NEWSLETTER 7 DEC 2025 *WHAT'S NEW IN THE COMPARATIVE ADMINISTRATIVE LAW WORLD?*

Comparative Administrative Law Scholarship Corner

Affiliation with the Yale Comparative Administrative Law Listserv

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Controlling the Administrative State: Essays in Honour of Matthew Groves

Published: Nov 13, 2025; Publisher: Bloomsbury Publishing

Aronson, Mark
Weeks, Greg:

This book discusses some of the most important issues facing administrative law and related doctrines.
Leading public law scholars from across the common law world have contributed chapters to recognise the exceptional scholarship and career of Matthew Groves, Distinguished Professor at Deakin University, Australia.
Over the last century, the power of the administrative state has grown immensely and the scope of administrative law as a field of inquiry has grown with it. This collection of essays provides an up-to-date analysis of some of the most important issues in administrative law in the 2020s, including: access to justice issues; the role, purpose and future of ombuds institutions and tribunals; government liability within and beyond judicial review; integrity bodies; 'lawfare'; the role of policies in government decision-making; and the tension between military and civilian systems of justice. These topics have been central to the work and career of Matthew Groves.
Readers interested in public law – whether practitioners, researchers or students – will discover a wealth of engaging and thought-provoking considerations of the most topical current issues in administrative law by a selection of prominent academics.

Automation as Delegation of Power: Constitutional Constraints on AI Systems for the Administration of Justice

Written: October 30, 2025; Posted in SSRN: November 8, 2025

Carnat, Irina

The deployment of generative AI systems in judicial decision-making constitutes a de facto delegation of power that threatens constitutional principles governing the administration of justice, particularly the fundamental right to an effective judicial remedy under Article 47 of the Charter of Fundamental Rights. This article operationalizes constitutional constraints within the EU AI Act's risk-based regulatory framework by analyzing relevant provisions on risk classification, fundamental rights impact assessments, human oversight, and the right to an explanation. The proposed algorithmic accountability framework distributes responsibility among providers, deployers, and surveillance authorities, demonstrating how constitutional principles must engage substantively with pragmatic product safety regulation to preserve judicial independence and accountability in an age of algorithmic governance.

Hong Kong's failed attempt at criminalising commercial surrogacy: Tale of a flawed legislative transplant

Medical Law International; Published: 01 December 2025

Cheung, Daisy
Wan, Trevor T. W

The article examines the failure of section 17 of Hong Kong's Human Reproductive Technology Ordinance (Cap. 561) to criminalise commercial surrogacy, despite clear legislative intent to that effect. Through an in-depth analysis of the legislative debates and a series of illustrative vignettes, it demonstrates that section 17 only renders unlawful the act of making or receiving payments for negotiations leading to a commercial surrogacy arrangement, rather than the act of entering into such an arrangement itself. Such predicament stems from a flawed process of legislative transplantation. Section 17 was modelled on section 2(1) of the United Kingdom's Surrogacy Arrangements Act 1985, the primary aim of which was to combat the proliferation of intermediary surrogacy agencies, instead of outlawing the practice of commercial surrogacy itself. Incomplete understanding of this legislative context likely led the drafters to misjudge the Surrogacy Arrangements Act 1985 as a suitable model for transplantation into the Hong Kong context. The article underscores the importance of careful legislative transplantation, and how crucial it is that law drafters and legislators be attuned to the original intent, domestic policy, and socio-legal context of the foreign rule being considered.

