes, regulators must be empowered to mandate data flow restrictions, to develop design requirements for both user-facing and technical interfaces, to require continuous adversarial testing of certain kinds of systems and processes, and to develop and impose human subjects oversight requirements adapted to the operation of digital architectures, services, and supply chains.

Last, we propose corresponding institutional changes, including new statutory authorities to replace the relevant parts of the Administrative Procedure Act (APA) and their corresponding agency implementations. As a baseline, regulators must be empowered to engage in streamlined, iterative rulemaking and equipped with the resources to conduct interdisciplinary problem framing and assessment. Additionally, regulators should have authority to develop what we call policy sandboxes—experimental regimes of enhanced oversight that operate via tunable parameters—and to develop premarket certification and/or licensing regimes for digital architectures, products and services.

English Administrative Law from 1550: Continuity and Change

Oxford Legal History; Published: 24 September 2024, ISBN: 9780198908326.

Paul Craig

The commonly held view about English administrative law is that it is of recent origin, with some dating it from the mid-20th century and some venturing back to the late 19th century. *English Administrative Law from 1550: Continuity and Change* upends this conventional thinking, charting its development from the mid-16th century with an in-depth examination of administrative law doctrine based on primary legal materials, statute, and case law.

This book is divided into four parts. Part I sets out the book's principal thesis, contrasting standard perceptions concerning the existence of English administrative law with the reality of its emergence from the mid-16th century. Part II is concerned with Regulation and Administration from the mid-16th century to the end of the 19th century. There is detailed analysis of the regulatory and administrative state, which includes chapters on the way in which administrative policy was developed through individual decision-making and rulemaking, and the role played by contract in service delivery. Part III deals with Courts and Doctrine. It begins with discussion of foundational precepts followed by chapters on natural justice; review of law and fact; rights; delegation, fettering and purpose; reasonableness; proportionability; prerogative; and third and fourth source power. Part IV of the book covers Remedies and Review, with chapters on invalidity; standing; the prerogative writs; injunction, declaration, quo warranto and habeas corpus; and damages and restitutionary liability.

With thought-provoking and original insights, *English Administrative Law from 1550* systematically elaborates and contextualizes the origins of administrative law features while linking them to their modern-day equivalents.

The Scope and Meaning of Reasonableness Review After Vavilov

Written June 4, 2025; Posted in SSRN June 5, 2025.

Paul Daly

This paper, written for the fifth anniversary of the Supreme Court of Canada's seminal decision in *Vavilov*, revisits themes discussed in my 2015 article on "The Scope and Meaning of Reasonableness Review". As in my 2015 paper, I will discuss the scope and meaning of reasonableness review. First, I tackle the scope of reasonableness review, highlighting the narrow scope of the correctness categories based on thin conceptions of the rule of law and institutional design as well as the definitive rejection of contextual analysis in selecting the standard of review. Second, I address the meaning of reasonableness review: I describe the general structure of reasonableness review under *Vavilov* and then turn to the central concept -- "constraint" -- and assess whether it successfully mediates the tensions within the *Vavilov* framework. My analysis of the scope and meaning of reasonableness review allows me to discuss the sociological and normative legitimacy of the *Vavilov* framework, concluding that the legal community's acceptance of the framework is due to the Supreme Court's skilful navigation of fault lines in Canadian administrative law and the normative attractiveness of the majority reasons in *Vavilov*.

Taming the Smart Cyber Beast: A Network of Courts and Other Authorities

European Review of Digital Administration & Law – Erdal 2024, Volume 5, Issue 1, pp. 85-97.

De La Sierra, Susana

Governments turned digital long ago. This is essential in terms of efficiency, which is in general a constitutional mandate incumbent on public bodies. Many tasks can be executed in a quicker and more effective manner, while leaving to human beings the responsibility of dealing with complex cases, where public interests need to be duly balanced. Yet risks also exist, and they need to be outweighed with benefits when using digital and AI instruments in public action. Controls of this usage are paramount. A theory of control of digital administration using AI instruments, i.e. the intelligent or smart Cyber Beast, needs to be comprehensive and up to date. This article attempts to delve into the main institutions and principles that frame said control.

