NEWSLETTER 10 MAR 2026 *WHAT'S NEW IN THE COMPARATIVE ADMINISTRATIVE LAW WORLD?*

Comparative Administrative Law Scholarship Corner

Affiliation with the Yale Comparative Administrative Law Listserv

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Environmental Governance and Administrative Judiciary in Jordan and France: A Socio-Legal Comparative Study

Social Sciences & Humanities Open

Awaisheh, Sadam Mohammad
Abdelrahman, Anas
Awaisheh, Salah Mohammad

This article examines the role of the administrative judiciary in environmental governance through a socio-legal comparative study of Jordan and France. Using Jordan as the primary case study and France as a mature reference model, the research employs Environmental Governance Theory and the Law-and-Society approach to analyze how judicial oversight shapes environmental regulation. The study finds that Jordan's administrative judiciary has increasingly emerged as a protector of environmental integrity by reviewing regulatory failures, enforcing statutory obligations, and expanding the scope of administrative liability in cases of ecological harm.In France, a long-established administrative judicial system—supported by constitutional recognition of environmental rights—demonstrates a more proactive and institutionalized approach to environmental adjudication, including decisions that require government action on climate and environmental protection. Through an analysis of legislation, case law, and scholarly literature, the paper highlights how judicial intervention influences the implementation of environmental policies in both systems. The analysis shows that while France provides a developed model of judicial engagement, Jordan's system is rapidly evolving through legal reforms and growing institutional capacity. The paper concludes that strengthening judicial authority, expanding access to environmental justice, and enhancing legal frameworks—such as considering constitutional protection for environmental rights—are essential for effective environmental governance and sustainable development in both jurisdictions.

Rethinking the Fund Termination Sanction

76 Case W. Res. L. Rev. ___ (forthcoming 2026).; U of Michigan Public Law Research Paper No. 25-024

Bagenstos, Samuel R.

Title VI of the Civil Rights Act of 1964 and its cognate statutes authorize the federal government to withhold funds from grantees found to have violated them. This fund termination sanction is commonly understood as an incredibly powerful tool to ensure compliance. But it has not worked out that way. Except for a very brief period many decades ago, the federal government had not sought to withhold funds under these statutes.
Until the second Trump Administration. By freezing billions of dollars in grants to major universities and demanding far-reaching concessions, the administration has wielded fund termination as a tool to punish ideological enemies and coerce institutions into abandoning diversity initiatives, restricting campus speech, and adopting administration-favored policies—all in patent violation of both the procedural and substantive requirements Congress imposed on the termination remedy.
This essay argues that the lesson from Trump's abuse of the fund termination sanction is not that future administrations should use it more aggressively for civil rights enforcement. Rather, the lesson is that the sanction contains a structural imbalance. Because fund termination undermines the very public purposes that federal grants are designed to serve, good-faith administrators who care about those programs will hesitate to invoke it even against proven discriminators. Only administrators hostile or indifferent to those purposes will be willing to use it—and they will use it to serve their own ends rather than civil rights. Congress should eliminate the fund termination sanction and replace it with express public and private rights of action for injunctive and compensatory relief.

Executive Power and Crown Prerogative in Canada

Samuel White & Matthew Stubbs, eds, Executive Power and the Royal Prerogative in the Commonwealth (LexisNexis, 2025)

Baud, Patrick F.
Lagasse, Philippe

In this chapter, we aim to provide an overview of the Crown prerogative as a source of executive power in Canada today. We begin by describing the structure of the core executive in Canada and distinguishing prerogative powers from other types of executive powers. By examining the reception and continuation of prerogative powers into Canadian law, we provide an overview of the extent of and limits on prerogative powers in Canada today. We also examine the extent to which the King, his Canadian representatives – the Governor General of Canada and the lieutenant governors of the provinces – and ministers of the Crown can exercise prerogative powers. Finally, we consider the extent to which decisions made under prerogative powers are justiciable on constitutional and other grounds.

The Government is not the same as us: eSafety Commissioner v Baumgarten [2026] FCAFC 12

Aus Public Law Blog, 2 March 2026

Boughey, Janina

This article examines the significant legal implications of the Full Federal Court decision in eSafety Commissioner v Baumgarten [2026] FCAFC 12. The case addresses a fundamental tension in public law: whether government agencies can circumvent statutory accountability and tribunal review by framing their actions as "informal requests" or "soft law" rather than formal exercises of power.

Vacatur Within the Appellate Model of Judicial Review

136 Yale L.J. ___ (forthcoming 2026)

Bremer, Emily S.

This Article situates vacatur within a holistic account of the appellate model of judicial review that Congress codified in the Administrative Procedure Act (APA). Revisionist objections to judicial vacatur of agency rules neglect this broader structure and impose upon the APA a modern idea of remedies that crystallized decades after the statute's 1946 enactment. Understood on its own terms, the APA uses pre-APA principles governing appellate jurisdiction to provide a constitutionally calibrated remedy for unlawful agency action. This Article uncovers those principles, and it argues that vacatur is not an equitable remedy but an appellate determination. It is statutorily authorized when an agency action is properly before a court on judicial review and is found to be unlawful under the applicable standard of review. But the approach has implications beyond vacatur, offering a revelatory blueprint for the APA's judicial review section. This blueprint can help to address some of the most intractable problems in the judicial review of agency action, including the timing of judicial review of rules, the relationship between APA review and other remedies, and the role of the scope of review in keeping courts within Article III's boundaries.