Including Publics in Administrative Governance

Written: September 29, 2025; Posted in SSRN: November 21, 2025

Cohen, Julie E.
Edwards, Nina-Simone
Jones, Meg Leta
Ohm, Paul

The administrative state is struggling to counter the growing harms of the information economy. As we have documented in previous reports, existing regulatory tools were designed for an earlier era and are ill-suited to confront information-era harms such as algorithmic discrimination or AI-enabled manipulation. This document is part of a broader effort to rethink the role of the administrative state in governing a digital, data-driven economy. It explores methods for generating and mobilizing public participation–a longstanding pillar of administrative governance. Public participation in administrative processes serves several recognized purposes: it enhances the legitimacy of agency actions, helps guard against regulatory capture, and improves policy outcomes by surfacing a range of expertise and experience. Participation mechanisms are designed, at least in theory, to enable those affected by regulations to influence their development. In practice, however, it is often difficult for members of the public to meaningfully engage with agencies due to procedures that are opaque, outdated, and influenced by entrenched interests. For many, it is unclear whether participation would have any real impact at all. In this report, we develop a set of principles to guide the redesign of public participation mechanisms. These include: front-loading public engagement so that publics are involved sooner, building public capacity to enable meaningful engagement, building regulatory capacity to generate ongoing, two-way communication between regulators and publics, and reframing expertise as a public good to help facilitate informed contestation of policy priorities. Next, we propose specific mechanisms to facilitate the creation of information pipelines that are optimized for the timely transmission of two-way flows of high-quality, context-rich information between agencies and publics. Agencies must actively generate community engagement, gather community information, and facilitate structured deliberation and decision-making on issues central to the substance and design of regulatory oversight.
Last, we propose recommendations for institutional redesign to embed participation mechanisms throughout the regulatory lifecycle. Public participation should begin at the agenda setting stage and extend through regulatory monitoring and enforcement of public mandates. Implementing these changes requires both appropriate resource allocation and some reorganization of internal agency processes.

Automating Administrative Decisions in Europe and The United States: the algorithmic state from a comparative perspective

Journal of International and Comparative Law (2025) 12:2; 179-198

Conticelli, Martina
Zumbini, Angela Ferrari
Infantino, Marta

This article presents the results of a comparative research project on automated decision-making (ADM) carried out on 20 European legal systems and the United States. The article aims to shed light on the involvement of the state not only as a regulator, but also as a major user and, occasionally, a developer of new technologies. It therefore explores the legal framework applicable to automated administrative decisions in the selected jurisdictions, the sectors involved, the conditions under which automated administrative decisions can be made, and the disputes arising from their use. As the article shows, there are substantial differences between legal systems in terms of regulatory choices and of rates of adoption of administrative ADM. The main finding of the paper is that these differences do not appear to be correlated, in that regulatory choices have little impact on the public adoption of ADM, and vice versa.

Leave the Door Open? Towards a Context-Based Approach to the Revolving Doors

Arizona State Law Journal (forthcoming 2026)

Eckstein, Asaf
Granov, Ziv
Schillo, Ariel

Policymakers and academics have extensively debated the extent and the nature of the revolving door phenomenon – the interchange of personnel between the government and the private sector. Proponents claim that the transition of former regulators into commercial firms fosters compliance with regulation and encourages aggressive enforcement practices. On the other hand, critics argue that the interchange of personnel exposes public officials to regulatory and cultural capture. The revolving door debate, which has only gone and intensified in recent years, still remains largely binary, treating the revolving door as a single undifferentiated practice.

This Article aims to reconcile these different viewpoints by showing that not all interchange is the same. We argue that the revolving doors are context-dependent – meaning that their extent and nature vary based on the circumstances – and that regulation and discourse surrounding the phenomenon should be adapted accordingly. To do so, we provide a comprehensive, hand-collected analysis of 6,430 directors and executive officers that serve the current S&P 500 companies, using DEF-14A filings published in the fiscal year 2024. Through extensive empirical analysis of the U.S. market's largest public firms, we show that the revolving doors manifest differently based on the agency or department from which revolvers came, the level of seniority that they held within the agency or department, the sector within which they worked, the positions that they currently hold in the private sector, and the length of time between their exit from the public sector and their entrance into S&P 500 firms. In addition, we show that the phenomenon is prescribed different normative desirability in academic literature based on these same criteria.

To connect our theoretical discussion and empirical findings, we offer a novel framework for contextualizing the regulatory approach to the revolving doors. Regarding the public-sector side of the phenomenon, we argue that federal regulations should differentiate between executive agencies and departments when implementing post-employment restrictions for public officials. With respect to the private-sector side, we offer a unique regulatory approach that focuses on differentiating regulation according to the destinations of the revolvers. Afterwards, we explain that a context-based approach to the revolving doors encourages agencies and departments to collect data regarding former employees who transition into the private sector. Finally, we discuss the underexplored role that public firms should play in self-regulating the revolving doors, in light of their increased commitments to act as good corporate citizens in the modern era of stakeholderism.