Global Standards and EU Law: Challenges for the EU Principles of Good Governance

Edward Elgar; Publication Date: June 2025; ISBN: 9781802202267

Elia Antonio, Mariolina

Volpato, Annalisa

Röttger-Wirtz, Sabrina

This book examines the interplay between global standards and the EU legal system, examining how the process of incorporating technical standards set at international level poses challenges for principles of good governance, such as accountability, participatory openness and transparency. It contributes to the ongoing debate concerning the democratic credentials of decision-making in Europe by focusing on the specific juncture where globally produced standards are used by the EU institutions for EU regulatory purposes.

Renowned experts delve into the process of incorporation of global standards into salient EU policy areas including agriculture, environment, finance, telecommunications and transport. They shed light on relevant case law and EU legislation, providing unique reflections on the interactions between global and EU governance. Chapters explore the membership and procedural rules of global standard-setting bodies and discuss the patterns of incorporation of standards produced by diverse global regulators. They also present critical insights into horizontal issues, focussing on the role of agencies as in-betweeners, the role of the Court of Justice of the EU, and the bottom-up approach to standardisation via EU member states.

Global Standards and EU Law is designed for students and academics in European law and governance. The focus on global standards makes this an essential read for policymakers and practitioners in EU and US administrative law.

Ensuring Consistent Decision-making when Administration is Decentralized: A Case Study of Scandinavian Countercyclical Capital Buffer Rates

Written May 14, 2025; Posted in SSRN May 30, 2025

Ellingsæter, Sjur Swensen

Two major developments in post-crisis EU banking regulation are in tension with each other: While the EU now seeks to have common regulatory standards across all Member States, important pieces of new EU legislation leaves for national administrative authorities to conduct the calibration of regulatory requirements through decision-making. Such a set-up could result in inconsistent decision-making, thus creating differences in standards between Member States. Against this background, this article identifies two means for mitigating this tension: EU legislation could either state the risk preferences of the legislator or provide instructions on what decision national authorities should adopt given certain circumstances. The article then considers the extent to which the EU law framework for national decisions on countercyclical capital buffer rates employs these means and what policies the Danish, Norwegian and Swedish authorities have developed where EU law sources are vague or silent.

Adversarial Comparativism: The Role of Emotion in U.S.-China Comparative Law Projects

Written February 4, 2025; Posted in SSRN May 22, 2025

Erie, Matthew S.

Contemporary comparative law operates across a landscape riven by protectionism, nationalism, and securitization, all of which complicate comparative law projects. Nowhere is this more evident than in the U.S-China relationship, the most important bilateral relationship in the world. Despite economic "delinking," the U.S. and Chinese legal systems are interacting more than ever; however, how this interaction works is poorly understood. This Article proposes "adversarial comparativism" to explain this dynamic. It is an approach to comparative law and politics that includes different modalities: competition, aggressiveness, transactionalism, misunderstanding, opportunism, and gaslighting. Many of these are underpinned by emotion. As such, while this Article unpacks adversarial comparativism, its broader contribution is to point to the role of emotion and its cognates-faux emotion, emotional contagion, psychological framing, and affect-in the comparing and making of law across borders. Adversarial comparativism shows emotion as a strategic asset deployed by elites to promote their interests. Drawing on bi-jurisdictional fieldwork, I illustrate this through the US-China relationship and the countries' respective comparative law projects. Chinese are learning extraterritorial law from the US; conversely, US states are building property regimes to limit the extraterritorial reach of the Party-State into American markets. Although the projects are different modalities and are asymmetrical, they are also reactive if not relational, and both are riddled with emotion. Adversarial comparativism shows how emotions like indignation and fear operate as "structures of feeling" that shape lawfare behaviors. Emotional content makes certain outcomes of comparative law projects possible while foreclosing others, including "symbolic legislation" informed by faux emotion. The Article asks what adversarial comparativism means for legal development in both superpowers, the fragmentation of international law, and the discipline of comparative law. Lastly, it suggests that while emotion may be one reason for US-China lawfare, it may also serve as resource for alternative pathways.

