NEWSLETTER 8 JAN 2026 *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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This edition summary:

The Unitary Executive and the Due Process State

101 Notre Dame L. Rev. Reflection (forthcoming 2026)

Bremer, Emily S.;
Eskridge, William

In Trump v. Slaughter, the Supreme Court will consider whether to overrule Humphrey's Executor v. United States, 295 U.S. 602 (1935), a landmark case that affirmed Congress's authority to limit the President's ability to fire members of the Federal Trade Commission (FTC). Proponents argue that this is necessary to ensure unitary executive control over the significant policymaking functions of the FTC and other historically independent administrative agencies. But the legal principles reflected in Humphrey's Executor are also the foundation upon which Congress has constructed what we call the "due process state," i.e., the many impartial officers and institutions that the President requires to discharge his Article II duty to ensure the faithful execution of adjudicatory statutes. This essay argues that the unitary executive and the due process state can-and indeed must-coexist.

The Unexpected Actor? Civil-Military Relations and Regulatory Agency Control in Brazil

Governance: e70106

Cunha, Bruno Queiroz;
Lopez, Felix G.;
Coban, M. Kerem

Democratic backsliding around the world has sparked debate about its impact on public administration and governance. This article explores a growing yet less visible phenomenon threatening democracy. It examines the influence exerted by authoritarian populists over autonomous regulatory agencies through militarized patronage, that is, the discretionary appointment of military officers to civil positions. Scholars have not fully untangled how and why contemporary populists employ militarized patronage, and much less is known about militarization of autonomous regulatory agencies. To fill this gap, we highlight enabling factors underpinning militarized patronage and draw on a unique empirical dataset that integrates military with civil service records to account for the militarization of autonomous regulatory agencies in Brazil during the far-right presidency of Jair Bolsonaro (2019–2022). The article deepens our understanding of the role of civil-military relations in restructuring regulatory governance during populist rule, and the effects of democratic backsliding on regulatory governance.

The Artificial Intelligence Act Between the EU and National Levels: The Slovenian Case Study

HKJU-CCPA, 25 (3), 481–50

Kovač, Polonca;
Babšek, Matej;
Aristovnik, Aleksander

The Artificial Intelligence Act (AIA) represents a pioneering step in the European Union's approach to digital governance, establishing a legally binding regulation directly applicable across all Member States. However, its hybrid character, combining legal obligation with policy guidance, creates challenges for implementation at the national level. This article examines how this dual nature is understood and applied by administrative authorities in Slovenia, based on a mixed-method study involving normative legal analysis, surveys, and focus groups. Although the AIA is formally recognised as binding legislation, the findings reveal substantial gaps in awareness, institutional readiness, and administrative application. Operational authorities often interpret the AIA more as a strategic framework than enforceable law. The study underscores the urgent need for coordinated action, clearer delineation of responsibilities, and structured support mechanisms to ensure effective implementation. The Slovenian case provides important insights for other Member States facing similar challenges in the multi-level governance of artificial intelligence.

The Constitutionality of Tax and Social Legislation: An Analysis of Recent Slovenian Empirical Data

ELTE Law Journal, No. 2 (2025)

Kovač, Polonca;
Košec, Klavdija

The concept of the rule of law encompasses the regulation of rights and obligations, as well as their enforcement as materia legis. This is particularly relevant in administrative relations, where public and private legal interests often come into conflict. Laws create legal norms, which are constitutionally consistent only if they do not infringe upon human rights and fundamental freedoms. In the Republic of Slovenia, the Constitutional Court, acting as a negative legislator, is responsible for assessing the constitutionality of laws, particularly in the administrative field, most often through a combination of constitutional review and constitutional complaints in administrative cases. This study analyses cases of constitutional complaints arising from original administrative procedures over a ten-year period, from 2014 to 2024, in Slovenian constitutional case law. The research addresses especially the tax and social field, as constitutional unconformity is established most frequently in these areas. Special emphasis is dedicated to procedural safeguards that tackle constitutional rights, such as the right to be heard and the right to appeal. The main findings endorse the role of the Constitutional Court as a negative legislator, being crucial in limiting the tendency of the Executive to conduct administrative proceedings efficiently at the expense of constitutional guarantees. The findings aim to provide lessons not only for Slovenian regulators but also for those in other countries and comparative analyses across the region.

Why Consult? The Case of Public Consultation in Hong Kong Administrative Law

Asian Journal of Comparative Law. Published online 2025:1-21

Lui, Edward

This article investigates the law of public consultation in Hong Kong administrative law. The Hong Kong cases in this area have consistently followed, without question, the corresponding English authorities, and seem to have simply assumed the appropriacy of this approach. But given that it seems open to academic argument whether the Hong Kong legal system shares the same liberal democratic political theory which the English legal system endorses – and given that the English law of public consultation is commonly regarded as, inter alia, pursuing a liberal democracy-based rationale – two questions arise: (i) what is, or what are, the underlying rationale(s) for the Hong Kong law of public consultation; and (ii) to what extent is it appropriate for the Hong Kong courts to adopt the English case law on public consultation? This article contends that even assuming the Hong Kong legal system is not underpinned by a liberal democratic political theory, (i) the Hong Kong law of public consultation is underpinned by the informational rationale and a specific strand of the respect rationale; and (ii) English case law on public consultation can be implemented into Hong Kong law, insofar as its reasoning can be completed without affirming a liberal democratic premise.