Spending conditionality in the EU and in the US. Prospects on the EU fiscal integration

Journal of European Public Policy, 1–27; Published online: 01 December 2025

Fasone, Cristina
Simoncini, Marta

Since the adoption of NextGenerationEU (NGEU), the use of conditional spending as an internal EU governance device has spread significantly. Still, little attention has been paid to the potential legal risks stemming from the extensive use of conditionality regimes cutting across different policy areas. The ongoing uncertainty regarding the prospect of a broader EU fiscal integration makes reflection on conditionality governance even more urgent.
What are the functions and risks of conditional spending, and what is the role of conditionality vis-à-vis fiscal integration? This article aims to answer these questions by comparing the EU fiscal federalism in the making with the U.S.'s consolidated fiscal federal system. More specifically, it discusses the flexible design of EU conditionality governance and the prospects of EU fiscal integration in light of the federal experience in the U.S.

Does enforcement style influence citizen trust in regulatory agencies? An experiment in six countries

Journal of Public Administration Research and Theory, Volume 35, Issue 1, January 2025; 29–44

Grimmelikhuijsen, Stephan
Aleksovska, Marija
Van Erp, Judith
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Van Dooren, Wouter
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Salomonsen, Heidi Houlberg

Establishing and maintaining citizen trust is vital for the effectiveness and long-term viability of regulatory agencies. However, limited empirical research has been conducted on the relationship between regulatory action and citizen trust. This article addresses this gap by investigating the influence of various regulatory enforcement styles on citizen trust. We conducted a pre-registered and representative survey experiment in six countries (n = 5,765): Belgium, Denmark, Germany, Israel, the Netherlands, and Norway. Our study focuses on three key dimensions of enforcement style: formalism, coerciveness, and accommodation. We hypothesize that a strict and punitive enforcement style with minimal accommodation will enhance citizen trust. Surprisingly, we found no overall effect of enforcement on trust. However, specifically high levels of formalism (strictness) and coerciveness (punitiveness) exhibited a small positive effect on trust. Furthermore, we observed no discernible impact of an accommodative enforcement style. Additional analyses revealed that the effects of enforcement style were not consistent across country and regulatory domains. This suggests we need to reconsider assumptions underlying enforcement theory, as our findings imply that public trust seems less conditional on heavy-handed enforcement than initially anticipated.

Loper Bright v Raimondo: Federalism, Popular Sovereignty, and the Political Question Doctrine

Written: July 18, 2025; Posted in SSRN: October 8, 2025

Henry, Makai

The Courts holding in Loper Bright v Raimondo and its has exposed a profound tension between the limits of Judicial Review and the principle of administrative deference, this note argues that Loper Bright was wrongly decided and that the debate over Chevron deference should be recontextualized as fundamentally about popular sovereignty and democratic legitimacy. It proposes a neo-departmentalist reading of the majority and judicial supremacy, one that restores interpretive authority to the political branches of government.

The argument proceeds in Five parts. First, it advances a theory of Neo-departmentalism, offering a four-rule brightline test for lower courts to curb judicial activism. Second, it proposes an expanded political questions doctrine that treats federalism itself as a non-justiciable political matter. Third, it critiques the majority's reading of APA § 706 and 702, highlighting the seeming incompatibility of that interpretation with United States v. Klein. Fourth, it interrogates whether economic injury should automatically constitute concrete harm for standing, suggesting instead that precedents such as Lujan v. Defenders of Wildlife and Sierra Club v. Morton support a narrower view. Finally, it analyzes the majority's language on questions of "special competence" and critiques Justice Gorsuch's invocation of Burkean originalism as inconsistent with the American legal tradition.

By approaching these questions through an originalist framework, this Note offers a reorientation of the Chevron debate, one that grounds administrative deference in constitutional structure, democratic accountability, and the proper limits of judicial power.

