

# Comparative Administrative Law Scholarship Corner

*Affiliation with the Yale Comparative Administrative Law Listserv*

## **Edited by Eduardo Jordão**

Professor of Law at FGV Law School in Rio de Janeiro

eduardo.jordao@fgv.br

## **Assisted by Eduarda Onzi**

PhD candidate in Regulatory Law and Research Assistant at FGV Law School in Rio de Janeiro

eduarda.onzi@fgv.edu.br

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eduardo.jordao@fgv.br**

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## **Global Adoption and Impact of Blockchain Technology in Government: Enhancing Transparency, Efficiency, and Trust in Public Services**

Posted in SSRN: Nov 7, 2025

**Almiani, Khaled;**  
**Mirza, Shaher;**  
**Siyam, Nur;**  
**Al-Jaziri, Shaikha;**  
**Alqaryouti, Omar;**  
**Zufferey, Camille**

Blockchain technology has increasingly drawn the attention of governments seeking to modernize public services through transparent, secure, and efficient digital infrastructures. Drawing on case studies from diverse regions, including the UAE, Estonia, Georgia, Colombia, and multiple Gulf Cooperation Council (GCC) nations, this review synthesizes implementation patterns across domains such as land administration, digital identity, procurement, and intergovernmental payments. The critical analysis highlights blockchain's capacity to establish tamper-evident records, automate verification, and reduce administrative overhead, while also addressing technical and institutional factors that shape its impact. Outcomes across successful deployments suggest that benefits are most pronounced when blockchain aligns with real governance needs and is supported by robust legal and digital infrastructure. The review also identifies key barriers to adoption, including interoperability challenges, regulatory uncertainty, limited technical capacity.

## **Whose Law Governs Canadian Data? The CLOUD Act, Executive Agreements, and Digital Sovereignty**

Written: Dec 22, 2025; Posted in SSRN: Jan 16, 2026

**Appleton, Barry**

When a senior Microsoft executive testified before the French Senate in June 2025 that he could not guarantee government data would remain beyond the reach of U.S. authorities, he confirmed what this paper systematically demonstrates: the U.S. Clarifying Lawful Overseas Use of Data Act (CLOUD Act) of 2018 has fundamentally restructured jurisdictional sovereignty in the cloud computing era.

This paper examines the CLOUD Act's implications for Canadian digital sovereignty and makes several original contributions. First, it demonstrates that U.S. Department of Justice claims regarding constitutional constraints on CLOUD Act jurisdiction substantially overstate the practical protections available to foreign service providers, particularly under the federal "national contacts" doctrine. Second, it provides detailed case studies of major Canadian telecommunications and technology companies, documenting specific U.S. connections that may subject them to CLOUD Act compulsion regardless of where data is stored. Third, it analyzes empirical evidence from the U.S.-U.K. CLOUD Act Agreement, revealing that the United Kingdom issued over 20,000 requests to U.S. providers in two years, predominantly for real-time interception, demonstrating that executive agreements operate at surveillance scale.

The paper identifies a fundamental constitutional incompatibility between Canadian and American approaches to digital privacy. The Supreme Court of Canada's decisions in *R. v. Spencer* and *R. v. Bykovets* explicitly rejected the U.S. third-party doctrine. Yet, a CLOUD Act executive agreement would permit U.S. authorities to obtain Canadian data using legal standards Canadian courts have declared unconstitutional.

The paper concludes with a seven-pillar policy framework for Canadian response, each recommendation designed to be actionable within existing constitutional authority.

## **Equality and Inclusivity through Accountability: Regulating Automated Decision-Making in the Public Sector**

Queen Mary Law Journal, 2025, Issue 5, Pp. 93-108

**Asif, Rayyan**

The UK's limited governance of automated decision-making (ADM) in the public sector is concerning. ADM raises significant concerns for fairness, equality, systemic bias, and discrimination, especially because it is primarily applied to marginalised demographics already lacking resources and protections, such as in the immigration sector. A Private Member's Bill currently undergoing its third reading in the House of Lords would address this regulatory gap with a scheme that closely resembles the Canadian ADM regulation model. This article fills a gap in the literature by introducing UK audiences to the Canadian model's functioning in an immigration context and analysing how the proposed Bill can better uphold inclusivity, equality, and administrative principles. The article critically examines the accountability mechanisms in the Canadian model, contributes to the debate of government transparency regarding their ADM systems, and argues that an internal governance approach is incompatible with effective regulation.

## **"Slush Funds" and Congress's Power of the Purse**

Written: Jan 27, 2026; Posted in SSRN: Jan 29, 2026

**Bagenstos, Samuel R.**

If there's one point on which everyone agrees in appropriations law, it's that "slush funds" are bad. In the appropriations context, people tend to use the term to refer to financing mechanisms that enable the Executive Branch to evade the usual congressional checks on spending -- either because they enable spending to occur without being fully accounted for in the federal budget, or because they enable spending to occur without congressional approval at all.

From both the left and the right, critics of particular financing schemes accuse them of being slush funds. To right-leaning critics, both the Consumer Financial Protection Board and President Biden's student loan forgiveness program were impermissible slush funds. And left-leaning critics have applied the slush fund label to President Trump's efforts to fund the border wall, his seizure and sale of Venezuelan oil, his university settlements, his "Board of Peace," his efforts to shield some farmers from the effects of his tariffs, and many more. Slush funds seem to directly challenge Congress's constitutional power of the purse. But there is great disagreement over what constitutes a slush fund. And once we start digging, we can see that many deeply entrenched appropriations practices have some of the same key aspects as do the financing schemes that have attracted the pejorative label. This paper examines the variety of arrangements that may be characterized as slush funds. Doing so can help us understand why Congress has found delegation to the Executive Branch in the appropriations sphere so essential to achieving the tasks that the electorate wants the government to carry out. But it can also help us assess what sorts of delegation should raise greater or lesser concerns. And it can help us determine when courts should be deciding these questions and when the other branches should be thinking about these issues in a constitutional register. This paper undertakes that analysis.

## **Strategic Decision-Making by Anti-Corruption Agencies: Case Selection, Communication, and Institution-Building**

Written: Nov 9, 2025; Posted in SSRN: Jan 3, 2026

**Baum, Jeeyang Rhee;  
Stephenson, Matthew**

Anticorruption agencies (ACAs), and other bodies entrusted with investigating or prosecuting high-level government corruption, face a daunting task: They must faithfully discharge their anticorruption functions in the near term, but at the same time they must protect, entrench, and strengthen their institutions so that they can carry out these anticorruption functions effectively over the longer term. These objectives are sometimes complementary, but there can often be significant tensions between them. This essay considers some of the strategic challenges that ACA leaders must confront, taking the institutional rules and the agency's structure, resources, and capacity as exogenous constraints. While such leaders face many strategic challenges, we focus on two. The first concerns case selection strategy. How do (or should) ACAs decide which cases to pursue or prioritize? The second issue concerns communications strategy. How do (or should) ACAs engage with various constituencies—such as politicians, media organizations, activists, international bodies, and the general public—about the ACA's work? This essay explores these questions, drawing on both existing scholarship and on several in-depth interviews with current and former senior officials from ACAs or comparable bodies.

## **Regulatory Settlement, Stare Decisis, and Loper Bright**

Written: Apr 01, 2025; Posted in SSRN: Jan 29, 2026

**Bressman, Lisa Schultz;  
Stack, Kevin M.**

In *Loper Bright v. Raimondo*, the Supreme Court adopted and deployed a particular narrative about agency action in support of overruling *Chevron*: Agencies reverse their own statutory interpretations “as much as [they] like[,]” creating pervasive instability in the law, thereby destroying private reliance interests. Based on a study of two decades of agency regulations affirmed by the D.C. Circuit under *Chevron*, we show how infrequently agencies reversed their interpretive positions. Our study suggests that the Court's regulatory “whiplash” narrative is overstated and that there is an underappreciated institutional settlement for notice-and-comment rules under *Chevron*. Identifying this regulatory settlement is important not only to correct the record but because it sheds light on a pressing question raised by *Loper Bright*: How much *stare decisis* effect should courts give to prior judicial decisions that affirmed an agency interpretation in reliance on *Chevron*? Our study reveals the true risks to legal stability that would come from courts reinterpreting the relevant statutory language and reversing previously upheld regulations. Courts therefore should have an extraordinary justification for overruling or avoiding precedent that affirmed an agency regulation under *Chevron*. In addition, our study provides guidance to courts on another significant issue after *Loper Bright*: How much respect should they give under *Skidmore* to regulations that amend the agency's prior regulations in some respect? Although we find that agencies rarely reversed their interpretive positions under *Chevron*, we also find that they did revise their regulations in routine ways, as a necessary part of informed rulemaking. Our study suggests that courts should not treat any agency regulatory change as proving the Court's whiplash narrative and as presumptively ousting amended regulations from judicial consideration and respect.

## **Administrative Law's Fourth Settlement: AI and the Capability-Accountability Trap**

Written: Jan 09, 2026; Posted in SSRN: Jan 10, 2026

**Caputo, Nicholas**

Since 1887, administrative law has navigated a “capability-accountability trap”: technological change forces government to become more sophisticated, but sophistication renders agencies opaque to generalist overseers like the courts and Congress. The law’s response—substituting procedural review for substantive oversight—has produced a sedimentary accretion of requirements that ossify capacity without ensuring democratic control. This Article argues that the Supreme Court’s post-Loper Bright retrenchment is best understood as an effort to shrink administration back to comprehensible size in response to this complexification. But reducing complexity in this way sacrifices capability precisely when climate change, pandemics, and AI risks demand more sophisticated governance.