The Evolution of Lobbying Regulation in the United States

Columbia Public Law Research Paper No. 6234480

Briffault, Richard

Lobbying in the United States dates back to the earliest years of the Republic. The term 'lobby-agent' first appeared in print in 1829; and by 1832 the word 'lobbyist' was in frequent use in Washington. The legal regulation of lobbying long lagged behind the emergence of lobbying as a force in the legislative process. The states began to regulate lobbying only in the late nineteenth and early twentieth centuries; Congress did not begin to grapple seriously with regulating lobbying until the 1930s; did not pass general lobbying regulation legislation until 1946; and did not establish a reasonably comprehensive lobbying regime until the end of the twentieth century.
Legal approaches to lobbying have navigated between two poles – the view that, on the one hand, lobbying is a form of special interest corruption of the legislative process and, so, must be tightly regulated if not banned outright, and, on the other hand, that lobbying is simply people presenting their interests and concerns to their representatives, and, so, is vital to a democracy and constitutionally protected. Through a combination of Congressional action and Supreme Court case law, the federal regulatory regime that emerged from this tension treats lobbying as political activity protected by the First Amendment that is, nonetheless, subject to oversight and transparency requirements and to restrictions on the techniques lobbyists may use, but not to limitations on the amount of lobbying itself. The current structure of federal lobbying law was largely settled at the end of the twentieth century, but new measures continue to be proposed or adopted that address the transparency and anti-corruption concerns that have long driven lobbying regulation.
This chapter traces the evolution of the law of lobbying from the mid-nineteenth century, when lobbying was first recognized as a distinct but troubling political and legal practice, to the enactment of the centerpiece of the current federal regulatory regime, the Lobbying Disclosure Act (LDA) of 1995. It examines the LDA, as subsequently amended by the Honest Leadership and Open Government Act (HLOGA) of 2007, and other measures that regulate lobbying at the federal level. It then turns to the current lobbying regulatory agenda. The chapter concludes with a discussion of the role of the courts and constitutional law in shaping the regulation of lobbying in the United States.

Preventing Election Subversion without Agency Independence

Posted in SSRN: 5 Feb 2026; Written: December 15, 2025

Coll, Ally
Hagenbuch, Tyler

Since Donald Trump's inauguration to his second term in January 2025, the President has taken unprecedented steps to undermine the functions of independent federal agencies. Such actions have included unlawful firings of multiple independent agency heads and the issuance of Executive Order 14215 calling for "Presidential supervision and control of the entire executive branch," including independent agencies. Through both emergency docket rulings and merits decisions, the Supreme Court has demonstrated its openness to undermining longstanding precedents protecting independent agencies from presidential interference. These developments have particularly dangerous implications for our democracy. Among the independent agencies targeted by Trump, several have historically played a key role in promoting free and fair elections: The Federal Elections Commission (FEC), the Election Administration Commission (EAC), the Federal Communications Commission (FCC), and the United States Postal Service (USPS). Part I describes the rise of independent agencies and the recent emergence of election subversion threats. Part II explains why Congress created several distinct independent agencies to oversee the administration of federal elections and describes their election-related functions. Part III outlines the unprecedented steps President Trump has taken since regaining power to undermine the independent functioning of these and other independent agencies and details the Supreme Court's acquiescence of these actions. Part IV explains the implications for future federal elections if the President is able to effectuate direct control over the policies and programs administered by the FEC, EAC, FCC, and USPS. Part V argues that, in order to safeguard the fairness of future federal elections, Congress should reassert control over core federal election administration functions by placing the enforcement of relevant statutes in either Article I courts or in new or existing Congressional committees.

The New Presidential Adjudication

THE YALE LAW JOURNAL FORUM FEBRUARY 9, 2026

Cuéllar, Mariano-Florentino

Executive orders and presidential actions reflect the power and growing tendency of modern presidents to "adjudicate"—that is, to make fact-specific, high-stakes decisions about sanctions, investigations, contracts, legal interpretations, and enforcement, with limited or minimal judicial oversight. That presidents have considerable leeway in making decisions about how to execute the law in foreign affairs and many domestic contexts is a function of both the core design of the American system and a variety of practical rationales rooted in plausible conceptions of the national interest. Yet a newer, bolder, less-constrained iteration of presidential adjudication is emerging as administrative-law doctrine expands the White House's control over agencies, traditional norms erode that previously placed constraints on presidential interference in fact-specific investigations, and congressional oversight is diluted or entangled in partisanship. This development heightens the risk of the presidency devolving into a roving tribunal with vast discretionary power to make deals and impose arbitrary costs on individuals and institutions. The resulting risk of arbitrariness, or even "executive coercion"—using adjudicatory discretion to pursue personal or partisan goals, weakly connected to legitimate public purposes if connected at all—threatens both governmental legitimacy and the separation-of-powers principles the American Founders designed to prevent authority over citizens' lives and fortunes from being overly concentrated.
As part of a broader civic effort to calibrate a response to these changing realities, courts possess dispute-resolution tools borne from existing doctrine, which can be used to constrain presidential arbitrariness without crippling executive effectiveness. Courts can recognize the legislative power to rein in presidential control of agency decisions, police foreign/domestic distinctions, and scrutinize statutory and constitutional compliance to favor nonarbitrary decisions. Taken together, these moves could coalesce into a kind of "harder look" review when presidential statements or changing norms might suggest a particularly stark risk of departure from the traditional public-regarding purposes of presidential adjudication. Though challenging, this approach may allow the federal judiciary to calibrate presidential power to an era when the office has slipped free of longstanding constraints, while retaining in the Oval Office the energy and flexibility necessary for effective governance in the world's most powerful democracy.