Ethics for traveling judges

University of Toronto Law Journal, Volume 75, Number 3

King, Alyssa S

Around the world, traveling judges sit on domestic courts outside their home jurisdictions. They are hired as trusted outsiders to promote the hiring court as a hub for commercial law, to maintain ties between legal systems, and to aid rebuilding and regime transition. Along with the more familiar dilemmas that all judges can face, traveling judges face ethical concerns tied to their frequently episodic and short-term roles. Those invited to join courts as traveling judges also face questions about whether to accept a position in the first place. These concerns have not been examined in a systematic way. Judges and courts are reliant on individual senses of integrity and, ultimately, on the willingness of these traveling judges to resign. This article proposes that traveling judges should be viewed as trusted outsiders and argues for the development of specific rules attaching to their role as well as standards for accepting and continuing in a job. In particular, it proposes common transnational soft law rules around issues like conflicts of interest, renewability of terms, and work visas. Adopting such rules is a necessary, but not sufficient, condition for taking and continuing in a specific job. I also propose some further questions that judges should ask before they agree to work.

The Trump Administration's Latest Strategy to Rush Deregulation

Yale Journal on Regulation; Posted: December 1, 2025

Lewis, John

John Lewis's text critically analyzes the Trump administration's latest strategy to accelerate deregulation, as outlined in memorandum M-25-36 from the Office of Information and Regulatory Affairs. This memorandum attempts to streamline the review of deregulatory actions, but the author argues that its approaches are riddled with significant legal vulnerabilities. Two main flaws are identified: the flawed "good cause" theory to avoid notice and public comment, especially when rescinding regulations deemed unlawful, and a flawed cost-benefit analysis that distorts the benefits and costs of deregulation. Lewis uses examples from case law and legal reasoning to demonstrate why agencies that follow these recommendations may be arbitrary and capricious and face legal challenges. In conclusion, the author suggests that there is no "strange trick" to rush deregulation and that the government should simply follow established procedures.

Risk Narrative: Deconstructing the AIA's Risk-Based Approach as a Regulatory Heuristic

Written: April 28, 2025; Posted in SSRN: October 29, 2025

Mahler, Tobias

While the European Union's Artificial Intelligence Act (AIA) is presented as a landmark "risk-based" framework, this article argues that its reliance on risk levels functions more as a narrative device than a consistently applied methodology. Although the AIA genuinely engages with the concept of risk, it does so through a patchwork of distinct legislative strategies that often construe and operationalize risk in divergent ways. Examining the AIA's structure reveals that the widely used risk pyramid, while serving a crucial heuristic function in policy communication, only partly reflects the law's underlying legal architecture. The AIA primarily establishes two distinct risk-based categories: high-risk AI systems and general-purpose AI models presenting systemic risk, which operate under different regulatory logics. To understand the AIA's regulatory architecture, the article traces the origins of the risk-based approach and distinguishes between risk regulation and riskbased regulation. It finds that divergent interpretations of risk by lawmakers, enforcement bodies, and regulated entities, coupled with the introduction of general-purpose AI models as a separate regulatory object, undermine the coherence of a singular risk-based framework, leading to what the article terms a "risk-regulatory cacophony.

The Law and practice of International Administrative Tribunals

Cambridge University Press; Publication Date: October 2025

Muñoz, Asier Garrido
Morgan-Foster, Jason
Peat, Daniel
Thévenot-Werner, Anne-Marie

The jurisprudence of international administrative tribunals holds great relevance for international organisations, as seen in the proliferation of these tribunals, the complexity of their jurisprudence, and their practical impact. This book provides a comprehensive and accessible analysis of essential topics in this field, including applicable sources, jurisdiction and admissibility, grounds for review, equality and non-discrimination, and remedies. It also covers key emerging issues, such as the rights of non-staff personnel, the growing application of international human rights law by tribunals, and the protection of acquired rights. Drawing on thousands of decisions, this book is an invaluable resource for both practitioners and scholars. For practitioners, it offers a practical guide to navigating complex cases. For scholars, it highlights common principles and key divergences across the jurisprudence of some thirty tribunals, at the same time illuminating the increasingly sophisticated interplay between international administrative law and public international law.