AI offers a different path. Unlike many prior administrative technologies that increased opacity alongside capacity, AI can help build “scrutability” in government, translating technical complexity into accessible terms, surfacing the assumptions that matter for oversight, and enabling substantive verification of agency reasoning. This Article proposes three doctrinal innovations within administrative law to realize this potential: a Model and System Dossier (documenting model purpose, evaluation, monitoring, and versioning) extending the administrative record to AI decision-making; a material-model-change trigger specifying when AI updates require new process; and a “deference to audit” standard that rewards agencies for auditable evaluation of their AI tools. The result is a framework for what this Article calls the “Fourth Settlement,” administrative law that escapes the capability-accountability trap by preserving capability while restoring comprehensible oversight of administration.

## **The Attorney General's 'Devil': An Introduction to the work of First Treasury Counsel**

Judicial Review (Forthcoming 2026)

**Casey, Conor**

This article offers an extended introduction to one of the lesser discussed, but critically important, components of the firmament of government lawyering in the United Kingdom: the First Treasury Counsel who assist the government on matters of civil law. Part I provides a concise overview of the emergence of the position of First Treasury Counsel and its functions, noting its historically intimate relationship with the Law Officers and their own rise as the Crown’s chief lawyers. Part II outlines the contemporary role of the First Treasury Counsel. Part III concludes by outlining some recent significant changes to how the office will work in future.

## To Keep Government Generally Within the Bounds of Law

139 Harvard Law Review (forthcoming 2026); Harvard Law Review, Vol. 139, 2026, Forthcoming; Texas A&M University School of Law Legal Studies Research Paper No. 25-78

**Crocker, Katherine Mims**

The current President of the United States has a relationship with the law that is casual at best and contemptuous at worst. Whether we are facing a constitutional crisis has thus become a topic of debate among legal scholars and the broader public. The answer turns in important part on the extent to which the judiciary can help confine the emboldened executive to constitutional limitations. But alongside individual judges, the institution of judicial review (meaning the authority of courts to determine whether government actions comply with the law, and to counteract them if not) is under attack from multiple directions. Combatants include President Trump, administration officials, congressional partisans, and state lawmakers. The Supreme Court has entered the fray.

This Symposium, "Judicial Review in Jeopardy?," seeks to make sense—and suggest some ways out—of these circumstances. To do so, this Foreword aims to demonstrate, we should view judicial review through the lens of Richard Fallon and Daniel Meltzer's contention that our constitutional structure "demands a system of constitutional remedies adequate to keep government generally within the bounds of law." And to realize that system, federal courts must remain willing—and recognize their authority—to both check and balance expansive assertions of political power.

Professors Fallon and Meltzer exalted decision-making about distributing constitutional remedies "governed 'not by metaphysical conceptions of the nature of judge-made law, nor by the fetich of some implacable tenet, such as that of the division of governmental powers, but by considerations of convenience, of utility, and of the deepest sentiments of justice.'" By balancing formalism with realism and doctrinal care with civic concern, this Symposium reflects considerations of "the deepest sentiments of justice"—and does Fallon, to whom it is dedicated, proud along the way. Judicial review is in jeopardy. But the contributions here offer hope that the peril need neither persist nor prevail.

## Algorithmic Transparency and Democratic Legitimacy in Australia: A Procedural Fairness Approach

Written: Dec 16, 2025; Posted in SSRN: Jan 14, 2026

**D'Zilva, Nicholas**

Digital platforms now function as primary intermediaries of political communication. Their algorithmic systems determine the visibility, amplification, and suppression of political content at scale. While these systems are formally content-neutral, their operational effects may differentially shape political discourse. This paper argues that, within the Australian constitutional framework, algorithmic systems that materially influence political communication engage principles of procedural fairness and democratic legitimacy. Without alleging intent, bias, or misconduct, it contends that transparency obligations are a proportionate and orthodox regulatory response consistent with existing Australian public law traditions.

## Administrative Law Year in Review 2025

Written: Oct 31, 2025; Posted in SSRN: Nov 4, 2025

**Daly, Paul**

This paper traces how Canadian courts in 2025 continued to consolidate and refine the post-Vavilov landscape. The year's jurisprudence reflects a mature administrative law—anchored in justification, consistency, and institutional restraint—rather than one in doctrinal flux. At the Supreme Court, *Pepa v. Canada (Citizenship and Immigration)* reaffirmed that reliance on irrelevant or outdated precedent renders administrative reasoning unreasonable, reinforcing Vavilov's central demand for transparency and justification. *Telus Communications Inc. v. Federation of Canadian Municipalities* illustrated the continuing vitality of correctness review in matters of constitutional and technological interpretation, confirming the judiciary's role in maintaining coherence across evolving statutory regimes. At the appellate level, courts have extended Vavilov's reach in *Universal Ostrich Farms and Rogers*, applying reasonableness review to government policies and inaction. Parallel developments in *Best Buy* and *Canadian National Railway* blurred the traditional line between statutory appeals and judicial review, as appellate courts increasingly imported Vavilov's reasoning requirements into both contexts. In arbitration, divergent provincial approaches to appellate standards—Manitoba favouring reasonableness, the Northwest Territories correctness—highlight ongoing uncertainty likely to attract future Supreme Court attention. Courts also deepened their analysis of procedural fairness, bias, and institutional independence, striking a balance between efficiency and legitimacy in administrative decision-making. Meanwhile, the Federal Court of Appeal's "tactical burden" doctrine refined how appellate courts engage with judicial review outcomes, underscoring the evolving relationship between administrative and appellate oversight. Collectively, the 2025 decisions signal consolidation rather than change: Vavilov's principles have not only endured but expanded, embedding a pervasive culture of justification across Canadian administrative law and reaffirming the judiciary's commitment to reasoned, transparent governance.

## El Estado social digital

Aranzadi La Ley; Publication date: Oct 2025; ISBN: 9788410853973

**De La Sierra, Susana;**  
**Moreno, Juana Morcillo;**  
**Cereceda, Pablo Meix**

Estudia el impacto de entornos digitales en la sociedad, analizando la interacción entre inteligencia artificial y derechos ciudadanos. Desde la protección histórica hasta desafíos contemporáneos, cada capítulo ofrece una visión detallada sobre el marco supranacional, la constitución y el papel de las entidades locales en la transformación digital. El libro alcanza a actores del sector público, planteando preguntas sobre la administración digital y el acceso a la información.

Destaca la inclusión de género y discapacidad, explorando la digitalización en educación, salud y cultura. Con técnicas modernas como planificación y soft law, la obra propone debates cruciales sobre la digitalización y sus efectos sociales.

### **Translation:**

It studies the impact of digital environments on society, analyzing the interaction between artificial intelligence and citizens' rights. From historical protection to contemporary challenges, each chapter offers a detailed overview of the supranational framework, the constitution, and the role of local entities in digital transformation. The book reaches out to actors in the public sector, raising questions about digital administration and access to information.

It highlights the inclusion of gender and disability, exploring digitization in education, health, and culture. Using modern techniques such as planning and soft law, the work proposes crucial debates on digitization and its social effects.

The EU Digital Regulation and its Impact on Member States, pp 125-148; Jan 2, 2026

**De La Sierra, Susana**

In Spain, there are accredited uses of artificial intelligence systems by public administrations. However, access to information remains challenging due to the absence of public inventories or registries. In this regard, legal scholarship advocates for the application of the principle of algorithmic transparency as an essential element for safeguarding citizens' rights and ensuring administrative oversight. This principle has been included in regional legislation (such as in Comunitat Valenciana). Some regions (Comunidades Autónomas/Autonomous Communities) have established their own governance frameworks (Castilla-La Mancha, Catalonia, Galicia, Madrid), and some have even promoted the adoption of a comprehensive artificial intelligence act (Galicia and, to a lesser extent, Extremadura). At the national level, notable developments include the drafting of the Digital Rights Charter in 2021, the creation of a regulatory sandbox for artificial intelligence and the establishment of the Spanish Agency for the Supervision of Artificial Intelligence (AESIA) in 2023. Nevertheless, no adaptation of the legal framework governing public administrations has been undertaken to address this new reality, and as a result, the general legal framework remains applicable.

This chapter has been prepared in the framework of two research projects, of which the author is Principal Investigator (together with Prof. Juana Morcillo Moreno): "Protección jurídica y oportunidades de los colectivos vulnerables ante la digitalización y la inteligencia artificial" [Legal protection and opportunities of vulnerable groups vis à vis digitalisation and artificial intelligence] (PRODIGIA: PID2021-124967OB-I00, funded by MICIN/AEI/10.13039/501100011033/ and the EU) and "Digitalización y colectivos vulnerables: protección, garantías y propuestas para su implantación en Castilla-La Mancha" [Digitalisation and vulnerable groups: protection, guarantees and proposals for its implementation in Castilla-La Mancha] (PRODIGITAL: SBPLY/21/180501/000089, funded by Junta de Comunidades de Castilla-La Mancha and the EU).