Rule of Law Depression

Ottawa Faculty of Law Working Paper; The Advocates' Journal, Summer 2025, Pp. 6-10

Dodek, Adam M

This short paper analyzes the state of the rule of law in Canada with reference to threats to the rule of the law in the United States.

The High Court's judgment in the Palestine Action case

Published on Feb 13, 2026, Public Law for Everyone website

Elliott, Mark

The High Court has ruled that the government's decision to proscribe Palestine Action under the Terrorism Act 2000 was unlawful, holding that the decision contravenes the government's own policy on proscription as well as breaching the fundamental rights of freedom of expression and freedom of assembly. This post examines the legal reasoning that led the court to those conclusions.

Brief Amici Curiae of Professors of Administrative Law, Legislation and the Regulatory State, and Separation of Powers in Support of Respondents in Trump v. Slaughter, No. 25-332

Posted: 20 Nov 2025; Written: November 14, 2025

Estreicher, Samuel

Amici are law professors who teach and write in the areas of administrative law, legislation and the regulatory state, and separation of powers. Based on their scholarship and experience, they have concluded that Congress under the Constitution has broad discretion to assign adjudication of disputes governed by federal law to Article I tribunals, including so-called "legislative courts" and administrative agencies performing predominantly adjudicatory functions, and to protect such adjudicators from at-will removal before expiration of their terms. Such removal protections, in their view, are essential to the integrity of adjudications of federal law disputes, and Congress properly can choose to assign such tasks to Article I or Article III tribunals that feature removal protections for adjudicators, rather than to executive departments that may not.
Petitioners have not met their burden of demonstrating that statutory protections against at-will removal of members of the Federal Trade Commission (FTC) prior to expiration of their terms -- protections that have been the law for over a century -- interferes with a substantial power that the Constitution assigns to the President alone. Simply put, adjudications of such disputes is not a power assigned by the Constitution exclusively to the executive.
If the Court determines that Petitioners have met their burden of showing that post-1935 additions to the FTC's role interfere with an exclusive executive power, the Court should sever the unconstitutional additional authorities rather than end the removal protections for Commissioners Congress thought necessary to maintain the stability, integrity and acceptability of FTC adjudications for over a century, and that this Court upheld in Humphrey's Executor.
The Court should take care to preserve the adjudicative capacity of Article I tribunals to decide disputes governed by federal law, nearly all of which feature protections for adjudicators against at-will removal before expiration of their terms. Administrative agencies performing predominantly adjudicative functions with similar protections operate functionally as a type of Article I tribunal. Removal protections are essential to the integrity and acceptability of adjudications. Removing such protections from Article I adjudicators puts pressure on Congress to shift adjudicative capacity to Article III courts which over time will result in a costly, unwieldly enlargement of their ranks that could change fundamentally their character.

Automated Administrative Decisions and Due Process: A Comparative Analysis

Special Issue of The Italian Journal of Public Law, Vol. 18 Issue 1/2026

Ferrari Zumbini, Angela
Conticelli, Martina

This volume contains the final results of the PRIN project (Under 40) "The Dark Side of Algorithms under the Comparative Lens: Automated Administrative Decisions between Efficiency and Due Process – AutAD", PRIN 2022 SH2-2022LSRL82, Principal Investigator Angela Ferrari Zumbini. The previous Special Issue of IJPL No. 2/2025 contains the results of the PRIN project regarding other twelve Central and Eastern European Countries.
The research aimed to carry out a comparative analysis applying a refined version of the 'Common Core' methodology in order to understand the problems generated by the use of algorithms by public bodies in different legal systems and to check which solutions are available to guarantee individual procedural rights in automated administrative decision-making processes.
Faced with automated decision-making, legal systems react in different ways, reflecting different legal traditions, institutional structures and political sensibilities; however, beneath these differences, there is a shared core of procedural requirements that continues to serve as a common point of reference. The principles of transparency, participation, motivation, good administration and judicial protection remain intact in essence, but must be adapted to the digital context, transforming into the principles of intelligibility, comprehensibility, contestability, traceability and human supervision.
The legal systems considered are Austria, China, Estonia, France, Germany, Italy, the Netherlands, the United Kingdom, Spain, the United States and the European Union.