The Presumption of Accountability: A New Legal Doctrine in Public Governance

Written: September 26, 2025; Posted in SSRN: November 17, 2025

Muñoz, Jonelle Peter

The Presumption of Accountability is introduced as a complementary doctrine to the long-established Presumption of Innocence. While the latter protects citizens from unjust prosecution, the former ensures that public officials remain continuously answerable for the lawful, transparent, and ethical exercise of their duties. It reframes accountability from a reactive process into a standing legal and ethical obligation. By shifting the evidentiary burden toward those who hold public trust, the doctrine establishes a structural safeguard against corruption and administrative abuse (Fair Trials, n.d.; Rule of Law Education Centre, n.d.; U.S. Attorney-General's Department, n.d.).

Ultra Vires Review Of Federal Agency Action Made Simple(R)

Utah Law Review, Volume 2025, No. 5, Pp. 1201-1252

Murphy, Richard W.

The law governing ultra vires review seeking injunctive relief to challenge statutory violations by federal agencies is a mess. Although administrative law generally limits judicial review to final actions, a substantial body of caselaw holds that this type of ultra vires review can reach interlocutory actions, vastly expanding judicial reach. Although administrative law now insists that federal courts must exercise independent judgment when reviewing agency statutory interpretations, caselaw limits this type of ultra vires review to correcting only the most spectacular statutory violations. In addition, caselaw ignores or garbles the problem of determining which types of plaintiffs qualify to invoke a cause of action for ultra vires review. Ultra vires review for injunctive relief to challenge statutory violations would make more sense if courts thought about it the same way they did back in 1946 when the Administrative Procedure Act was enacted. Under the well-understood framework of that time, a plaintiff could seek injunctive relief to redress a "legal wrong" caused by a "final" agency action in a suit in which the court could exercise independent judgment over issues of law. Students of administrative law will find this framework familiar because Congress basically codified it in the APA. By the transitive postulate, this Article's proposal boils down to the idea that ultra vires review should work much like APA review did back in 1946. The confusion that burdens ultra vires review would largely disappear if courts remembered this basic equivalence.

Outster of Judicial Review Clauses and the Common Law

142 Law Quarterly Review (forthcoming), University of Cambridge Faculty of Law Research Paper No. 20/2025

Murray, Philip
Warchuk, Paul

This article traces the development of English administrative law's approach to ouster clauses, re-assessing the idea that ouster clauses have always been treated by the courts as so constitutionally repugnant that they are to be given the narrowest of interpretations. We show how the idea of common-law antagonism to ouster clauses is fairly recent, influenced especially by the writings of Sir William Wade and his interpretation of Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147. While some later decisions of the House of Lords and Supreme Court, most especially R (Privacy International) v Investigatory Powers Tribunal [2019] UKSC 22, have perpetuated the idea of constitutional repugnancy, closer attention to the common law's history allows for a more nuanced understanding of the courts' attitude to statutory exclusions of review. It is in this context that recent cases on ouster clauses can be seen as consonant with administrative law's traditionally deferential approach.

Combatting the Code: Regulating Automated Government Decision-Making in Comparative Context

Cambridge University Press; Publication Date: March 2025

Ng, Yee-Fui

Across the world, governments are grappling with the regulatory burden of managing their citizens' daily lives. Driven by cost-cutting and efficiency goals, they have turned to artificial intelligence and automation to assist in high-volume decision-making. Yet the implementation of these technologies has caused significant harm and major scandals. Combatting the Code analyzes the judicial, political, managerial, and regulatory controls for automated government decision-making in three Western liberal democracies: the United States, the United Kingdom, and Australia. Yee-Fui Ng develops a technological governance framework of ex ante and ex post controls within an interlinking network of horizontal and vertical accountability mechanisms, which aims to prevent future disasters and safeguard vulnerable individuals subject to automated technologies. Ng provides recommendations for regulators and policymakers seeking to design automated governance systems that will promote higher standards of accountability, transparency, and fairness.