Disability Law After the Demise of Deference

Written: Dec 04, 2025; Posted in SSRN: Dec 08, 2025

Porter, Nicole B.

The Equal Employment Opportunity Commission's (EEOC) regulations implementing the Americans with Disabilities Act (ADA) are crucial for enforcing the rights of people with disabilities in the workplace. Accordingly, the Supreme Court's decision in Loper Bright Enterprises v. Raimondo-which jettisoned Chevron deference to agency interpretations-has the potential to significantly threaten workplace disability rights. This Article identifies three specific EEOC regulations that are potentially vulnerable to attack after Loper Bright, each of which addresses fundamentally important aspects of the ADA.
The first addresses the proper interpretation of the definition of disability-a definition that has generated significant litigation leading to a judicial restriction of the definition, followed by a congressional amendment in 2008 to overturn those restrictive cases and broaden the definition of disability. If courts refuse to defer to the EEOC's regulation regarding the broadened definition of disability, we very well might see a renewed backlash against the ADA. The second EEOC regulation addresses what evidence courts should consider in determining whether a disabled employee is qualified to perform the essential functions of their job. This inquiry implicates how much weight courts will give to the employer's judgment of a job's essential functions-the more weight courts give to employers, the more likely it is that employees with disabilities will be deemed unqualified for their jobs and therefore unprotected by the ADA. Finally, the third regulation addresses when employers are required to provide reasonable accommodations to employees with disabilities. The ADA cannot work as intended without the EEOC's broad interpretation of the accommodation mandate.
This Article discusses the (mostly positive) effects these three regulations have had on the case law, and the potential troubling implications if courts stop deferring to the EEOC's regulations after the demise of Chevron deference. The case law demonstrates that the more courts have deferred to these three regulations, the more likely it is that the plaintiffs have survived their employers' dispositive motions. And yet, these regulations might be vulnerable to attack after Loper Bright. In addition to discussing the potential negative implications of decreased deference to the EEOC's regulations, I also address potential solutions if my negative predictions turn out to be true.

A pragmatism approach to the Administrative State: a new interpretation of John Willis's 'Three Approaches to Administrative Law'

University of Toronto Law Journal 2025 75: Supplement 1, 15-31

Prado, Mariana Mota

In this article, I offer an alternative interpretation of John Willis's article 'Three Approaches to Administrative Law: The Judicial, the Conceptual, and the Functional,' published in the University of Toronto Law Journal in 1935. While celebrated as one of the founding fathers of Canadian administrative law, Willis has also been heavily criticized for his strong opposition to judicial review of administrative action. These criticisms, however, seem less pressing if his proposal for a functionalist approach to administrative law can be reinterpreted as being aligned with the American pragmatist tradition. According to this reinterpretation, I look back to argue that the philosophical assumptions of this school of thought can shed new light on Willis's resistance to judicial review at the time of his writing. Then I look forward to claim that, if we reinterpret Willis's proposal according to philosophical pragmatism's assumptions, a functionalist approach to administrative law seems very much in line with Canadian administrative law today.

Making Sense of the Emergency Appropriations Decisions

Harvard Law Review Blog. Posted in SSRN: Dec 8, 2025

Price, Zachary

A push for "appropriations presidentialism," or stronger executive control over spending, has emerged as a central theme of the second Trump Administration. The Supreme Court has now made three key interventions on its emergency docket in the resulting legal disputes. Each ruling was thinly reasoned and reached a debatable result on a hard question. Because the Court's opinions will nevertheless shape appropriations litigation going forward, this blog essay attempts to reconcile the Court's rulings with a rational account of the law, putting the decisions in their best light and suggesting resolutions to some open questions. It argues that lower courts (1) should narrowly construe the Court's holding in Department of State v. AIDS Vaccine Advocacy Coalition that the Comptroller General has exclusive authority to enforce the Impoundment Control Act (2) should follow, in any reasonably analogous cases, the Court's indication in National Institutes of Health v. American Public Health Ass'n (NIH v. APHA) and Department of Education v. California (DOE v. California) that grant-termination claims belong in the Court of Federal Claims (CFC) rather than federal district courts, and (3) should disregard as overbroad dicta any suggestion in AIDS Vaccine Advocacy that legal disputes over expired appropriations are necessarily moot.

The Structural Corruption Disclosure Act

Written: Nov 12, 2025; Posted in SSRN: Dec 10, 2025

Tabor, Richard

This Article presents The Structural Corruption Disclosure Act, a public, educational model for reconstructing how a modern republic can make administrative reasoning, influence pathways, and deviations from historical practice visible to the people it serves. Drawing on principles of constitutional accountability, institutional memory, and structural integrity, the model proposes a unified framework through which agencies generate a "Public Memory Record" for every major administrative action. These records include rationale chains, aggregated and non-identifying influence summaries, deviation reports, and evidence bibliographies—each designed to strengthen transparency without compromising the confidentiality or independence required for lawful governance.