Los entes autónomos en el derecho constitucional latinoamericano **Introduction (Independent authorities in Latin American constitutional law)**

Written March 17, 2023; Posted in SSRN June 6, 2025

García-Huidobro, Luis Eugenio
Guidi, Sebastian

This introduction provides an overview of the concept and role of independent authorities in comparative public law, with a particular emphasis on Latin America. First, we outline an idea of these institutions and examine how they have assumed critical responsibilities traditionally allocated to one of the three branches of government. We also explore their role in protecting constitutional democracy and discuss some problems associated with their democratic legitimacy. Second, we outline these entities' situation in Latin America, stressing how little academic attention they have received in contrast with their growing importance. Finally, we provide a critical review of each of the contributions to the symposium.

The Impact of Leadership in Indian Civil Services: A Critical Study of Its Role as the Backbone of Administration

Written May 23, 2025; Posted in SSRN June 2, 2025

Garg, Abhishek

The Indian Civil Services represent the permanent executive machinery of the world's largest democracy, serving as the critical link between policy formulation and implementation. This study examines the multifaceted role of leadership within the Indian Civil Services, analyzing how administrative leadership shapes governance outcomes, policy effectiveness, and citizen welfare. Through a comprehensive evaluation of leadership styles, challenges, and transformative potential, this research demonstrates that civil service leadership serves not merely as an administrative function but as the fundamental backbone supporting India's democratic governance structure. The study employs a mixed-method approach, incorporating historical analysis, case studies, and contemporary assessments to understand the evolution and impact of civil service leadership in India's administrative framework.

Parliamentary Sovereignty and the Inconsistency of Ultra Vires

Written May 18, 2025; Posted in SSRN May 19, 2025

Hameed, Asif

Parliamentary sovereignty and judicial review can only be reconciled, ultra vires theorists say, if judicial review principles are taken to be authorised by Parliament. While this argument was vigorously debated around the turn of the millennium, it continues to have traction among academics and senior judges today. This article takes stock by returning to ultra vires and surfacing a critical ambiguity at the heart of the doctrine. Its supporters tell us that ultra vires is logically necessary in a system recognising parliamentary sovereignty, and that judges should not abandon it. Yet if ultra vires is abandoned, what are the consequences for parliamentary sovereignty? Two readings of the argument are available. On one reading, parliamentary sovereignty continues to obtain. This generates a logical inconsistency: ultra vires must be true because the system recognises parliamentary sovereignty, but in that same system it could be abandoned by the judges and therefore false. On another reading, to abandon ultra vires does mean to abandon parliamentary sovereignty. But this reading is inconsistent with the evidence—apartheid South Africa, a key case study and the ultra vires theorists' exemplar, where the ultra vires doctrine was definitively repudiated and yet parliamentary sovereignty continued to obtain. Either way, inconsistency afflicts the ultra vires doctrine.

Agency Amici

Written May 30, 2024; Posted in SSRN June 2, 2025

Hammond, Emily

Administrative law is largely concerned with two issues. The first is how agencies exercise their power using traditional forms like rulemaking and adjudication. The second is their legitimacy in doing so, which is increasingly under attack in the courts. However, agencies engage in numerous other activities that offer important insights into both these issues. To that end, this Article considers an under-appreciated agency activity: the practice of appearing as amicus curiae in the federal courts. Agencies file scores of amicus briefs each year, all seeking to influence the development of the law outside of the traditional means of rulemaking and adjudication. This Article's primary objectives are to build a positive account of agency amicus behavior, including a typology of such behaviors, and to evaluate those behaviors through the normative dimensions of administrative law. As developed herein, this exploration offers deep engagement with some of the most pressing issues of administrative law today, including the scope of agencies' interpretive authority, implications of a strong view of the unitary executive, and access to justice. As the Article concludes, agency amici fill important roles both in ordinary administrative law and in supporting the constitutional framework.