Transactional Governance and the Weaponization of Executive Orders

2026 Mich. St. L. Rev. (forthcoming Apr. 2026)

Noah, Lars

Executive orders have become an increasingly important tool of governance, and the number that emerged from the White House at the start of the latest administration has broken records. These formal presidential directives run the gamut, from altogether ordinary to downright weird, but they also include an entirely novel variant that should raise alarms. In his second term, President Trump has formally announced plans to visit adverse consequences on particular individuals, law firms and universities for alleged misconduct. Although lower courts have already invalidated some of these orders, in other cases the targets opted to make concessions rather than gamble on a judicial challenge. As it happens, agency officials have long engaged in similar though little-noticed forms of bargaining with regulated entities, but the current administration has elevated this approach to the highest levels of the Executive branch, which heightens the risk that it will escape normal constraints against possible abuse. This Article draws attention to a potential constitutional safeguard against punitive executive orders—namely, the absolute prohibition on bills of attainder—that would remain amenable to judicial scrutiny at the behest of affected third parties even if those targeted seemingly have waived their right to object.

The Divergence of Mandatory Climate Disclosure in the U.S. and the EU

European Corporate Governance Institute - Law Working Paper No. 882/2025 Amsterdam Center for Law & Economics Working Paper No. 2025-07 Forthcoming in Law & Contemporary Problems, The Wharton School Research Paper

Pacces, Alessio M.
Zaring, David T

In this article, we ask why mandatory disclosure of climate risk differs between the U.S. and the EU. We identify a fundamentally different legal basis for securities regulation on the two sides of the Atlantic. While the EU treaty provides EU institutions with legislative authority to introduce far-reaching climate disclosure obligations, the SEC faces significant hurdles to do so under U.S. administrative and constitutional law. We focus on the SEC because it has acted on climate. Congress could pass a comprehensive climate disclosure statute, but the subject is controversial in the United States, and so the legislature is unlikely to act. Moreover, we discuss pros and cons of climate disclosure from an economic perspective. Finally, we discuss the recent developments in climate disclosure regulation, both in the EU and in California, and their potential to set voluntary disclosure standards for companies not subject to these jurisdictions.

Administrative Law as a Choice of Business Strategy: Comparing the Industries Who Have Routinely Sued Their Regulators with the Industries Who Rarely Have

George Washington Law Review, Vol. 93, No. 5, pp. 1031-1195 (2025)

Parrillo, Nicholas R

For some large and powerful industries, it has long been normal and even routine for businesses to sue their federal regulator. For other large and powerful industries, it has been rare for the last twenty-five to forty years or more. This variation is enormous yet almost entirely unknown to the literature on administrative law.
This Article documents and analyzes this variation in one type of federal regulation: public health and safety. For every major federal health-and-safety regulator, I search dockets to identify every judicial challenge to the agency's actions brought by the agency's principal regulated industry—whether by individual companies therein or by trade associations—during the period from 2013 to 2021 and, for several of the agency-industry pairings, for additional time periods extending as far back as the 1980s and as recent as 2024. The pairings covered are the following: the Food Safety and Inspection Service at the U.S. Department of Agriculture and meat and poultry processors; the Food and Drug Administration and drugmakers; the National Highway Traffic Safety Administration and automakers; the Federal Aviation Administration and airlines; the Consumer Product Safety Commission and children's product companies; the Nuclear Regulatory Commission and nuclear plant operators; the Occupational Safety and Health Administration and employers generally; the Mine Safety and Health Administration and coal mines; the Environmental Protection Agency and power companies; the Federal Motor Carrier Safety Administration and for-hire trucking companies; and the Centers for Medicare and Medicaid Services and hospitals and nursing homes. For each pairing, I use the data on judicial challenges as the starting point for a qualitative discussion of how big or small a role litigation plays in agency-industry interaction.
I find that industry judicial challenges tend to be few and marginal when two conditions are met. The first condition is that companies in the industry have a thick relationship with the regulator—that is, each company knows the regulator will be making repeat decisions impacting its business into the indefinite future, so each company has a stake in winning the agency's trust and goodwill. The second condition is that, with regard to the agency action at issue, industry economic interests are aligned with the mission of the regulator. This is especially the case for agency action that has the official purpose of protecting the health and safety of the industry's own consumers, as opposed to protecting industry workers or victims of externalities of industry conduct. In protection of consumer health and safety, the industry and the regulator are more likely to view each other as on the "same team," and industry tends to (1) see the regulator as a source of credible guarantees that help attract business, (2) fear the "bad look" with consumers that conflict with the regulator could cause, and (3) seek influence and leverage over the agency by less open and adversary means than litigation.