Administrative Decentralization

Posted: 10 Feb 2026; Written: February 01, 2026

Fontana, David

The legitimacy of the administrative state has been challenged since it was first created. The persistent war over the administrative state now features a newly significant and largely unexamined front. Political and legal leaders from across the ideological and jurisprudential spectrum have started to question whether many of the problems of the administrative state are due to the fact that the overwhelming majority of the most important administrative officials are concentrated by law in a single location: the Washington metropolitan area. The last few presidential administrations across both parties have even pursued reforms to this administrative centralization.

This Article considers for the first time how administrative law does and should treat the geographical centralization of the administrative state in Washington. It provides a descriptive account of the distinctive areas of administrative law dividing authority between officials inside and outside of Washington. Administrative officials outside of Washington play a vital and underappreciated role in the administrative state, but administrative law ensures that this role is a limited one. The administrative state outside of Washington is largely defined by—with important exceptions—being subservient to the administrative state inside of Washington.

This Article then considers whether and when to redistribute greater authority to administrative officials outside of Washington. Working across different parts of the administrative state, this Article considers examples of decentralizing reforms that further broadly supported administrative goals. Many administrative functions should be performed in Washington because they should be performed by those with a background in and/or a deeper connection to the federal government. The substantial decentralizing efforts pursued by the two terms of President Trump have failed sufficiently to appreciate this point.

In other situations, it can be more constructive to empower officials outside of Washington to a greater degree precisely because they are in a place that is distant and therefore different from Washington. The democratic nature of the administrative state would be furthered by ensuring that more people from more places can more easily work for or with those at the highest levels of the administrative state. The expert capacity of the administrative state would be enhanced by ensuring that expert knowledge from all places can influence the administrative state.

Trust in Regulation in a Time of Revolution

Regulation and Governance, forthcoming

Ford, Cristie

In a moment when big-P Politics feel practically catastrophic, the suggestion that we should be focusing on regulation could seem foolish, or worse: it could seem like some kind of self-serving effort to pretend our work rearranging deck chairs continues to matter. Regulation can feel like the opposite of resistance, and resistance is on many peoples' minds these days, particularly in the United States. And, the goal of this paper is to argue that failing to focus on regulation – and especially on trust in regulation, in this time of revolution – would be a terrible mistake. Regulation is at the leading edge of politics in a way we sometimes fail to recognize. Regulation is where the "rubber" of policy and aspiration meets the "road" of implementation and subject-facing engagement. Regulation is the face of government for most people in their daily lives.

This article examines trust in regulation as a core value and precondition of the modern liberal democratic regulatory state. It develops a concept of justified trust in regulation, grounded in regulatory trustworthiness—honesty, competence, and reliability—rather than in proxies such as partisan loyalty, blind faith, obedience, or resignation. The article situates this conception of regulatory trustworthiness within liberal democratic rule-of-law commitments to equal respect, fairness, and accountability, and shows how it underpinned late-twentieth-century imaginings of the "regulatory state." It then contrasts this model with an emerging illiberal vision, exemplified by the current American President's emphasis on personal loyalty, in-group allegiance, and zero-sum politics – all of which actively repudiate the conditions for justified trust. Using regulatory theory and examples from contemporary US governance, the article argues that mutual justified trust between regulators and regulated actors is an indispensable "capital good" for effective, flexible, and fair regulatory regimes. It concludes that rebuilding a functional regulatory state after an illiberal turn requires explicitly naming, protecting, and measuring regulatory trustworthiness as a central liberal value, alongside the rule of law, democratic accountability, and a basic commitment to equality.

Governing AI Without Agencies: Self-regulatory Organizations and the Federal Backstop

GWU Legal Studies Research Paper No. 2026-11; GWU Law School Public Law Research Paper No. 2026-11

Gavoor, Aram A.

Artificial intelligence is accelerating American innovation and strategic advantage. The governance task is to provide predictable compliance baselines that support scale and competitiveness while remaining workable under executive branch policy, statutory baselines, and the rules that now govern the administrative state. Congress remains slow and factional, and agencies face rising procedural and remedial constraints. Recent Supreme Court doctrine has reduced the administrative state's interpretive and enforcement leverage. Regulated entities can challenge agency rules when those rules newly impose concrete harm, litigate statutory meaning without Chevron-style mandatory deference to agency statutory interpretations with limited exceptions, and invoke strengthened procedural safeguards in agency enforcement proceedings. Meanwhile, executive branch AI policy is variable across presidential administrations, and states are producing a patchwork of AI mandates.

This Article argues that these institutional conditions will make soft law, especially industry self-regulation through structured self-regulatory organizations, a primary mechanism of near-term United States AI governance. It develops a framework of self-regulatory optionality, mapping governance architectures from voluntary codes and standards bodies to organizations that promulgate enforceable rulebooks, conduct audits, and impose meaningful sanctions through membership, certification, and market access levers. Drawing lessons from established self- regulatory ecosystems, the Article identifies practical constraints on private governance, with antitrust as the central limiting doctrine, and it emphasizes design choices that increase credibility, including transparent procedures, due process protections, and carefully bounded information sharing. A frontier AI case study explains why credible self-regulation can be economically rational rather than merely aspirational. Finally, the Article describes how federal actors can reinforce effective self-regulation through procurement-linked benchmarks and related cooperation mechanisms, and how later codification can support federal preemption where state regulation becomes conflicting or excessive.