The Case for an Independent Reviewer of Counterterrorism Legislation in New Zealand

Written: January 31, 2025; Posted in SSRN: May 23, 2025

Ip, John

Counterterrorism legislation expands state power. Its enactment is often reactive and rushed. Once enacted, it tends to resist repeal. These features make scrutiny and oversight of the operation of counterterrorism legislation particularly important. However, the institutions ordinarily tasked with these functions, including legislatures and courts, have various limitations. These limitations, coupled with New Zealand's enactment of a relative flurry of counterterrorism legislation since 2019, suggest the need for a different institution. Drawing on models from the United Kingdom, Australia and Ireland, the paper argues for the establishment of a permanent independent office, with complete access to information, to review the operation of counterterrorism legislation at a programmatic level and publish reports with its findings and recommendations. The value of such an entity lies in its capacity to enhance public understanding, facilitate evidence-based policy-making and augment existing legal and political oversight institutions.

The Legitimacy of EU Environmental Governance and the Role of the European Courts

Oxford University Press, Published: 09 July 2025; ISBN: 9780198972808

Lees, Emma

Elia Antonio, Mariolina

European courts have an important role to play in contributing to the legitimacy of EU environmental governance. Their role in holding to account and scrutinizing administrative and legislative acts is critical to the overall legitimacy of the political system. However, the boundaries of legitimacy in governance are themselves being shaped by the environmental context. This volume explores how the environment affects the ways in which the courts can support the legitimacy of EU governance, and, in turn, what the courts themselves bring to the table in enhancing that legitimacy.

The Legitimacy of EU Environmental Governance and the Role of the European Courts considers soft law, human rights, the environmental principles, judicial procedures and remedies, and the wider European law context, to examine the dynamics which shape the courts' contributions to legitimacy.

Bringing together leading authors in EU constitutional and administrative law and EU environmental law, this book explores the ways in which environmental degradation is shifting how the courts, and we, assess what legitimate governance actually consists of.

Giulio Napolitano**Leonardo Parona**

Providing an overview of the history and methods of legal comparison as applied to the field, this topical book traces the origin, evolution and transformation of administrative law in various jurisdictions across the globe. It examines the tendencies of convergence as well as the preservation of distinctive traits within international legal systems.

Giulio Napolitano and Leonardo Parona explore the rise of a modern bureaucracy with special powers and safeguards in France and in Europe and its most recent achievements; the invention and the reformation of the Regulatory State in the United States; the hybrid system of public law used in South America; the constitutionalization and institutionalization process in Africa; the Chinese path towards rule of law; and the development of administrative law in South East Asia, Australia and New Zealand. They combine both theoretical and practical approaches to the analysis of a wide array of legal topics, including public functions, delegations and outsourcing; administrative action such as adjudication, rulemaking and public contracts; and administrative litigation and judicial review.

An original and inspired guide to a wide range of legal issues central to administrative law, this book is an essential resource for students and scholars of comparative law, constitutional and administrative law, and regulation and governance.

 The Right to a Healthy Environment in the Light of the New Case Law of the Croatian Constitutional Court

Journal of Agricultural and Environmental Law, Vol. 20, No. 38, 2028, 349-369.