 **The Doctrine of Constitutional Self-Restraint: Government Shutdowns as Lawful Contractions in the American Republic**

Written: Nov 10, 2025; Posted in SSRN: Nov 16, 2025

**Decker, Nicolin**

This paper advances a new constitutional theory—the Doctrine of Constitutional Self-Restraint—arguing that federal government shutdowns are not constitutional breakdowns but lawful contractions intentionally enabled by Article I of the U.S. Constitution. Rather than signaling dysfunction, shutdowns represent the Republic's most severe yet peaceful expression of institutional self-restraint: the federal government choosing to halt rather than violate the law.

Grounded in the Antideficiency Act of 1870 and its decisive interpretation by Attorney General Benjamin Civiletti in 1980 and 1981, shutdowns occur because the Constitution forbids the withdrawal of funds from the Treasury without a congressional appropriation.<sup>1</sup> This is not an accident of bureaucracy but a deliberate constitutional mechanism, rooted in Article I, Section 9, Clause 7—"No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." When appropriations lapse, the federal government does not collapse; it contracts in obedience to law. This study synthesizes Supreme Court precedent, including *Youngstown Sheet & Tube Co. v. Sawyer*, *Train v. City of New York*, *INS v. Chadha*, and *OPM v. Richmond*, to show that the Constitution not only tolerates inter-branch friction—it requires it.<sup>2</sup> The Framers did not design a system to avoid conflict, but to confine conflict to lawful channels rather than violence. In this light, a shutdown is not an anomaly but a constitutional safeguard within a separated system of powers—a lawful pause instead of an unlawful breach.

Economic and historical data from 1980 to 2025 reveal a recurring correlation: as federal debt, deficits, and appropriations disputes grow, shutdowns emerge as constitutional pressure valves to prevent fiscal authority from drifting into executive will. This pattern demonstrates that shutdowns are not failures of governance but the Constitution enforcing its own boundaries. In contrast to parliamentary democracies (e.g. the United Kingdom, France, Israel), where automatic funding continues during legislative deadlock, the United States stands uniquely committed to the principle of "no taxation or expenditure without representation."

Finally, this doctrine offers Congress, future administrations, and the public both a legal defense and a civic vocabulary: to understand shutdowns not as crises of legitimacy, but as proof that law is still governing power. In a global moment where constitutional systems are tested by debt, polarization, and executive inflation, this doctrine provides a nonpartisan, academically rigorous framework that protects institutions, restores public trust, and re-centers the Constitution as a living architecture of lawful restraint.

**Diab, Robert**

This article considers whether a decision made by generative artificial intelligence can satisfy the standard of reasonableness set out in Canada (Minister of Citizenship and Immigration) v. Vavilov. Vavilov requires that administrative decisions be justified through reasons that are transparent and intelligible to the affected party. Earlier scholarship, law, and policy have assumed that AI cannot do this because it cannot provide reasons and its inner workings are opaque or uninterpretable. However, new capabilities of large language models challenge this view. Recent experiments show that when prompted with party submissions and relevant legal materials, generative AI can produce persuasive, legally grounded reasons for decisions. The article evaluates two responses: one argues that AI decisions remain unreasonable under Vavilov since their true basis lies in opaque technical processes; the other contends that Vavilov focuses on the cogency of stated reasons, not how they were generated. The article supports the latter position, suggesting that Vavilov leaves open the possibility that AI-generated decisions can be reasonable, provided their reasons meet the decision-making standard applied to human actors.

 **Nigeria's Healthcare Delivery Paradox: Are Systemic Failures Rooted in Deficient Laws and Policies or in Weak Implementation and Enforcement?**

Posted in SSRN: Dec 30, 2025

**Elguja, Abba;  
Kaza, Saleh Abba;  
Alkali, Umar;  
Abubakar, Hauwa;  
Onyegbule, Kelechi**

Nigeria has enacted successive health-sector reforms aimed at strengthening stewardship, financing, and service delivery, including the National Health Act (2014), the National Health Insurance Authority Act (2022), Primary Health Care Under One Roof (PHCUOR), and multiple national strategic health plans. Despite this extensive legal and policy architecture, health system performance remains weak, with persistent gaps in primary healthcare delivery, financial protection, surveillance capacity, and equity. This disconnect raises a central policy question: why do ambitious health reforms fail to translate into sustained improvements in service delivery? Drawing on health policy and systems research, regulatory governance, federalism theory, and implementation science, this study applies a law-policy-implementation triangulation to examine Nigeria's health system reforms. Using documentary analysis, national survey data, and comparative insights from other decentralised health systems, the article demonstrates that underperformance is driven not by a lack of legal ambition, but by weak implementation fidelity shaped by fragmented intergovernmental authority, limited enforcement capacity, and political-economic incentives that favour discretion over compliance. The analysis further shows that many health statutes function as symbolic legislation: they signal alignment with global norms on universal health coverage and health security while embedding limited enforcement triggers, weak fiscal conditionality, and ambiguous coordination mechanisms. These design features, combined with chronic capacity constraints and elite exit from public healthcare, sustain a governance equilibrium in which nonimplementation is politically and administratively rational. To address these challenges, the article proposes a Healthcare Implementation Accountability Framework (HIAF) that integrates performance-based regulation, conditional intergovernmental financing, digital monitoring, judicial activation of health rights, and strengthened community oversight. The findings contribute to health policy scholarship by highlighting how governance design and political economy shape implementation outcomes in federal systems, offering lessons for low- and middle-income countries seeking to move from legislative reform to effective health system delivery.

## Legal Automation and Multijurisdictional Normative Verification in the United States: An Artificial Intelligence-Based Framework for Regulatory Compliance

Written: Oct 21, 2025; Posted in SSRN: Nov 5, 2025

**Espinal De Aza, Eduardo Luis**

This paper proposes a comprehensive framework for the automation of legal and regulatory processes through Artificial Intelligence (AI), focusing on the concept of multijurisdictional normative verification — the capacity of an AI system to analyze, interpret, and adapt legal texts according to multiple layers of jurisdictional authority. While originally designed for Latin America, the model is expanded here to demonstrate its direct applicability within the United States federal and state legal systems. The proposal aligns with recent federal initiatives, including the 2023 Executive Order on Safe, Secure, and Trustworthy AI, and the White House AI Bill of Rights, highlighting how automated legal reasoning can strengthen compliance, transparency, and institutional efficiency across sectors such as banking, energy, healthcare, and government administration. The system, currently under patent application before the USPTO, integrates Natural Language Processing (NLP), rule-based logic, and blockchain-anchored audit trails to ensure verifiable traceability of every decision. It provides a scalable model for embedding compliance within digital infrastructures — a key step toward regulatory intelligence systems that serve both public interest and private innovation. The research demonstrates that AI-driven normative verification can reduce compliance costs, mitigate legal risk, and enhance procedural fairness, supporting the national interest of the United States in promoting lawful, efficient, and transparent governance.

## Valuing Administrative Democracy

Texas A&M University School of Law Legal Studies Research Paper Forthcoming; U of Penn, Inst for Law & Econ Research Paper Forthcoming; The Wharton School Research Paper Forthcoming

**Feinstein, Brian D.  
Walters, Daniel E.**

Public engagement has long sat at the heart of administrative law's democratic aspirations. For proponents, opportunities for individuals to participate in agency decision-making help reconcile the administrative state with democratic ideals. Yet a tide of skepticism is swelling. The ascendant "abundance movement" argues that overemphasizing participatory procedures slows government action while delivering incommensurate benefits. Others—including most Supreme Court justices—cast presidential control as the sole credible means of securing agencies' perceived legitimacy and accountability. Although proponents and critics alike rely on assumptions about the value that the public places on participatory mechanisms, little evidence exists about how people actually view these mechanisms and how they consider tradeoffs, including those involving procedurally caused delays. This Article supplies that evidence. It presents results from experiments in which over 5,800 participants read agency policy vignettes that varied in their use of participatory tools. Some experiments also varied in terms of the reported length of the rulemaking process—a key cost of procedure that critics emphasize. Participants then assessed the agency's accountability, legitimacy, fairness, and related qualities.

Across experiments, a consistent pattern emerges: people value agencies that invite and ensure robust participation. The largest shifts in attitudes occur when agencies move beyond basic notice-and-comment to offer structured deliberation or targeted outreach to underrepresented groups. The public's appetite for meaningful voice is also remarkably durable; even when participatory mechanisms lengthen rulemaking by years, support for those tools remains strong. These findings indicate that the public values not only administrative efficiency but also a government that listens widely, thoughtfully, and carefully.

The policy implications are pragmatic: to strengthen agencies' perceived connection to democratic values, officials should preserve notice-and-comment as a floor, improve representational balance, and deploy "thicker" engagement opportunities, especially early-stage deliberation among key stakeholders. They should also consider ways to eliminate the most extreme delays while also resisting the urge to streamline participatory procedure across the board. Administrative democracy's future will hinge less on slogans for or against "procedure" and "participation" than on careful, evidence-based design choices that deliver opportunities for voice when the public is willing to wait for them.