The Supreme Court's 2026 Term-Public Health in Jeopardy

JAMA Health Forum, volume 7, issue 1, 2026[10.1001/jamahealthforum.2026.0061]
Georgetown University Law Center Research Paper Forthcoming

Gostin, Lawrence O.

Considerable public attention has focused on steep funding and staffing cuts at the US Department of Health and Human Services (HHS), along with the undermining of science and evidence by HHS Secretary Robert F. Kennedy Jr. Less well appreciated is how the US Supreme Court's conservative majority is placing science, medical practice, and public health in jeopardy. The coming 2026 term is filled with deeply consequential cases, including on vaccines, firearms control, and the rights of sexual minority individuals. The Supreme Court will also revisit the continuing battle over reproductive rights following its historic Dobbs v Jackson Women's Health Organization ruling. If previous decisions by the Chief Justice John Roberts Jr court predict the future, then we are likely to see public health imperiled, with long-lasting repercussions.

First Amendment and the Executive Power

Loyola Law School, Los Angeles Legal Studies Research Paper No. 2026-02

Grossi, Simona

This Article develops a structural account of expressive liberty under modern executive governance. It argues that significant contemporary threats to the First Amendment arise not primarily from statutes or criminal prohibitions, but from the routine exercise of executive power within the administrative state. Through personnel authority, funding decisions, access controls, institutional restructuring, and informal pressure, the modern presidency increasingly governs expressively — not by prohibiting speech, but by reshaping the incentive structures and dependencies that determine which speech is professionally viable, institutionally supported, and publicly audible.

The Article's core claim is that existing First Amendment doctrine is poorly calibrated to this form of power. Drawing on Robert Post's distinction between managerial authority and sovereign governance, it argues that the applicable First Amendment constraints depend on whether speech occurs within a domain the state manages or within public discourse the state governs as sovereign. Within managerial domains, speech regulation should be assessed by whether it is consistent with the institutional mission Congress has authorized — not simply by whether it constitutes viewpoint discrimination. Each domain — public employment, subsidized speech, and informal coercion — requires its own analytical framework.

Traditional doctrine is designed to detect discrete acts of punishment, formal prohibitions, and explicit viewpoint discrimination. Executive expressive governance, by contrast, operates through funding withdrawal, personnel restructuring, access denial, and informal signaling — mechanisms that alter incentives ex ante rather than impose sanctions ex post. When expressive harm arises through dependency and anticipatory compliance, existing doctrinal triggers systematically under-detect constitutional injury.

Drawing on public-employee speech doctrine, political patronage jurisprudence, presidential removal cases, informal-coercion precedents, and unconstitutional-conditions theory, the Article shows that First Amendment law already contains the tools necessary to address executive expressive control, but has not yet integrated them into a coherent framework. It applies this framework to recent executive actions involving diversity and inclusion infrastructure, legal advocacy, and public broadcasting, and concludes by proposing burden-shifting presumptions, clear-statement rules, and a form of heightened scrutiny for executive actions affecting expressive intermediaries — to re-center the First Amendment as a structural constraint on executive power in the modern administrative state.

No Rights for Deportees?

Posted: 26 Nov 2025; Written: November 21, 2025

Hamburger, Philip

In 1785, three "Algerians" arrived in Virginia. Although they are long forgotten, their fate remains illuminating about deportation.

The constitutional status of deportees is a puzzle. Lawfully visiting foreigners are widely acknowledged to enjoy constitutional rights. Yet deportees are largely without such rights, including speech rights and the due process of the courts. This disjuncture, like the rest of immigration exceptionalism, seems disturbingly unprincipled. But is it really unprincipled or puzzling?

Beginning with the story of the "Algerians," this Article explains that deportees lose their rights under American law because of an underlying principle, drawn from the law of nations, demarcating the protection of the law. In a multinational world, the domain of each nation's law must be limited, and the principle of protection was the constitutionally assumed principle that delineated the domain of American law. This principle, the nation's long adherence to it, and its value for both security and generosity in immigration explain why deportees are generally without rights in the American legal system.

Insurrection Powers and the Public's Health

Arizona State University Sandra Day O'Connor College of Law Paper No. 6257498

Hodge, James G.
Brown, Taylor
Hartle, Kimberly

President Trump and his administration have repeatedly threatened to invoke insurrection powers and unleash U.S. military and National Guard members in American cities in response to civil uprisings and alleged interferences with immigration officials' actions. In so doing, they raise a specter of significant constitutional clashes over the use of these antiquated emergency authorities. To the extent Congress is unwilling to constrain Presidential discretion, the U.S. Supreme Court may be called on to clarify the scope and limits of Insurrection Act powers.

Misinterpretating Immigration Law

Posted: 24 Nov 2025; Written: November 21, 2025

Kagan, Michael

Although Congress bears primary responsibility for the convoluted nature of America's immigration laws, immigration law has been rendered even more incoherent through inconsistent interpretation. During the reign of Chevron deference, the federal courts, the Board of Immigration Appeals and various Attorneys General pushed in different directions, with textualist, libertarian, and restrictionist impulses holding sway on different major interpretive questions. The result is that immigration law is more internally incoherent and more divorced from popular opinion than is necessitated by the text of the Immigration and Nationality Act. The end of Chevron deference offers some potential for the federal courts to bring a more consistent interpretive approach to immigration law, but it is by no means certain that the courts will take this opportunity.