Lana Ofak

This research paper aims to investigate if notable environmental matters have, in recent years, come before the Constitutional Court of the Republic of Croatia, in light of the increasing number of similar cases brought before the highest courts in European countries (Chapter 1). Previous analyses concerning constitutional adjudication on environmental issues have revealed that the Croatian Constitutional Court has seldom invoked Article 69 of the Constitution of the Republic of Croatia, a provision which enshrines the right to a healthy life (Chapter 2). However, on 18 April 2023, the Constitutional Court rendered a landmark judgment wherein it affirmed that the Croatian Constitution protects the citizens' right to a healthy life and environment. The case involved a dispute over the constitutionality of the Decision on the Order and Dynamics of Landfill Closure. This paper will thoroughly examine and scrutinise this significant constitutional case (Chapter 3). To commence, the analysis shall delineate the magnitude of Croatia's waste management deficiencies—failings which were deemed by the Constitutional Court to violate the principle of legality and the constitutional duty to comply with EU laws (Chapter 3.1). Thereafter, the study shall address the formal inconsistency of the disputed Decision with the Constitution (Chapter 3.2). Subsequent chapters shall demonstrate how the Constitutional Court assessed point III of the contested Decisions as an excessive (and therefore disproportionate) limitation of the fundamental right to a healthy life and environment prescribed in Article 69 of the Constitution (Chapter 3.3) and further, how it encroached upon the constitutionally safeguarded right of citizens to local and regional self-government (Chapter 3.4). The concluding portion of this paper shall recount the process by which the Constitutional Court's decision took place (Chapter 3.5) and shall conclude with reflections upon the prospective influence this decision may exert upon the trajectory of environmental jurisprudence and legislative development within Croatia (Chapter 4).

Portugal's Legal and Policy Framework for Evacuation Planning in Wildfire Scenarios: Status Quo and Potential for Improvement

Posted in SSRN: May 15, 2025

Oliveira, Fernanda Paula
Mello, Beatriz de

The increasing occurrence and intensity of wildfires in Portugal underline the need to enhance disaster preparedness. This study analyzes Portugal's legal and policy framework on evacuation planning for wildfire scenarios, assessing its strengths and limitations in protecting evacuees' rights and proposing improvements based on human rights standards and comparative law. It is a qualitative and interdisciplinary study—at the intersection of disaster management and law—using the doctrinal legal research method. In Portugal, evacuation plans are part of the civil protection preparations and have been developed under the 'Safe Village, Safe People' programs. The analysis identified key strengths within this framework, including a planning committee to support decision-making, priority evacuation guidelines for vulnerable groups, recommendations for multilingual communication, and a right to risk-related information. However, Portuguese guidelines on evacuation planning could be improved by detailing a decision-making phase, safety measures in the shelters, the return of evacuees and alternative solutions for those without homes to return to. The provision of evacuees' human rights in a binding instrument could contribute to making sure that no one is left behind and to hold authorities accountable. Addressing these omissions would strengthen Portugal's disaster preparedness and better protect evacuees before, during and after displacement.

Appeal vs Judicial Review: Myths and Surprises

Written: June 9, 2025; Posted in SSRN: June 13, 2025

Perry, Adam

An appeal from a judicial decision is different than a judicial review of an administrative decision. But how are they different, exactly? One common view is that the grounds of appeal are more extensive than the common law grounds of judicial review. Specifically, appeal concerns the merits of a decision whereas review concerns only its legality. I argue that this common view turns the truth on its head. All the grounds of appeal are, in fact, also grounds of review. Not all the grounds of review are grounds of appeal. As a result, the grounds of review are more, not less, extensive, than the grounds of appeal. The implication is that review concerns the merits of a decision at least as much as appeal does.

Deference As Informed Respect: Vavilov's Implications for Procedural Review of Legislative Functions

University of Toronto Law Journal, vol. 75 no. 2, 2025, p. 147-175.

Prado, Mariana Mota

Xu, Ivy Tengge

This article articulates a theoretical and doctrinal basis to support the idea that Canadian courts should abandon their complete abstinence from reviewing the procedural fairness of delegate legislation (known as the “legislative exception”). While this is a longstanding demand, Canadian courts have been slow in embracing it until now. *Vavilov*, a Supreme Court of Canada case decided in 2019, opens the door for the substantive review of delegated legislation, and, hopefully, this will become a consolidated feature in the Canadian system soon. For a *Vavilovian* robust reasonableness review to be meaningful, however, procedural guarantees need to be in place. To support this claim, we argue that *Vavilov* builds on David Dyzenhaus’s influential concept of ‘deference as respect’ but rearticulates it as ‘deference as informed respect’. This means that a deferential stance requires courts to have enough information in order to determine if a decision is justified. Procedural guarantees will provide information and assist courts in conducting a meaningful substantive review. Eliminating the legislative exception in this way allow courts to address a significant gap in, and increase the coherence of, Canadian administrative law jurisprudence.