## Evaluation of Internal Audit Functions in Public Institutions

Written: Jun 22, 2025; Posted in SSRN: Jan 29, 2026

**Freya, Amelia**

This study evaluates the effectiveness of internal audit functions in public institutions, aiming to determine how well these functions contribute to organizational transparency and accountability. Employing a mixed-methods approach, the research integrates qualitative interviews with internal auditors and stakeholders, detailed case studies across multiple public sector entities, and quantitative performance metrics to offer a comprehensive assessment of internal audit outcomes. Key findings indicate that internal audit functions significantly enhance transparency and accountability by improving risk management practices and reinforcing governance mechanisms. However, the effectiveness of internal audits is constrained by persistent challenges such as resource shortages, skill gaps among audit personnel, limited management support, and compliance barriers that hinder audit follow-up and implementation of recommendations.

These constraints affect auditors' capacity to deliver timely and impactful insights, ultimately weakening the assurance role of internal audits. The study also observes that strengthening institutional frameworks through enhanced auditor independence, targeted capacity-building initiatives, and strategic use of technology can greatly improve the quality and influence of internal audit activities. The results underscore the need for public institutions to prioritize systematic improvements in internal audit frameworks to bolster governance, accountability, and public trust. Overall, fortifying internal audit systems through resourcing, professional development, and technological integration emerges as critical for optimizing audit effectiveness in the public sector.

## Immigration Adjudication, Judicial Review, And The Uneven Incorporation Of Administrative Law Norms

40 Georgetown Imm. L. J. \_\_ (forthcoming 2026)

**Giammatteo, John Harland**

This article examines the interaction between immigration law and administrative law. Scholars and courts regularly treat immigration as outside of, or exceptional to, the normal operation of administrative law and its norms of judicial review. Yet in the past decade, the Roberts Court has radically reshaped administrative law. This broader administrative law project has largely emphasized the primacy of the federal courts and judicial review, enlarging the putative rights of regulated parties, at the cost of agency power. Within that project, immigration adjudication is a frequent conversation partner. Immigration adjudication is used to undermine the administrative state's claim to policymaking legitimacy and to reinforce the role of courts in other substantive areas. At the same time, the Roberts Court has largely excluded noncitizens from the benefits of a new robust role for the courts. Noncitizens in removal proceedings thus appear as useful subjects throughout the Roberts Court's administrative law jurisprudence, incorporated into administrative law where convenient but largely excluded from the field's reach where it might actually matter.

Building on this understanding of the uses of immigration within administrative law, I argue that exceptionalism is the wrong framework to understand judicial review of immigration adjudication. Instead, I argue that immigration adjudication suffers from what I label an uneven incorporation of administrative law norms. That is: immigration adjudication has incorporated the bureaucratic functioning enabled by administrative law, but without the robust harmonizing functions and transubstantive access to judicial review, with attendant cross-doctrinal standards of review.

This article therefore makes three contributions. First, it develops the concept of immigration law's uneven incorporation of administrative law's norms and doctrines. Doing so allows for a more accurate and nuanced understanding than an exceptionalism framework, as well as an opening for noncitizens to utilize administrative law's toolkit to challenge the arbitrary decisionmaking of removal proceedings and enforcement. Second, the article offers the first examination of the Roberts Court's use of immigration adjudication within its larger administrative law project. Finally, the article uses immigration law as a lens to view administrative law writ large. Immigration adjudication offers one vision of what administrative law might look like in decades to come: increasingly context-specific doctrines, standards of review, and requirements for specific agencies. This would be a major shift in administrative law, retreating from transubstantive standards of judicial review dating back at least to the New Deal; it would also undermine administrative law's uniformity and harmonizing function long seen as a primary justification of the field as a whole.

## Delay, Politics, and Expertise in OIRA Tax Review

45 Virginia Tax Review 125 (2025), Minnesota Legal Studies Research Paper 2025-53; Ohio State Legal Studies Research Paper No. 958

**Hickman, Kristin E.**  
**Dooling, Bridget C.E.**

The opening months of the second Trump administration have featured a wide range of changes to federal policy accomplished through presidential executive orders. Among those changes, a lesser-known shift is the reinstatement of centralized review of tax regulations by the Office of Information of Regulatory Affairs (OIRA). For many years, most tax regulations were exempt from OIRA review. That changed in the first Trump administration when the Treasury Department (Treasury) and OIRA signed a memorandum of agreement bringing more tax regulations within OIRA's oversight sphere. In the Biden administration, Treasury and OIRA reversed course, this time clearly and unequivocally exempting all tax regulations without exception. Now the script has flipped again, as a new Trump executive order has reinstated OIRA review of tax regulations. OIRA review of tax regulations is controversial, with critics complaining of long delays in the publication of important regulatory guidance and increased political meddling in decisions that ought to be made by tax experts. This article documents the first and only effort to study OIRA review of tax regulations comprehensively and empirically by analyzing the preambles of every notice of proposed rulemaking and Treasury Decision proposing or adopting temporary and final tax regulations published from 2016 through June 2023—434 documents in all, across three presidential administrations. From the data we conclude that complaints that OIRA review leads to lengthy delays and systematic politicization of tax policy are generally overblown. We additionally offer preliminary findings regarding OIRA's contributions to transparency, and potentially to regulation quality. These findings shed light on the debate about OIRA review of tax regulations and potentially foreshadow implications of extending OIRA review to independent regulatory agencies as well.

## The Missing Constitutional Law of Executive Conditions

Emory Legal Studies Research Paper; Boston Univ. School of Law Research Paper No. 5858224

**Huberfeld, Nicole**  
**Lawrence, Matthew B.**

This Article contributes to development of the constitutional law of executive conditions. Courts are wrestling with the constitutionality of federal efforts to encourage what the federal government cannot mandate—speech on particular subjects, participation in cooperative federalism programs, and so on—but have failed to appreciate an important distinction. Binding statutory conditions articulated by Congress or an executive branch delegatee (statutory conditions) and non-binding executive conditions articulated by executive branch actors engaged in regulation by deal (executive conditions) are different in constitutionally salient ways that can and should inform the development of workable doctrine. Yet courts, advocates, and scholars have only begun to map these differences and to draw the lines that will help to inform doctrinal development.

While textual, historical, and precedential differences between executive and statutory conditions must be assessed doctrine by doctrine, this Article describes five over-arching functional differences between statutory and executive conditions. Executive conditions—including non-enforcement discretion, agenda setting, discretionary acts, and the like—are essential sources of flexibility in the day-to-day implementation of programs, so judicial review of such conditions brings a greater risk of incapacitating the federal government than does judicial review of statutory conditions. This functional difference may counsel more deferential or limited judicial review. On the other hand, executive conditions involve different risks, because they can be tailored or threatened, aggrandize executive power while circumventing congressional control, negate political safeguards of federalism and anti-subordination in the legislative process, come from any executive branch actor, and be compounded across programs or agencies. These functional differences bring greater threats to liberty, state sovereignty, and the separation of powers, increasing the need for judicial intervention. Together, these functional differences indicate that, rather than evaluating executive conditions by reflexively applying (or refusing to apply) precedents developed in review of statutory conditions, courts should develop distinctive constitutional doctrines for executive conditions tailored to check serious abuses without unduly interfering with day-to-day program administration.

Courts can tailor executive conditions doctrines to check abuses without unduly interfering with day-to-day program administration and should clarify rather than complicate doctrinal development by supporting clear, workable lines. The Article illustrates the workability of its intervention with two specific prescriptions. In the First Amendment context, courts have struggled to discern when a condition on speech is a permissible aspect of program definition or is impermissible leveraging of a program to regulate speech more broadly. By scrutinizing executive conditions articulated by novel executive branch actors or compounded across programs, courts can draw better lines and check abuses without interfering with ordinary program administration. And in the Spending Clause context, courts have struggled to identify when pressure turns to compulsion. Here, we suggest executive conditions that pull resources to achieve executive goals in excess of amounts appropriated by Congress require judicial scrutiny to safeguard Congress's power of the purse, which can be done without incapacitating the ordinary implementation of federal programs.

## **The Digitalization of Public Services in Uzbekistan: How to Avoid the Rigidity?**

Written: Nov 05, 2025; Posted in SSRN: Nov 12, 2025

**Islam, Kamoliddin**

The policy brief analyzes Uzbekistan's rapid digitalization of public services and the emerging problem of administrative rigidity caused by weak legal and institutional alignment. While digital reforms have improved efficiency and accessibility, they may outpace the development of contemporary administrative law institutions - administrative procedures and administrative justice. This imbalance has produced inconsistencies between digital platforms and legal norms, limiting procedural fairness and citizen rights. The brief identifies how digital platforms may inadvertently constrain rather than facilitate legal processes, by enforcing rigid automated rules that contradict procedural guarantees under the Law on Administrative Procedures (LAP). It explores examples such as identity verification barriers, incompatible data standards, and contradictory state databases that create uncertainty in citizens' rights and obligations. To address these challenges, the paper recommends harmonizing administrative regulations with the LAP, ensuring procedural flexibility in automated systems, enhancing transparency in pre-trial administrative justice mechanisms, and embedding due process guarantees within the design of digital platforms.

## **Policy level Corruption in Nepal: How Laws are Bent to Serve Political and Bureaucratic Interests**

Written: Oct 07, 2025; Posted in SSRN: Nov 17, 2026

**Karki, Seema**

This article examines the issue of policy-level corruption in Nepal, where laws, regulations, and cabinet decisions are deliberately shaped to serve political, bureaucratic, and corporate interests rather than the public good. Despite being ranked 107th in the 2024 Corruption Perceptions Index, Nepal continues to struggle with systemic manipulation of policies, loopholes in lawmaking. Through case studies such as the Lalita Niwas land grab, the Pajero scandal, the Patanjali land deal, and the misuse of welfare programs, the paper highlights how corruption manifests not only through bribery but by altering legal and institutional frameworks for private gain. The article concludes by recommending reforms such as stricter oversight, lobbying regulation, conflict-of-interest laws, and civic vigilance to realign policymaking with transparency, accountability, and the broader national interest.