Abductive Account of British Constitutional Principles

Written: November 07, 2025; Posted in SSRN: November 12, 2025

Perry, Adam

This article investigates how principles such as responsible government and democracy enter the British constitution. Principles do not enter the British constitution by being enacted in statute or laid down in judicial decisions. Nor do they become part of the constitution by being accepted and followed by constitutional actors. Instead, principles enter the constitution by figuring in the best explanation for constitutional rules and practices. So understood, British constitutional principles are stated in the conclusion of an abductive argument, also known as an inference to the best explanation. As well as correctly diagnosing which principles are part of the constitution, the abductive account can resolve several puzzles about constitutional principles, including why they resist deliberate change.

Comparative Latin American and United States Water Law

UCLA School of Law, Public Law Research Paper 25-38, In Comparative Environmental Law 370, (Tseming Yang, et al., eds., Edward Elgar Publishing, 2025) (Original Version Submitted to Publisher)

Reich, Peter L

This book chapter applies Agustín Parise's "ownership paradigm" of Latin American civil law typologies to water law development in seven countries: Argentina, Brazil, Chile, Colombia, Mexico, Peru, and Venezuela. Parise's historical model characterizes property regimes as "allocation" (royal use grants) in the colonial period, "liberal" (absolute individual rights) in the nineteenth century, and "social function" (government management for public benefit) in the twentieth. After briefly surveying Roman and US water law, the work examines legislation and caselaw to illuminate the water ownership trajectories in each of these seven nations, analyzing how different countries swung from the colonial allocation category to the others at different rates, depending on domestic and international political contexts. In some cases the author identifies a further category—the "neoliberal" (market-oriented or privatization) system. A final section investigates to what extent Hispanic and US water regimes have converged in the American Southwest. The study sheds light on how legal rights to water evolved as part of broader historical processes, and on the particular relevance of national constructs such as agrarian reform and federalism.

The separation of powers and the administrative branch in the European Union

International Journal of Constitutional Law, 2025; Published: 16 November 2025

Simoncini, Marta

The interpretation of the principle of separation of powers in the EU has developed a distinct character through the principle of institutional balance. The Court of Justice of the European Union (CJEU) has played a central role in assessing and overseeing this principle. This article examines how the EU's understanding of the separation of powers has shaped the functioning of its administrative branch. Specifically, it focuses on how the CJEU has applied the principle of institutional balance through the so-called non-delegation doctrine, which restricts the delegation of powers to EU administrative bodies. It argues that the CJEU's interpretation has affected the theoretical understanding of administrative powers, ultimately hindering the development of a robust framework to ensure the accountability of discretionary powers exercised by administrative bodies not explicitly outlined in the EU treaties.

Regulating Robotaxis

99 Southern California Law Review (forthcoming 2026)

Smith, Bryant Walker
Wansley, Matthew

In several sunbelt cities, commercial robotaxi service has arrived. The leading robotaxi company is providing over 250,000 trips per week. The industry claims that robotaxis will save lives and provide convenient and affordable mobility. Critics counter that they will increase congestion, undermine transit, and subject the public to ubiquitous surveillance. We argue that the social impact of robotaxis depends critically on how they are regulated. We emphasize two points missing from the debate. First, some of the benefits of robotaxis may be political rather than technological—longstanding urbanist policy goals may become viable in a robotaxi world. Second, letting one private company dominate the transportation system risks monopoly abuse—and regulators can act now to prevent it.

In this Article, we provide a plan to regulate robotaxis. Carefully crafted externality regulation can address pollution, congestion, wear-and-tear on infrastructure, and privacy risks while minimizing distortions in choices between travel modes. Regulators can promote competition by permitting open entry and banning lock-in contracts. And they can protect riders even if competition fails by mandating that fares be transparent and rider-neutral and requiring that robotaxi companies maintain a fleet sufficient for emergencies. Policymakers should take advantage of robotaxi deployment to redesign the transportation system—liberate land from the tyranny of parking, refocus transit investments on high-throughput routes, and expand mobility for people with low incomes and people with disabilities.