Evolving Expertise: Structural Inequality And Bureaucratic Judgment

Written: February 1th, 2025; Posted in SSRN: June 2, 2025

Rahman, K. Sabeel

This symposium contribution explores this question of the pathways, possibilities, and limitations of evolving and adapting existing bureaucratic processes to shift how governments conceptualize and then respond to public problems, focusing in particular on efforts to embed concepts of equity, market power, and systemic responses to climate change in shaping administrative governance from 2021 to 2024.

Even as we now see a more vociferous counterreaction against policies aimed at advancing equity, reining in new forms of market-dominant corporate power, and tackling climate change, these very concepts faced a different set of challenges from as they sought to be operationalized and institutionalized within a favorably inclined bureaucracy from 2021 to 2024. While attention is rightly directed in the coming months and years on navigating and withstanding this counterrevolution, there is also a need to interrogate the lessons and limitations of the kinds of policy evolutions that were under way in the aftermath of the social movement demands of 2020.

Focusing on the challenge of implementing new paradigms—and transforming existing discourses and practices of administrative governance—we see a more generalized set of challenges. Big new ideas about public policy must also be made legible, tractable, and implementable in context of the existing administrative and governance machinery itself. Even after the passage of new legislation—including the major new bills investing in post-pandemic economic recovery, infrastructure, and clean energy—they still need to be implemented through myriad administrative actions. Evolving, adapting, and leveraging existing bureaucratic processes requires more than either legislative or executive command, particularly if the goal is to rewire the ways in which existing policy mechanisms conceptualize and respond to public problems more broadly. This shifting of internal paradigms and approaches to governance within existing institutions can in some sense be a source of slowdown, friction, or erosion of more transformative possibilities. In another sense, though, if done right, such attentiveness to the inner discourses and dynamics of bureaucracies can be a component of how new ideas become institutionalized.

As scholars and practitioners begin to imagine what kinds of administrative institutions ought to be rebuilt or redesigned for the future, the possibilities and limitations of administrative governance prior to the current period of destabilization and dismantling should be one of many data points informing deeper reconsiderations.

Power, Profit, and Washington's Paradox: Corruption and the Trump Administration

Posted in VerfBlog: June 12, 2025

Rose-Ackerman, Susan

The text examines allegations of corruption and the misuse of public power for private gain during the Trump administration, arguing that his actions go beyond the conventional definition of corruption, aligning instead with a model of kleptocracy and personalist governance. The central premise is that the president and his family appear to disregard the distinction between public and private interests, pursuing personal financial gain and retribution, thereby revealing a transactional view of governance detached from ethical or moral constraints. The analysis is structured around three main axes: (i) self-enrichment and conflicts of interest; (ii) the dismantling of anti-corruption safeguards; and (iii) legal implications and internal contradictions. In sum, the Trump administration poses a challenge to traditional structures of accountability and transparency, exposing a tension between the ideological dismantling of the regulatory state and the personalist exploitation of power for private benefit.