The Act also outlines an Annual Public Memory Ledger to consolidate agency outputs in a searchable, machine-readable format, enabling long-duration civic understanding and legislative calibration. The legislation is not prescriptive or enforceable; it creates no rights and imposes no obligations. Instead, it functions as conceptual public scholarship—illustrating how the administrative state might structure its reasoning processes to improve legitimacy, enhance civic comprehension, and support a healthier constitutional ecosystem.

The drafting process included the use of multiple AI research assistants for structural refinement, synthesis of administrative-law doctrine, and calibration of transparency mechanisms.

A reappraisal of deference to expert regulators in light of the end of the Chevron doctrine

Legal Studies (2025), 45, 414–431

Willis, Edward

In June 2024, the US Supreme Court released its judgment in Loper Bright, with a majority overruling the long-standing principle of Chevron deference to regulators on questions of statutory interpretation. Loper Bright ostensibly aligns the US approach with the general common law position. This paper reviews Loper Bright for a common law audience and argues that it represents an opportunity to reappraise the merits of those cases in Anglo-Commonwealth administrative law where excessive deference to regulators has been applied despite the basic rule that questions of law are for the courts to determine. In particular, it critically examines example cases of excessive regulatory deference from the United Kingdom and New Zealand, which now appear highly anomalous in light of Loper Bright. In doing so, the paper argues that to the extent that Anglo-Commonwealth administrative law retains scope to accommodate presumptive deference to regulators, this should be reformulated. It is for the judiciary to authoritatively determine questions of law, even where regulatory expertise or judgement is involved.

Shaming climate wrongdoers

Environ. Res. Lett. 20 124073

Yadin, Sharon;
Maibach, Edward

Climate law, policy, and governance have grown substantially in recent years, yet these efforts have achieved only modest success. This article spotlights an underexplored complementary strategy in policy, governance, and legal domains: climate shaming—the use of public condemnation to encourage climate-responsible behaviour among governments, corporations, and their leaders. While shaming has been studied and applied as a regulatory and governance tool in other contexts, only a small but growing body of scholarship has begun to examine its potential in the climate arena. Drawing on multidisciplinary research from the social sciences, the humanities, and law, we review and map the main strands of this emerging literature to show the diverse forms and potential of shaming mechanisms, actors, and messages in the climate domain. Based on this analysis, we identify several gaps in the literature and practice of climate shaming, including explicit regulatory shaming, intergovernmental shaming, shaming of regulators by civil-society actors, and regulatory shaming of industry leaders. We propose expanding the conceptual framework of climate shaming to encompass these neglected dimensions, with the aim of encouraging further research as well as policy and governance experimentation in this evolving field.

Fighting Climate Change through Shaming

Cambridge University Press, 2023

Yadin, Sharon;

This Element contends that regulators can and should shame companies into climate-responsible behavior by publicizing information on corporate contribution to climate change. Drawing on theories of regulatory shaming and environmental disclosure, the Element introduces a "regulatory climate shaming" framework, which utilizes corporate reputational sensitivities and the willingness of stakeholders to hold firms accountable for their actions in the climate crisis context. The Element explores the developing landscape of climate shaming practices employed by governmental regulators in various jurisdictions via rankings, ratings, labeling, company reporting, lists, online databases, and other forms of information-sharing regarding corporate climate performance and compliance. Against the backdrop of insufficient climate law and regulation worldwide, the Element offers a rich normative and descriptive theory and viable policy directions for regulatory climate shaming, taking into account the promises and pitfalls of this nascent approach as well as insights gained from implementing regulatory shaming in other fields.

Regulatory Shaming and the Problem of Corporate Climate Obstruction

60 Harvard Journal on Legislation 337 (2023)

Yadin, Sharon;

This Article examines the rationales and justifications for regulatory climate shaming—a nascent approach to climate policy involving the governmental publication of information regarding corporate contributions to climate change, with the aim of generating public pressure on companies to comply with climate change norms. Regulatory climate shaming is employed by national and subnational regulators inside and outside the United States through tools such as naming-and-shaming lists and rankings, environmental databases, climate labels, and corporate disclosure obligations. Generally, regulation by shaming is considered controversial, as it involves public condemnation and targets corporate reputation. However, this Article's main argument is that regulatory climate shaming is an important tool that can and should be utilized by regulators not only for inducing compliance with climate change norms but also for fighting crucial meta-regulation problems like corporate climate obstruction. Building on regulatory shaming theory and climate obstruction scholarship, this Article offers a normative theory of regulatory climate shaming and discusses the ways in which shaming can fight climate denial, climate washing, and other climate obstruction practices employed by the fossil fuel industry and other industries.

Events and Informations:

- **84th Plenary Session ACUS - Washington, January 21, 2026 - for more information, click here.**

  The Conference will be considering the following recommendations: Temporary Rules; Obtaining Government Records for Use in Agency Proceedings; Federal Agency Collaboration with State, Local, Tribal, and Territorial Governments; Organization, Management, and Operation of Agency Adjudication Offices;

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

Happy New Year!