The major Questions Doctrine Meets Trump’s Tariffs: judicial principle and presidential power in the balance

Posted: 9 Feb 2026; The Adm Law Blog

Katz, Andrea Scoseria
Bloch, Ofra

This article examines the intersection of the Major Questions Doctrine (MQD) and the litigation surrounding President Trump's "Liberation Day" tariffs in the case Learning Resources, Inc. v. Trump. While the MQD is frequently criticized by academics as an ideological and atextual tool used to invalidate Democratic policies, the authors argue that its flaws are operational rather than conceptual. Drawing on comparative law from jurisdictions like Israel, France, and the UK, the authors reframe the MQD as a vital instrument for enforcing "legality"—the principle that all government action must be traced back to clear legal authority.

Comparative Administrative Law: new voices, new perspectives – Third Edition

Edward Elgar Publishing; Research Handbooks in Comparative Law Series; Publication Date: 2026; ISBN: 9781035316526

Lindseth, Peter L.
Prado, Mariana Mota
Emerson, Blake
Ahmed, Farrah
Pfiffer, Megan

This thoroughly revised third edition of Comparative Administrative Law builds on the legacy of the first two editions, providing a redefined and reinvigorated analysis of pressing issues through original chapters, a renewed group of contributors and a broader geographic scope, with particular emphasis on the Global South.
Leading scholars offer novel perspectives, investigating the intersecting differences between common law and civil law, including cultural traditions and political systems. Most chapters provide comparative analyses of administrative law across at least two legal orders, while others explore comparative law themes and issues within a single jurisdiction. The result of this combination is a rich and detailed description of legal doctrines, institutional arrangements and practices across multiple jurisdictions. Furthermore, key topics such as the plural legacies of decolonization in administrative law, the relationship of administrative law to constitutional politics, and the challenge of legality in administrative governance beyond the state are also covered.
Scholars and students of comparative public law, international economic law, as well as law and development will benefit from this book's insights. It is also a valuable resource for judges, lawyers, policymakers, regional integration bodies, and NGOs interested in comparative and legal perspectives on regulation, governance, and public bureaucracies.

Administrative Self-Constitutionalism

94 U. Chi. L. Rev. ___ (forthcoming)

Lipshutz, Brian

Since the days of the Interstate Commerce Commission, federal agencies have generally refused to address the constitutionality of statutory provisions. They have offered little reasoning to justify that refusal, yet scholars have generally accepted it. This Article explains why agencies can-and should-address constitutional challenges to statutory provisions.
Agencies have the power to assess the constitutionality of statutory provisions. They already exercise a similar authority when they apply the canon of constitutional avoidance and consider the constitutionality of individual actions. There is no basis for stopping short of addressing challenges to statutes. And many scholars have recognized that, as a formal matter, the President should disregard unconstitutional statutes because the Constitution takes priority. The same structural and historical arguments support a corresponding power of agencies to review the constitutionality of statutes. Indeed, a previously neglected executive-branch opinion from the late nineteenth century reflects that understanding.
Moreover, as a normative matter, agencies should review the constitutionality of statutory provisions. Administrative self-constitutionalism follows from the theory of administrative constitutionalism, which views agencies as central participants in interpreting and applying the Constitution. Administrative self-constitutionalism also aligns with constitutional critiques of the scope of administrative power. And as a formal matter, the power to address the constitutionality of statutes implies a duty to do so. Although administrative self-constitutionalism poses some risk of abuse, the courts can adequately mitigate that risk.

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 unilateralism.

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.

Administrative Reality: A Study of Public Policy Implementation and Governance in Regional Contexts

Posted: 6 Feb 2026; Written: December 10, 2025

Mandal, Rohan

Public policies are often designed with clear legal authority, articulated objectives, and normative commitments to social and economic improvement. However, a persistent gap exists between policy intent and policy outcomes, particularly in regional and remote governance contexts. This study examines how administrative behaviour, institutional structures, and local governance conditions shape policy implementation in practice. Drawing on theories of policy implementation, administrative discretion, and governance, the research adopts aqualitative, document based analytical approach to analyse selected public policies implemented in regional contexts. Through document analysis and institutional comparison, the study identifies key administrative and structural factors that contribute to implementation failure or distortion. The research contributes to public policy and governance literature by centring administrative reality as a decisive factor in policy success and offers practical recommendations to improve accountability, effectiveness, and equity in regional policy delivery. The analysis conceptualises the movement from policy intent to administrative reality as a process of institutional translation rather than mechanical execution. It argues that policy outcomes are decisively shaped by how administrative actors interpret policy texts, allocate discretion, and operate within existing organisational and accountability structures. By foregrounding implementation dynamics, the article contributes to a deeper understanding of persistent policy failure and highlights the importance of institutional design, coordination, and administrative capacity for effective and equitable policy delivery, particularly in decentralised and regional governance settings.