The Traffic Light Metaphor in Administrative Law: A Critical Evaluation

Written: April 22, 2025; Posted in SSRN: May 6, 2025

Maresh Singh Saud

The "Traffic Light" metaphor, encompassing Red, Green, and Amber Light theories, provides enduring conceptual frameworks for analyzing the perennial tension between governmental power and legal control within administrative law. This paper undertakes a critical evaluation of these theories, examining their jurisprudential underpinnings, historical evolution, and contemporary relevance. Originating in debates surrounding laissez-faire versus collectivism and the appropriate scope of state intervention, these theories articulate distinct normative positions on the function of administrative law and the optimal balance between executive efficiency and the protection of individual rights under the rule of law. The Red Light theory, heavily influenced by Diceyan constitutionalism, privileges judicial control as a necessary restraint on potentially arbitrary state power. Conversely, the Green Light theory prioritizes administrative effectiveness and policy implementation, favoring political accountability over judicial constraints. The Amber Light theory attempts a synthesis, advocating a balanced, context-dependent approach integrating judicial oversight with administrative autonomy, often conceptualized as a 'partnership'. Drawing upon key scholarly contributions (Dicey, Harlow, Rawlings, Wade, Forsyth, Hayek, Jones, Griffith) and landmark jurisprudence (*Entick v. Carrington*, *Marbury v. Madison*, *Anisminic*, *Wednesbury*), this paper analyzes the core tenets, mechanisms, and constitutional implications of each theory, including their relationship with the ultra vires doctrine and common law principles. It concludes by assessing the metaphor's continued utility in navigating the complexities of modern administrative Governance.

Automated Decision-Making And Government Opacity

Public Law, 2025, January pp. 8-15, Available at SSRN

Sinclair, Alexandra

Discusses whether the reason for the limited number of challenges to the use of automated decision-making by government bodies is due to a lack of transparency over its application, which disadvantages claimants. Details four types of such opacity, including uncertainty over its role in a decision.

Public Law Analysis of Japan's Energy Policy for 2025

Written: May 12, 2025; Posted in SSRN: June 11, 2025

Tsuji, Yuichiro

Net Zero by 2050: A Roadmap for the Global Energy Sector by the IEA states, "Advanced economies should achieve net-zero emissions in the power sector by 2035."

Can Japan achieve this?

In 2022, the G7 countries issued a joint statement on the international agreement and policy direction for the "Decarbonization of the Power Sector," which they will advance in coordination, clearly stating the common goal of "decarbonizing the power sector nearly completely by 2035."

This includes the phased-out of unabated coal. Additionally, it will accelerate the adoption of renewable energy, nuclear power, hydrogen, and CCUS (carbon capture and storage).

Japan has set a target of achieving net-zero greenhouse gas emissions by 2050.

In order to evaluate Japan's energy policy for 2025, it is necessary to evaluate three elements: the Basic Energy Plan, the Global Warming Countermeasures Plan, and the GX2040 Vision.

The 7th Energy Basic Plan aims to reduce greenhouse gas emissions by 60% compared to 2013 levels by fiscal year 2035 and by 73% by fiscal year 2040. However, the Sixth Basic Energy Plan had originally aimed to reduce GHG emissions by 50% compared to 2019 levels as an international commitment. Somehow, the target year has changed from 2019 to 2013.

Countries are required to submit their 2035 targets by 2025 and their 2040 targets by 2030. The Japanese government is currently preparing its Nationally Determined Contribution (NDC) for greenhouse gas emissions reduction, which is recommended to be submitted by 2025. It is required to be submitted nine to twelve months prior to the COP30 conference scheduled for November 2025. How Japan's NDC will be evaluated at the COP30 conference in November 2025 will be a key issue.

This report aims to evaluate the degree to which this goal can be achieved based on Japan's legal system.

The "Common Law Consensus": Law, Rhetoric and Reform in Brazil

Written: June 2, 2025; Posted in SSRN: June 9, 2025

Víspico, Lucas

This Article coins the concept of the "Common Law Consensus" to describe the rhetorical power of the common law in driving legal reforms worldwide. It examines this phenomenon through the case study of Brazil, a jurisdiction traditionally regarded as part of the civil law world that has been adopting elements typically associated with common law systems. From establishing a stronger role of precedents in civil procedure to implementing measures that enhance judges' knowledge in Law and Economics, legislators and policymakers have justified local reforms based on the supposed need to align the country's legal institutions more closely with common law ones. This process underscores both the influence of the Common Law Consensus and its inherent contradictions. While recent scholarship has challenged the coherence and empirical validity of the common-civil law divide, its rhetorical power remains in full force. The Article reflects on the broader role of ideas in shaping legal reform, particularly in developing countries, and concludes by advocating for culturally sensitive lawmaking grounded in evidence rather than rhetorical justifications.