How Not To Design Expert Bureaucracy: Lessons From Administrative Law

Written: October 01, 2025; Posted in SSRN: October 20, 2025

Wagner, Wendy E.

Can we trust our agency experts to provide reliable scientific knowledge to inform policy? This question has worried academics, policymakers, and the general public for decades. Now, in the wake of expert agency debacles during COVID, the advent of a new presidential administration, and a Supreme Court intent on reshaping the structure of administrative law, these concerns are escalating.
This article offers one answer to this question by examining the architecture of administrative law itself, and the findings are not comforting. Under the law as currently designed, political officials within U.S. agencies and the White House—regardless of the president in power—can exert unrestricted control over the scientific staff at all stages of their work while also protecting these political interventions from public disclosure as deliberative process. And, while administrative law assumes that vigorous engagement by affected stakeholders will ensure the resultant work is at least not "arbitrary" in health and environmental regulation, the notice-and-comment processes are typically monopolized by the same corporate interests that enlisted the political officials in the first place. At the same time, the staff's anticipation of the resultant one-sided litigation only serves to introduce more biasing pressures on the objectivity of the work. And, if that were not enough, the deployment of elaborate external peer review processes, which are viewed as providing the last word on the quality of agency science, are entrusted not to disinterested scientists but to political officials. These officials enjoy ultimate control over the selection of scientists as peer reviewers and implementation of the review process, again in ways that remain largely undisclosed and often undocumented. As a result of this overarching legal design, even the most committed scientific staff find themselves impeded and sometimes blocked from producing work that has integrity, both with regard to scientific factfinding and to the identification of residual uncertainties. Indeed, it is not hyperbole to suggest that if one wants to know how NOT to design an expert bureaucracy, they should look to U.S. administrative law.

Globetrotting Advocates: Foreign Barristers in Hong Kong Courts

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Wan, Trevor T W

Foreign barristers, typically King's Counsel from the United Kingdom, can apply for admission on an ad hoc basis to argue cases before the Hong Kong courts. This Article presents a comprehensive account of this regime of ad hoc admissions, which has not yet been systematically examined by scholars. Building upon, and simultaneously challenging, the theory of market control in the sociology of the legal profession, this Article conceptualizes the system as initially an equilibrium between market demand for high-caliber legal services and market control by the local Bar. The transfer of sovereignty in 1997 prompted a shift in the underlying logic of the regime away from market control to politics. Under the new Chinese Special Administrative Region, the regime became integral to preserving Hong Kong's global standing. A bundle of political factors, tied to the notion of "foreignness," began to dictate its trajectory. Furthermore, this Article offers an empirical panorama of ad hoc admissions, documenting the trends and patterns over time, profiles of the foreign barristers, types of cases for which they were engaged, clients involved, and reasons for opposing individual admission applications by the Hong Kong Bar Association, Secretary for Justice, and the Court of First Instance. Last but not least, this Article assesses the ongoing criticisms, politicization, and securitization of the regime, while probing its future in light of changes in the underlying political incentive structure.

Regulatory Governance: Learnings, Challenges and Way Forward

Published April 1, 2025 by Routledge India

Yadav, Abha

This book explores the role of regulatory bodies and their emergence as the fourth branch of governments. It brings together professionals, academicians, and experts working in regulatory sector to present a foundational text on regulatory regime in India. From case studies to theoretical interventions, the book brings together a wide range of insights on an important but often neglected aspect of governance. It examines a range of themes including, the need for regulatory policy in a post-Covid world, regulatory excellence, impact of regulatory assessments, regulation of hazard, competition commissions, regulation of digital assets, stakeholder interests and investor activism, and anti-trust laws.
The volume will be of great interest to scholars and researchers of law and governance, public policy and South Asian studies.

Events and Informations:

- **Call for Submissions: Annual Meeting of The Association of American Law Schools (AALS)** Administrative Law Section - New Voices in Administrative Law – **New Orleans, January 6, 2026** **- 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.

Happy Holidays!