## **Local Government and the Constitution**

Address to Local Government New Zealand's Mayors School (Wellington, 20 October 2025)

**Knight, Dean R.**

These remarks explore the role of local government in Aotearoa New Zealand's constitutional system. The following constitution dimensions are discussed: reason, place, hierarchy, dysfunction, rangapū/partnership, deliberation and practice.

## **Problems of the Validity of Electronic Administrative Acts: A Comparative Legal Analysis**

Written: Oct 07, 2025; Posted in SSRN: Jan 19, 2026

**Krivelskaya, Olga**

In the era of digital transformation, public administration is increasingly shifting to electronic forms of exercising authority. The relevance of this topic stems from the growing number of electronic administrative acts—individual and regulatory decisions of government bodies issued in digital form. The digitalization of administrative procedures increases the efficiency and transparency of governance, a fact recognized worldwide. The study revealed that the introduction of electronic administrative acts represents a sustainable global trend, reflecting a profound transformation of public administration and legal regulation mechanisms. In most modern legal systems, the electronic form of administrative acts is recognized as equivalent to traditional ones, provided that the requirements of legality, authenticity, and procedural transparency are met. A comparative analysis of international experience suggests that a unified doctrine of "electronic administrative law" is emerging, integrating criteria for the validity of acts, guarantees for the protection of citizens' rights, and digital security standards.

## **Twenty-Five Years On: An Empirical Study of the Human Rights (Jersey) Law 2000**

Written: Oct 01, 2025; Posted in SSRN: Nov 19, 2025

**Le Suer, Andrew**

This article offers the first systematic evaluation of the Human Rights (Jersey) Law 2000 (HRJL), twenty-five years after its enactment. Using court judgments, States Assembly debates, scrutiny reports and government documents, it applies Joshua Newman's four evaluative dimensions—objectives, tools, distributional outcomes and political impact—to a constitutional statute. The record is mixed. Rights feature in litigation and legislative process but enforcement is patchy and access limited by restrictive legal aid. Institutions are sparse: there is no commissioner, no committee, and only a short-lived programme of public legal education. Distribution is uneven: foreign offenders and financial actors have mobilised rights most effectively, while women and low-income groups are largely absent. Politically, incorporation has proved stable but low-salience, with rights almost invisible in elections, Assembly debate, and civil society. The study concludes that the HRJL has delivered stability without salience, entrenchment without civic depth.

## **Opening the Tariff Toolkit: The Demand for U.S. Administrative Trade Remedies**

101 New York University Law Review (Forthcoming 2026)

**Liu, Lawrence J.**

After decades of moves towards trade liberalization, trade restrictions are back in vogue. The United States is raising tariffs, escalating tensions with trading partners, and has paralyzed the World Trade Organization's dispute-settlement system. The continuation of adversarial actions seems assured, with both political parties indicating interest in defending against imports, ongoing calls to "decouple" from China, and President Trump's penchant for unilateral tariffs.

Against this backdrop of rising trade tensions and weakening international legal constraints, I examine the demand for defensive trade measures and the domestic administrative processes that result in them. I advance a bottom-up perspective that trains attention on the actors that mobilize these processes to enforce "administrative trade remedies," which I define broadly to include any domestic law that aims to defend domestic industries against imports and is administered by an administrative agency, e.g., antidumping duties or Section 232 national security trade actions. Rather than focus on Congress or the President, this view appreciates the role of firms, workers, and lawyers in mobilizing administrative agencies to enforce, and thereby make, trade law.

I draw on over forty interviews with those involved in administrative trade-remedy processes and original datasets of agency investigations to describe how those who seek and benefit from tariffs choose among a toolkit of remedies. Although tools with greater presidential involvement in the decisionmaking process are receiving increased attention, I find that private actors remain actively engaged in the enforcement of administrative trade remedies. And they continue to prefer the antidumping and countervailing duty process because of its relative insulation from politics (especially the President) and resulting predictability and durability.

A bottom-up view of administrative trade remedies in the United States contributes first to our understanding of trade lawmaking and policy. In addition to highlighting the relevance of private actors and agency processes, the premium that relevant actors place on a process's perceived distance from politics and predictability helps explain the continuing popularity of such a scheme, as well as the value of consistent agency practice during a time of high political polarization and volatility. This approach can also travel to other countries, where the use of defensive measures is similarly on the rise, or to other areas of U.S. trade law. Second, I contribute to scholarship that seeks to "normalize" trade law. The mixed public-private nature of the trade-remedies enforcement scheme and interviewees' discussions of the pros and cons of administrative procedures illustrate the benefits of bringing research on "ordinary" areas of domestic law to bear on trade law, and vice versa.

## **A Systems Theory of Tort Law: Reevaluating the Case Against "Regulation by Litigation"**

Missouri Law Review, Vol. 90, No. 2, p. 385, 2025; Georgia State University College of Law, Legal Studies Research Paper No. 2025-09

**Lytton, Timothy D.**

For decades, critics of tort law have argued that lawsuits are a poor substitute for government regulation. These detractors compare the institutional capacities of courts and agencies, and they conclude that litigation is ineffective, inefficient, and illegitimate as an alternative to notice-and-comment rulemaking. In response, this Article asserts that characterizing tort law and administrative regulation as alternatives obscures their interdependence. By using systems theory to model this interdependence, the Article argues that any fair-minded assessment of tort litigation's contribution to regulatory governance requires understanding it as part of a system. Ignoring the systemic impacts of tort litigation overlooks the subtle ways in which it enhances expertise, stakeholder participation, feedback, and learning in regulatory regimes.

To illustrate, the Article examines the most urgent food safety problem currently facing U.S. consumers: foodborne illness outbreaks caused by leafy greens contaminated with virulent microbial pathogens. Systems theory demonstrates how tort litigation has played a vital role in the development of government regulations and industry standards to reduce the risk of contamination. Through interactions with media coverage, consumer advocacy, and insurance underwriting, tort litigation has shaped and motivated the development of the food safety standards that govern leafy greens production. From a careful analysis of how lawsuits have advanced food safety policy, the Article derives a general theory of the interdependence of tort litigation and government regulation.

## Administrative Law Wrapped, 2025

Written: Mar 05, 2025; Posted in SSRN: Dec 19, 2025

**Mancini, Mark**

2025 was a relatively quiet year in Canadian administrative law. This is a good thing. For those of us accustomed to frequent gyrations in the Supreme Court on the standard of review, we are now happy to see that most debates in administrative law centre around the substance: does this decision fit within this statutory mandate? Is this decision properly justified in relation to these parties? These are more productive questions to ask. But nothing is perfect. And in 2025, we were treated to several important judicial decisions working with the Vavilov framework and leaning on its pillars. As it turns out, Vavilov is incredibly strong as a doctrinal framework. But there is potential trouble on the horizon, and it is worth keeping our wits about us for that reason. In this year-end wrap-up, I focus on four topics that continue to percolate in the law of judicial review: (1) statutory interpretation; (2) impact on affected individuals; (3) remedies; (4) Charter values.

## Constructive Gridlock

13 Texas A&M L. Rev. 237 (2025); GWU Legal Studies Research Paper No. 2025-76; GWU Law School Public Law Research Paper No. 2025-76

**Manns, Jeffrey**

Critics of President Trump have alleged that he has reduced independent agencies to mere extensions of the executive branch during his second term. The reality is that Democratic and Republican presidents routinely leverage the opportunity to reshape independent agencies in openly partisan ways because presidents have majority control of the appointments for the leadership of virtually all agencies. I examine a large data set of independent agency votes from the Obama and first Trump terms to show that independent agency commissioners vote in predictably partisan ways when addressing substantive policy changes.

The partisan design of independent agencies undercuts agency claims to "independence." As a result, substantive policy changes at independent agencies generally become transient victories that are likely to be reversed by the next administration from the opposing party. I make the case for restoring a degree of independence to independent agencies by institutionalizing "constructive gridlock" in their leadership. I call for creating an even split in independent agency commissioners from the two major political parties. Gridlock between the two major political parties is almost uniformly panned as a problem plaguing our legislative process. Our current Congress epitomizes the potential dysfunctionality of legislative gridlock with divided government and high levels of partisanship leading to a dearth of statutes and frustration at inaction. But I argue that creating partisan balance in the leadership of independent agencies would have positive policy effects and legitimize decisions made by unelected leaders. Institutionalizing an even partisan division in the leadership of independent agencies would necessitate bipartisanship for agency action and pressure elected leaders in Congress to act when independent agency leaders cannot overcome their ideological differences.

This approach would further an underlying purpose of independent agencies for appointees from both major political parties to work jointly to legitimize rulemaking and adjudications. Well-known safeguards exist to foster the autonomy of independent agency appointees from the executive and legislative branches. But I argue that the majoritarian structure of (almost all) independent agency commissions and the partisan nature of the appointments process ensure that politics, rather than bipartisanship and independence, prevail when the stakes matter.