Administrative Justice Through Administrative Tribunals in Aotearoa: Exploring the Tensions and Trade-offs

The University of Auckland Faculty of Law Research Paper Series 2025, Stephen Thomson, Matthew Groves and Greg Weeks (eds) Administrative Tribunals in the Common Law World (Bloomsbury 2024), Available at SSRN.

Wilberg, Hanna

This chapter offers an administrative justice framework for evaluating remedial avenues, and a sketch of how this might apply to administrative tribunals in Aotearoa New Zealand. My framework aims to identify the range of competing considerations and to emphasise the tensions between them and the consequent need for trade-offs.

Public Procurement without the Public: The Case of Abolished Public Interest Litigation

Written: June 1th, 2025; Posted in SSRN: June 3, 2025

Yacoub, Abdelrahman Gamal

The Supreme Constitutional Court of Egypt upheld the State Contracts Appeal Law, which bans third-party standing in government contract disputes. The Court reasoned that the economic necessity justifies a ban on public interest litigation (PIL). Setting a unique precedent, this ruling validates the restriction on third-party standing, thus disabling any person who is not party to the contract from challenging its validity.

Although secure against judicial nullity forever now, doubts about the constitutionality of this law remain. This paper dissects the different facets of such a ban, first expounding the arguments against PIL on political, economic, and constitutional levels. Then, it discusses the drawbacks of a comprehensive ban approach, considering comparative experiences. Using a doctrinal analytical approach, this paper concludes that excluding PIL is corruption-tolerating, a dysfunction of locus standi (standing) undermining the access to justice and constitutes a case of judicial stripping.

The National Goals and Directive Principles as Constitutionally Implied Purposes and Relevant Considerations in Administrative Decision-Making in Papua New Guinea

Asian-Pacific Law & Policy Journal (2025) Volume 26, Issue 2, pp. 83-132., Available at SSRN.

Yadin, Shahr Shalom

The National Goals and Directive Principles ("NGDPs") and the Basic Social Obligations ("BSOs"), found in the Preamble of the Constitution of the Independent State of Papua New Guinea, 1975, justify, legitimize, and provide context and direction for the Papua New Guinean State. According to the Constitution, while the NGDPs and BSOs are nonjusticiable, it is the duty of all public authorities to, as far as lies within their mandates, apply and give effect to them. This duty, however, is neglected and unrealized by administrative decision-makers and within the workings of the judiciary, including the lack of legal techniques and mechanisms to oversee and enforce its fulfillment. Building on the work of Vergil Narokobi, this article restates and methodically develops one way in which this oversight and enforcement could take place: through the recognition of the NGDPs and BSOs as constitutionally implied purposes and relevant considerations in administrative decision-making, amenable to judicial review by the courts. This idea naturally emerges, and is even called for and required based on a proper reading of the Constitution. Furthermore, despite a few challenges that might arise, it is technically quite easily achievable and has great advantages in law and in the wider political and social picture. Finally, it is possible that some of the ideas developed here are transferrable to other jurisdictions with comparable constitutional situations (India, Nigeria, and Uganda).

Events and Informations:

- **August 6, 2025 (12:00 PM – 1:00 PM): HKU Law CCPL Seminar “The Nature of Administrative Policies” – for more information, [click here](#).**

Speakers: Kenny Chng - Associate Professor Yong Pung How School of Law (Singapore Management University) and Cora Chan – Professor Faculty of Law (The University of Hong Kong).

- **July 28-30, 2025: International Society of Public Law (ICON-S) Annual Conference “At the Crossroads of Public Law: Equality, Climate Emergency, and Democracy in the Digital Era” (Brasília – Brazil) – for more information, [click here](#).**

Please contact the editor at his e-mail with your comments, informations, questions or suggestions for our Comparative Administrative Law listserv.