The Power to Remove For Cause

Posted: 26 Feb 2026; Written: February 25, 2026

Manners, Jane
Menand, Lev

This Article reconstructs the common law of for cause removal in the United States. Drawing on extensive new analysis of state and federal materials, it shows that legislators typically paired fixed terms in office with "for cause" removal language to strike a balance: to protect officers from political termination while enabling the discharge of officials unable to carry out their duties effectively. Where a statute conferred a fixed term and authorized removal "for cause," nearly all courts treated removal as an adjudicatory act—requiring notice, an opportunity to be heard, and de novo judicial review of the legal sufficiency of the asserted cause. By contrast, in schemes lacking fixed terms, some courts treated "for cause" language as merely admonitory, leaving process and review to political actors. Building on these findings, this Article recovers the significance of Reagan and Shurtleff, two largely forgotten Supreme Court cases from the early 1900s. These decisions form the doctrinal foundation on which much of the federal administrative state was subsequently built including institutions like the Federal Reserve Board. Our recovery provides a framework for evaluating ongoing disputes between the President and federal administrators. It cuts strongly against the government's current position that "for cause" removals are nonreviewable and can be conducted without formal process—and offers concrete legal bases that courts today can use to police the outer limits of presidential removal power.

An Overview of Japanese Administrative Law —Part I: The Principle of Legality—

Kobe University Law Review, 2025

Okitsu, Yukio

This article constitutes Part I of a three-part study providing an overview of Japanese administrative law and focuses on the Principle of Legality. Chapter 0 sets out the background and personal motivations that led to the writing of this article. Chapter 1 explains that the Principle of Legality in Japan has its origins in German law and identifies the characteristics that derive from this history. Chapter 2 surveys the sources of administrative law, as a necessary foundation for the subsequent discussion of the Principle of Legality. Chapter 3 examines delegated legislation, the mechanism by which administrative agencies enact regulations based on statutory delegation. Chapter 4 turns to the reservation of statute, which holds that a certain type of administrative action—typically, one that imposes obligations on individuals or restricts their rights—may not be conducted without statutory authorization. Chapter 5 focuses on law-making by local governments, namely ordinances, and analyses in particular their relationship with national statutes.

Reflections on judicial supervision of prosecutorial powers

Posted: 26 Feb 2026; The Adm Law Blog

Ong, Benjamin Joshua

This article examines the judicial supervision of prosecutorial powers within the common-law jurisdictions of the United Kingdom and Singapore. The author challenges the prevailing judicial view that prosecutorial decisions should be subject to a more limited set of review grounds compared to other executive actions.

The Basic Structure Doctrine in Malaysia: Less than Meets the Eye

Posted: 27 Feb 2026, Written: 01 May 2025

Ong, Benjamin Joshua

The applicability of the basic structure doctrine in Malaysia has received significant attention from the Federal Court. This chapter argues that this attention is oftentimes unnecessary, misplaced or even misleading. Although the basic structure doctrine concerns the question of the Constitution's amendability, the phrase "basic structure" has been invoked in a wide range of other legal controversies — including the interpretation of the Constitution, the scope of judicial power, the legality-merits distinction, and the relationship between superior and inferior courts — that are conceptually distinct from that of amendability. Through an analysis of the series of cases that invoked the phrase "basic structure", this essay observes that the Federal Court has frequently given undue primacy and attention to that phrase, either by neglecting the pertinent issues of the case at hand, and/or conflating these issues with the basic structure doctrine altogether. This has resulted in the impression that these issues must necessarily stand or fall together with the otherwise binary question of constitutional amendability. This chapter proposes that lawyers and judges refrain from invoking the basic structure doctrine needlessly as a stand-in for other constitutional issues, or by focusing on the question of constitutional amendability instead of considering what precise impacts the amendments have (or have not) made. This would better clarify the contours of the basic structure doctrine and its applicability in Malaysia.

La noción de servicio público: historia comparada de su formación en el Derecho chileno, español y francés / The notion of public servisse: a comparative history of its development in Chilean, Spanish, and French law

Marcial Pons, 2025; ISBN: 9788413817040

Quezada Rodríguez, Flavio

This book takes a historical and comparative approach to examining the development of the legal concept of public service in Chilean, Spanish and French administrative law. The most widely accepted explanation is that France was the centre of intellectual production, from which public service doctrines and theories subsequently spread to Spain and Chile. This approach is known as 'diffusionist' and is challenged here in terms of its scope, assumptions, and consequences. This research argues that the diffusionist response is flawed because it obscures important aspects, such as the transnational legal space in which the concept was formed and the particularities of each case. In fact, France was not entirely original, and Spain and Chile were not merely recipients. Circulations occurred in various directions between the three legal systems under study. This work is divided into three chapters, corresponding to the three main steps in analysing the problem. First, chapter one develops methodological tools to study this phenomenon. Then, chapter two explores the socio-legal context of the development of the concept of public service in administrative law. Finally, chapter three explains the process of doctrinal delimitation of the legal concept.