To prove this point, I have gathered a data set of over 5,000 commissioner votes by the Securities and Exchange Commission ("SEC"), Nuclear Regulatory Commission ("NRC"), and Federal Election Commission ("FEC") from the Obama and Trump administrations. I compare the impact of three-two partisan splits in commissioners (SEC and NRC) with three-three commissioner political splits (the notable institution with partisan balance-the FEC). A large majority of votes in the SEC and NRC on uncontroversial issues are unanimous. However, I show that the partisanship inherent in the majoritarian structure of independent agencies is clear in the subset of ideologically driven votes concerning substantive policy changes.

## **The Unitary Executive and the Federal Reserve**

Columbia Public Law Research Paper Forthcoming

**Menand, Lev**

The Supreme Court may soon embrace an interpretation of the Constitution that would significantly expand the power of the President over federal administrators and invalidate key provisions in dozens of federal statutes. A critical question is whether this interpretation—known as Unitary Executive Theory (UET)—would also render unconstitutional Central Bank Independence (CBI), an arrangement where a country's monetary policy is formulated by a semi-autonomous body of experts insulated from partisan political pressure. Several justices have suggested that it would not, and a growing scholarly literature has proposed ways for the Court to distinguish the country's central banking apparatus from the rest of the administrative state. This Article examines these proposals and concludes that none are tenable. It then explains why UET is fundamentally inconsistent with CBI: the Federal Reserve's independence from the President reflects a wholly different, and incompatible, approach to the separation of powers. It further suggests that since the regulation of money and banking is one of the most important functions of the modern state, this conflict is arguably sufficient, standing alone, to reject UET. Relatedly, if the Court wishes to preserve statutory limits on the President's power to remove Federal Reserve officials without repudiating UET outright, it has only one viable option: stare decisis.

## **Ouster Clauses and the Common Law: a Historical Reappraisal**

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.

## **Administrative justice, regional courts and legal certainty: a comparative overview**

G. Giappichelli Editore; Publication date: Nov 2026; ISBN: 9791221116939

**Parisio, Vera**

The book, suitable for students (also PHD candidates) and professors of Administrative Law, features a collection of essays that discuss administrative justice systems and their organisation, specifically examining the relationship between Higher and Regional Courts, all from the perspective of ensuring full legal certainty. The selected countries (Austria, Belgium, France, Italy, Germany, Portugal and Spain) are a useful examples because they include both Unitarian and Federal States. The book offers an interesting overview of the legal systems of countries such as Austria and Portugal, not frequently analysed. Key words: administrative justice- regional courts - legal certainty

## **Beyond Adjudication: Exploring the Multifaceted Role of Supreme Administrative Courts**

Edward Elgar; Publication date: 2026; ISBN: 978 1 03537 240 9

**Piątek, Wojciech**

This book examines the diverse roles of Supreme Administrative Courts (SACs) across Europe, including the Councils of State. Contributors demonstrate how the courts operate within legal orders, focusing on how their additional (non-judicial) functions relate to adjudication. It provides insights into European constitutional and administrative law, particularly the principle of separation of powers and judicial independence.

## **The Thousand-Click Bureaucracy: The Erosion of Due Process in Digital Administration**

Written: Mar 14, 2024; Posted in SSRN: Jan 13, 2026

**Ponce, Mariano Enrique Torres**

Digital administration has been widely promoted as a solution to inefficiency and institutional opacity in public services. However its deployment has shifted procedural burdens from the state to the individuals who must operate the technological systems that govern access to rights. The result is a thousand click bureaucracy in which legal participation depends on the user's capacity to navigate digital platforms, maintain continuous visibility within the system and produce evidence of actions that interfaces do not always acknowledge. This transformation fragments procedural guarantees and weakens legal certainty because failures in the system generate consequences attributed to the user. The law continues to protect due process in theory while practice increasingly depends on technical performance and digital literacy. The concept of technological due process proposed in this article demands that administrative legitimacy be evaluated not only by formal legality but by the responsiveness, traceability and clarity of the technological infrastructures through which authority is exercised. Recognizing this shift is essential to ensure that modernization of the state does not erode the very rights it is meant to protect.

## **Social justice and its role in the implementation of the constitutional principle of the welfare state in Germany**

Written: Dec 06, 2025; Posted in SSRN: Dec 29, 2025

**Rakitskaya, Inna**

Social courts are a specialized judicial system that deals with the resolution of disputes in the area of social rights. They are organized and operate independently of the system of courts of general jurisdiction. Social courts are independent and subject only to the Basic Law (GG) and other laws. On the one hand, they are part of the system of specialized judicial power, and on the other hand, an jurisdiction over social matters is considered to be a special branch of general jurisdiction over administrative matters. So far, the consideration of social disputes is carried out through administrative proceedings.

Social justice was introduced in Germany in 1954 and is considered a specialized jurisdiction operating in Germany alongside general, administrative, financial, and labor jurisdictions. It is an important component of the constitutional guarantee of social rights, which is the basis of the welfare state, which Germany is proclaimed to be in Article 20, Part 1 of its Basic Law: "The Federal Republic of Germany is a democratic and social federal state."

The legal basis for the activities of social courts, in addition to the Basic Law, is formed by a special Law on Social Courts (Sozialgerichtsgesetz) of 3 September 1953, which entered into force on 1 January 1954. Before the entry into force of the abovementioned Law, there were no independent courts in Germany in the legal areas now classified as social jurisdiction.

**Reid, Blake E.**

The United States Copyright Office's multifarious roles in the U.S. copyright system have long prompted uncertainty about its position among the branches of the federal government. From its formal home in the Library of Congress, the chameleonic Office exercises arguably legislative and executive power over a growing array of copyright law, policy, and political matters. The Office not only has overseen the copyright registration, deposit, and other administrative systems, but has routinely weighed in on the substantive evolution of U.S. copyright law, accumulating rulemaking authority and quasi-judicial responsibilities along the way. Despite its increasingly sprawling portfolio and unusual configuration, the Office has never faced a serious separation-of-powers reckoning, even during a period of partisan turmoil, consolidated executive power, and judicial efforts to dismantle the federal administrative state.

In 2025, the Office pushed its separation-of-powers luck to the limit when it undertook a controversial report on generative artificial intelligence training and fair use that touched the stove of high-stakes politics. The Office publicly released the report with an unusual and conspicuous "pre-publication" label shortly after the President fired the Librarian of Congress—and shortly before the White House attempted to fire and replace the Register of Copyrights. The ensuing crisis over the leadership of the Office imperiled its core function of processing copyright registrations—and threatened broader political interference with the Library's distinct responsibilities to independently serve Congress and the public.

A divided panel of the D.C. Circuit in *Perlmutter v. Blanche* has at least temporarily protected the Register's position. However, the litigation over the Register's attempted firing and replacement has placed the Office and the Library in the shadow of the Supreme Court's broad conception of presidential control over executive power in *Trump v. Wilcox*. It also has put in sharp relief the President's long-standing statutory role in appointing the Librarian, who in turn is responsible for appointing the Register.

This Essay argues that the formalistic separation-of-powers issues raised in *Perlmutter* are not primarily a function of Office's nominal exercise of executive power, but rather of the Office's penchant for frolic and detour into controversial law and policy issues. Indeed, legal arguments over the Office's exercise of executive power have primarily focused on functions of the Office and the Library that bear little relationship to the AI training report that, at least according to some reports, catalyzed the leadership crisis. By contrast, the Office's free-floating intervention into generative AI training policy purportedly grew out of its responsibility to advise Congress about copyright issues—the most arguably legislative function the Office performs.

Illuminating the distinct political dimensions of the conflict in *Perlmutter* reveals that righting the separation-of-powers ship will require trimming the sails of the Office's politically controversial legislative functions as much or more than its legally controversial executive functions. Future efforts to influence high-profile substantive law and policy matters will make the Office—and by extension, the Library—an ongoing target of political interference and exploitation, using the Office's comparatively prosaic executive functions as a legal hook. Reestablishing the independence of the Office and Library will require the Office to refrain from using its limited advisory responsibilities as a platform to act as a self-appointed expert copyright agency.

 **The Algorithmic Hard Look 2.0: Rethinking Judicial Oversight of AI-Generated EISs**

Written: Oct 18, 2025; Posted in SSRN: Oct 29, 2025

**Saren, Tuoya**

Artificial intelligence (AI) is no longer a distant prospect in environmental law—it is already reshaping how federal agencies prepare Environmental Impact Statements (EISs) under the National Environmental Policy Act (NEPA). AI systems can process massive datasets and simulate environmental outcomes with unprecedented speed and precision. Yet this very power exposes a fundamental legal gap: courts were built to review human reasoning, not the invisible logic of algorithms.

This Article introduces Hard Look 2.0, a scientific reliability framework that modernizes NEPA's "reasoned decision-making" mandate for the algorithmic era. Hard Look 2.0 translates the procedural ideal of the hard look into six measurable criteria—testability, peer review, error disclosure, reproducibility, methodological rigor, and general acceptance—that agencies and courts can both use to evaluate the trustworthiness of AI-generated analyses. The framework provides agencies with an *ex ante* validation checklist for environmental models and equips courts with an *ex post* matrix for structured judicial review, all within existing administrative law.

The Article makes three contributions. First, it bridges the gap between scientific reliability and administrative accountability, demonstrating how both can reinforce each other in AI-assisted decision-making. Second, it provides a practical roadmap for agencies to document and validate algorithmic tools so that their use can withstand judicial scrutiny. Third, it reframes the judicial role in the post-Chevron era: deference to agency expertise is no longer presumed but earned through demonstrable reliability. By embedding scientific reliability into NEPA's procedural core, Hard Look 2.0 envisions an environmental governance system in which innovation and accountability advance together ensuring that algorithmic reasoning remains transparent, reviewable, and democratically legitimate.

**Shah, Bijal**

In a new book, *Over Ruled*, as well as in his jurisprudence, Justice Neil Gorsuch identifies some genuine harms caused by arbitrary administration, particularly in the immigration and national security contexts. These issues are legible not only—and perhaps not even primarily—to conservatives like him, but also important to a more honest and impactful vision of progressive administration. Despite being well-positioned to do so, Justice Gorsuch fails to bridge the partisan divide in order to fully engage with vital issues regarding flawed exercise of administrative discretion. Instead, this Review argues, in Justice Gorsuch and Janie Nitze's eagerness to advocate for a conventional form of anti-administrativism and attendant scorn for the challenges inherent to applying technical expertise, *Over Ruled* forgoes more compelling ways to investigate and support these concerns. Indeed, the book's emphasis on idiosyncratic examples of the challenges of applying expertise in administration comes at the expense of better exploring genuine weaknesses in our federal government. This Review explores the extent to which *Over Ruled* neglects pathways for more nuanced analysis—and in particular, where it ignores the role and perils of judicial pronouncements and presidential control over administrative enforcement. First, the authors ignore the role of judge-made law in the infringement on personal freedoms that they condemn. Indeed, *Over Ruled*'s critiques of one-off instances of regulation implemented sideways are particularly hard to stomach in light of Justice Gorsuch's failure to acknowledge his own contribution to the systemic criminalization and repression of vulnerable communities. Second, the authors' reflexive support for unilateral presidential control over administrative agencies is unlikely to fix the evils of administrative intrusion, such as they are, and constitute a fundamental cause of it today. Third, this Review proposes that—rather than the unitary executive model that the book, as well as Justice Gorsuch in other writing, espouses as a cure-all to the ills of bureaucracy—the administrative state would be better served by enhancing mechanisms of political and democratic accountability that both uphold important values and answer to marginalized people.

 **Out from Under the Guise of Judicial Review**

Administrative Law Review, Volume 78, forthcoming Sept. 2026

**Sharkey, Catherine M.  
Pultz-Earle, Ian**

Loper Bright—and the end of the Chevron era—seemingly outlaws the intermixing of agency policymaking review “under the guise” of judicial review of statutory interpretation. But, paradoxically, we argue that it presents an unanticipated opportunity for reform of judicial oversight of agency actions.

We propose that courts deploy a sliding scale of respect for an agency's policy-based interpretation: the more the interpretation departs from the ordinary meaning, the more evidence would be needed to support that interpretation. Our proposed expanded arbitrary and capricious review under a reinvigorated State Farm “hard look” standard accommodates greater judicial deference when an expert agency has engaged in truly reasoned decisionmaking, while triggering greater scrutiny when the agency's action has weaker justification or the agency lacks a track record of high-quality rulemaking.

Our proposal is consistent with Loper Bright's insistence that judges retain their statutory interpretation role. But it resists the case's premise (carried forward from Chevron) that issues of law and fact map onto separate regimes of statutory interpretation and policymaking. Instead, judges should extricate policymaking considerations “out from under the guise of judicial review” and treat them as an essential component of such judicial review. Under our approach, courts start with the agency's explanation rather than exclusive reliance upon traditional lawyers' tools. If the agency's explanation is high quality per State Farm, a court may infer that the underlying question is one of policy and defer to the agency's answer. Such judicial review would place greater emphasis on meaningful scrutiny of the agency's policy-based reasons for its rules.

Finally, our proposed framework sets up strong regulatory incentives for courts, agencies, and Congress, which must face a new era for administrative law.

## **Regulating Generative AI: Legal Accountability in the Age of Algorithms**

Written: Oct 30, 2025; Posted in SSRN: Dec 5, 2025

**Siddiqui, Anam**

Generative Artificial Intelligence (AI) systems — such as ChatGPT, DALL·E, and Bard — are reshaping communication, creativity, and commerce. Their rapid deployment raises urgent legal questions: Who is accountable when AI generates harmful, biased, or misleading content? This paper examines the legal challenges of generative AI, focusing on liability, transparency, and regulatory gaps. It analyzes global responses including the EU AI Act, the UK's sectoral approach, and India's Digital Personal Data Protection Act. Through case studies and comparative analysis, the paper proposes a layered accountability framework emphasizing human oversight, algorithmic transparency, and enforceable standards. As generative AI becomes embedded in judicial reasoning, education, and governance, "the law must evolve not just to regulate, but to ethically guide its development."

## **Keeping Evidence Real**

111 Iowa L. Rev. 589 (2026)

**Simon-Kerr, Julia Ann  
Bernstein, Anya**

Commentators largely agree that the Federal Rules of Evidence have problems. Expert testimony standards admit junk science. Impeachment rules chill defendant testimony. The hearsay regime defies consistent application and obstructs self-representation. The list goes on: Many rules fail to assist, or affirmatively thwart, jurors trying to make good decisions. Such shortcomings disproportionately harm those with the least power in the system, raising profound questions about whether the evidence code serves its statutory mandate—to promote truth and justice in court proceedings. In the face of widely recognized problems, the government body charged with managing the evidence code—the Advisory Committee on Evidence Rules—has been passive. Rather than exercising its authority to ensure that evidence rules fulfill their statutory purposes by rulemaking, it has focused on what we term rule-tending—treating the existing code as a fixed edifice needing only light maintenance.

The evidence committee is not the only government organ charged with managing regulations through authorities delegated by statute. Administrative agencies do that, too. This Article places evidence rule management within this larger government landscape, showing that the evidence committee's statutorily delegated authority is comparable to that of agencies. Rule-tending, we argue, has left the evidence regime empirically untested, normatively adrift, and unaccountable both to the public it governs and to the statutes it implements. We suggest that practices historically developed in the administrative agency context would help. Increasing public participation, diversifying decision-makers, pursuing empirical evaluations, and articulating reasons grounded in statutory purposes would enhance both efficacy and accountability. And it would better align the rules with their statutory purposes of promoting truth and justice. The very fact of delegated authority, we argue, demands more than rule-tending—it requires rulemaking that is empirical, accountable, and purpose driven.

## **Benches Across Asia: A Comparative Analysis of the Doctrine of Basic Structure**

Written: Oct 16, 2025; Posted in SSRN: Oct 27, 2025

**Singh, Major**

This paper provides a comparative analysis of the Basic Structure Doctrine, using India as the reference point, and examines its reception in Bangladesh, Pakistan, Nepal, Malaysia, and Singapore. Genesis from *Kesavananda Bharati* (1973), Basic Structure Doctrine imposes judicially enforceable limits on constitutional amendment to protect sacrosanct basic fabric of constitution. The paper shows that the doctrine's diffusion across Asia has produced divergent outcomes: Bangladesh adopted Basic Structure Doctrine defensively against authoritarian engineering; Pakistan invoked 'salient features' rhetorically but stopped short of a robust strikedown power; Nepal's courts have been cautious amid fragile political settlements; Malaysia evidences selective and aspirational judicial reassertion; and Singapore's categorical rejection of implied unamendability in favor of parliamentary supremacy. These variations are not random: Basic Structure Doctrine flourishes where judiciaries assume the role of constitution protector and where institutional independence, political legitimacy, and a permissive political culture exist. In absence of these enabling conditions, the doctrine tends to be symbolic or outrightly rejected. By mapping these jurisdiction-specific trajectories, the paper offers a context-sensitive account of unconstitutional constitutional amendments and reveals contingent judicial strategies being shaped by specific political variables—a point not fully explored by pure doctrinal analysis.

## **The Independence of Central Bank Supervision**

The Wharton School Research Paper

**Skinner, Christina Parajon**

The Dodd-Frank Act of 2010 gave the Federal Reserve (Fed) sweeping power to supervise the banking system. Consequently, the Fed as bank supervisor has the ability to steer the allocation of credit in the economy, shape the structure of financial markets, and set the pace of financial innovation. Although this is a mighty power of the State, the Fed's supervision function has become effectively shielded from political direction and control under the law and traditions of "central bank independence." This Article argues that the practice of extending central bank independence—which developed to protect the Fed's monetary policy function—to Fed supervision has insulated Fed supervision from political checks and balances in ways that affront the Constitution's separation of powers. Ultimately, the Article explains the Fed's supervision function as an exercise of executive power—not an independent central banking duty. That conclusion implies the need to restructure supervision at the Fed and reorient political conventions around the independence of the Fed.

## **Coercive Paternalism vs. Libertarian Paternalism vs. Antipaternalism: A Triptych**

Written: Nov 04, 2025; Posted in SSRN: Nov 04, 2025

**Sunstein, Cass R.**

The explosion of empirical work on how and when human beings depart from perfect rationality has led to a wholesale rethinking of paternalism and its limits. Over the last decades, three camps have emerged: (1) coercive paternalists, who urge that behavioral findings undermine John Stuart Mill's Harm Principle and greatly strengthen arguments for mandates and bans; (2) libertarian paternalists, who urge that behavioral findings justify a host of freedom-preserving interventions or "nudges," such as warnings, reminders, labels, and automatic enrollment; and (3) antipaternalists, who urge that behavioral findings justify only, or at most, efforts to strengthen or "boost" people's competences, or their capacities to make good choices. On welfare grounds, it is possible to identify the assumptions under which one or another approach would be best. There are certainly domains where antipaternalism (alongside boosting) on the one hand or coercive paternalism on the other hand is best, but libertarian paternalism often has significant advantages, whether our focus is on welfare or autonomy.

## **WTP: Epistemic, Behavioral, and Philosophical Challenges**

Written: Oct 29, 2025; Posted in SSRN: Oct 29, 2025

**Sunstein, Cass R.**

Both free markets and government regulators tend to use willingness to pay (WTP) to measure the value of goods. The reason for use of WTP is that it is the best and the most administrable method for (1) capturing the relevant welfare effects and (2) respecting personal autonomy. At the same time, WTP might be infected by a lack of information and by behavioral biases. There are also philosophical objections to certain uses of WTP, pointing, among other things, to the problem of adaptive preferences and to turning certain goods into commodities.

## **The Continuous Oversight Act: Regulatory Architecture for Preserving Constitutional Memory and Institutional Integrity**

Posted in SSRN: Dec 10, 2025

**Tabor, Richard**

This paper presents the Continuous Oversight Act, a statutory framework designed to operationalize and enforce the constitutional duty of preservation established by the proposed Constitutional Memory Amendment. While the Amendment embeds Memory as a structural obligation of the Republic, the Continuous Oversight Act supplies the slow, durable, and systemic regulatory signals necessary to ensure its practical and continuous implementation.

The Act establishes automated, tamper-evident retention systems across federal agencies; sets a uniform continuity standard—Complete, Accurate, Continuous, and Retrievable—for federal records; codifies a preservation default rule that favors retention over ambiguity; and authorizes emergency judicial preservation injunctions to prevent irreversible loss of evidence. It further creates an independent records inspectorate with audit and subpoena authority, imposes personal liability for intentional evasion or destruction, and mandates congressional oversight in cases of systemic failure.

Together, these provisions constitute a regulatory architecture that strengthens institutional memory, protects accountability, and ensures that courts, Congress, and the public can reliably reconstruct the actions of the state. The Act demonstrates that constitutional memory is not merely a procedural preference but a requirement for legitimacy, proportional governance, and long-term public trust.

## **Behavioral Self-Management and the Strategic Shifting of Fairness Norms**

Written: Dec 17, 2025; Posted in SSRN: Dec 18, 2025

**Tontrup, Stephan**  
**Arlen, Jennifer**  
**Sprigman, Christopher Jon**

People often act prosocially and voluntarily conform to social and legal norms. This has fueled the idea that law can guide behavior through its expressive power. By contrast, we offer a theoretical and experimental framework suggesting that people strategically alter their decision-making environment to shift the norm applicable to their actions to one that is in their self-interest and to the detriment of others. Norm-shifting is one strategy within a broader concept we refer to as Behavioral Self-Management (BSM).

To test norm-shifting, we implement a dictator game in which Allocators are offered an effort task before allocating a sum between themselves and a Recipient. Allocators receive the same endowment whether or not they work. We hypothesize that many will undertake the task to shift the applicable fairness norm from equal division to an effort-based norm that justifies their retaining a larger share. Prior evidence shows that costly effort is widely perceived as legitimizing unequal outcomes.

We find that many Allocators decide to work, thereby reducing average transfers. Their work choices are strategic: their odds of working are higher the more they expect work to shift the fairness norm in their favor and the more prosocial they are—that is, the higher the moral costs they face for violating the fairness norm. Finally, Allocators who work make transfers that they expect to conform to an effort-based norm in the view of others, to maintain their self- and social-image.

Our findings have implications for compliance with the law and with social norms. BSM can enable selfish non-compliance by undermining the social norms that underpin the law or by establishing social norms that provide justification for violation, while avoiding the social disapproval that would otherwise result.

## **The Supreme Court's (Self-Defeating) Supremacy**

2025 Sup. Ct. Rev. (forthcoming)

**Vladeck, Stephen I**

This essay, prepared for the 2025 volume of The Supreme Court Review, seeks to provide a holistic account of the Supreme Court's behavior on emergency applications relating to the Trump administration during its October 2024 Term.

As it demonstrates, the justices in those cases not only flouted the traditional standards for emergency relief; they exhibited repeated and sustained disrespect for both lower courts and Congress, enabling the executive branch to act in defiance of countless statutory restrictions; of settled constitutional understandings; and even of coercive district court mandates, all with dramatic (and deleterious) real-world consequences. As the Alien Enemies Act cases illustrate, the takeaway is not that the Court always ruled for President Trump; it's that it pushed back only when its mandates were on the line. The upshot is an attempt by the Supreme Court to preserve its supremacy, as such.

But such an approach, the essay concludes, is likely to be self-defeating. In the short term, it will encourage the executive branch to take ever-more-aggressive actions against both the people and the lower courts. And in the long term, it will not just further weaken Congress and the lower courts; it will further erode public confidence in the judiciary as an institution. Together, the increased power and momentum of the executive and the decreased credibility of (and respect for) the courts will make it that much harder for the Supreme Court to wield the supremacy it's protecting, even when it wants to.

## **Immigration Enforcement And The Major Questions Doctrine**

Written: Dec 13, 2025; Posted in SSRN: Dec 15, 2025

**Wilson, Amelia**

This Article harnesses a doctrine traditionally central to conservative causes and jurisprudence to challenge a new instrument in the Trump Administration's immigration enforcement regime. Specifically, it examines the Department of Homeland Security (DHS)'s reliance on the Alien Registration Act of 1940 in creating a universal immigrant registration that imposes strict criminal liabilities for noncompliance. This Article contends that the agency's implementation amounts to unheralded and transformative regulatory rulemaking that runs afoul of the Supreme Court's "major questions doctrine." By leveraging registration requirements to effect sweeping policy and enforcement outcomes, DHS asserted authority of vast economic and political significance without clear congressional authorization. As such, courts should invalidate it.

The Article makes a number of unique contributions. It situates the Alien Registration Requirement within a broader expansion of executive power; it identifies the constitutional tensions that arise when executive agencies convert ancillary statutory mechanisms into primary enforcement tools; and it explains why the asserted authority exceeds permissible interpretive bounds.

Additionally, it creates a litigation strategy that, if successful, could serve as a model to confront an increasingly authoritarian Executive. Curtailing DHS' rapid rulemaking serves the additional purpose of forcing Congress to speak explicitly on whether a universal registration (and extreme targeting and punishment of immigrants through the same) is the will of the people.

## **The Italian Journal of Public Law – The Council of Europe Framework Convention on AI: comparative, EU, international, and sectorial perspectives**

Editoriale Scientifica – ISSN 2239-8279

**Zumbini, Angela Ferrari**  
**Monaco, Paola**  
**Venier, Silvia**

This special issue of the Italian Journal of Public Law brings together the papers presented at the international conference “The CoE Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law: Comparative, EU, and International Law Perspectives”, held on 29 May 2025 at the University of Trieste (Gorizia campus - Italy). The conference was jointly organised by Professors Marta Infantino and Giuseppe Pascale (University of Trieste) and formed part of the research project “The Dark Side of Algorithms under the Comparative Lens: Automated Administrative Decisions between Efficiency and Due Process”, coordinated by Professor Angela Ferrari Zumbini (University of Naples Federico II) and funded for the period 2023–2026 by the European Union – Next Generation EU and the Italian Ministry of University and Research.

The contributions approach the Council of Europe AI Framework Convention from a broad range of legal perspectives—including international law, EU law, comparative law, private law, and administrative law—offering a rich and multifaceted analysis of its strengths, implications, and potential shortcomings. The issue is structured in two parts: “Comparative, EU, and International Law Perspectives” and “The CoE Framework Convention in Action across Specific Sectors”. This division highlights the Convention’s capacity to exert a profound influence both on overarching, cross-cutting legal questions and on highly specific and technical issues within specialised legal fields.

Overall, this special issue seeks to provide an overview of some of the most pressing questions that have emerged following the adoption of the Framework Convention, both at a general level and within particular sectors. It aims to offer a roadmap to the key initial challenges raised by the Convention, while also laying a solid foundation for reflection on the new perspectives opened by this new legal instrument.

## Events and Informations:

- **Call for papers: “APA Originalism” and “APA Realism” - for more information, click [here](#).**

The C. Boyden Gray Center for the Study of the Administrative State is calling for papers on both “APA Originalism” and “APA Realism,” to be presented and discussed at two independent research roundtables at George Mason University, Antonin Scalia Law School in Fall 2026 and Spring 2027 respectively.

Send an **email with a short description of your project** to the Gray Center's research director, Bennett Nuss ([bnuss@gmu.edu](mailto:bnuss@gmu.edu)) **by March 1, 2026**.

- **Call for papers: Annual Comparative Law Work-in-Progress Workshop – Princeton University, May 7-9, 2026**

Papers must be **submitted by February 20, 2026**. Authors will be informed of decisions by March 20, 2026.

Authors should **submit papers through the following Google Form: <https://forms.gle/UMrqFxHwGgS5dZX38>**.

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

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