Tratado de Derecho administrativo – Volumen II: Estructuras. Formas / Treatise on Administrative Law. Volume II. Structures. Forms

Marcial Pons, 2025; ISBN: 9791387913359

Rodríguez De Santiago, José Maria

Over the past 50 years, Spanish administrative law has undergone significant changes due to the enactment of the 1978 Constitution and Spain's accession to the EU. These developments have had a profound impact on the evolution of administrative legislation and case law. Furthermore, they have been accompanied by a renewal of the academic study of the subject. This treatise provides a fresh, systematic exploration of contemporary Spanish administrative law, shedding light on these changes for academics, judges, and specialists in other legal systems. Whereas the previous, first volume contained an introduction to the discipline (concept and typologies, history and methodology of administrative law) and explored its foundations (resulting from constitutional, international, and EU law), this new, second volume tackles two other areas of general administrative law. One of these areas relates to the structures of administrative action, such as the organisation of administrative authorities, the law of administrative procedure, and the operation of administrative legal relations. The other one is the theory of legal forms of administrative action, including both the classic ones (rulemaking, adjudication and contracting out) and other newer or simply less explored forms of administrative action (planning, soft law, material action, etc.). Subsequent volumes of the treatise will deal with the content of administrative action, with information and other inputs of administrative decision-making, and with the system of remedies.

The Age of Local Non-Reform

Posted: 5 Feb 2026; Written: February 04, 2026

Rosenbaum, Daniel B

In an era of aggressive state actors and often testy relationships between state and local officials, it comes as little surprise when legislatures make targeted incursions into the governance of cities and counties. Yet a spate of recent laws—arising in Tennessee, Texas, Missouri, and beyond—do not merely disable local regulatory power and squeeze small-scale nodes of democracy. Rather, these laws act to upend the basic configuration of local institutions: they amend how functions are distributed across the horizontal landscape of local government, both externally (between cities, counties, and authorities) and internally (between mayors, boards, and councils). In doing so, the laws violate a deeply-held principle of local structural autonomy that arises out of, and would appear to reinforce, a steady withdrawal of state legislatures from matters of local structure over the past thirty-plus years.

This article confronts the myth and reality of state retreat from local structural reform. It argues that the modern state approach to local structure—characterized at baseline by a system of non-reform, where states tinker with local structures while also adhering to a baseline principle of passive structural deference—leaves local governments increasingly isolated and voiceless in the federal system. Non-reform is a vertical governance system defined by negative spaces: those spaces where conversations about local structure do not occur, where structural inertia is assumed rather than questioned, and where path dependency favors yesterday's structural choices over the value and risks of experimental reform. Non-reform preserves a precarious veneer of autonomy. Through its neutral clothing, states can erode local power while preserving a commitment to localism.

To survive these threats, local governments can draw lessons from an unlikely source: from their international peers, who operate without the same norm of autonomy but have thrived in environments of structural agitation to advocate for local interests in recent years. Indeed, a curious trend has emerged in countries that experiment with local structural change, as formerly weak municipalities accrue new powers and assert newfound national voice. On the other side of the coin, equally curious is the continued erosion of local power in the United States, notwithstanding the imagined structural autonomy held by local institutions.

The article resolves this contradiction by diagnosing the unsung localist values of systemic structural change. It discovers that a system where upper-tier governments tinker with local structure can promote durable local voice and enhanced local powers. Drawing on these findings, the article offers guiding principles for local stakeholders operating in a non-reform environment. It also offers a warning about the false complacency of local autonomy, a thin shield against which structural conversations give way to an increasingly politicized discourse, and where local values can be easily lost and subsumed by top-down policy goals.

Administrative Justice and the Boards of Appeal of EU Agencies

Posted: 3 Mar 2026, Written: 28 Jan 2026

Sallent, Juan Antonio Gallo

This book provides the first comprehensive analysis of EU Boards of Appeal—specialized review bodies within European agencies processing thousands of decisions annually across trademark protection (EUIPO), chemical safety (ECHA), aviation (EASA), financial supervision (ESAs), energy (ACER), and other domains.
The study examines Boards' constitutional foundations, empirical performance, and institutional challenges through doctrinal analysis, data from the University of Ferrara Common Database, and comparison with UK, French, German, and US systems.
Three fundamental questions structure the inquiry. First, what is Boards' legal nature? They constitute sui generis hybrids combining administrative expertise with quasi-judicial procedures. Second, do Boards satisfy Article 47 Charter requirements? Generally yes, though independence from parent agencies remains problematic. The Article 58a filter limiting Court of Justice access (1-2% admission rate) raises constitutional concerns. Third, what review standard applies? Aquind (2018) mandated "full review," causing the empirically documented "Aquind Spike"—18% increase in processing times.
Empirical assessment through 2025 shows strong performance: 6-12 month processing versus judicial 24+ months, 55-70% confirmation rates indicating balanced review, 75-85% judicial confirmation validating quality. Substantive contributions include EUIPO's NFT/metaverse doctrine (2024-2025), ECHA's PFAS jurisprudence (2025), ACER's hydrogen regulation (2024), and cross-Board AI evidence standards.
Comparative analysis reveals critical findings. Transatlantic convergence: EU's Aquind (2018) and US Loper Bright (2024) both rejected administrative deference within six years. Yet divergence persists as US questions administrative adjudication (Jarkesy) while EU consolidates it. Spanish perspective reveals institutional gaps—no specialized tribunals, only direct judicial review.
Three existential reforms emerge. "Ring-fenced Fee Model" provides budgetary independence. "Regulation on Administrative Procedure for Union Bodies" (2028) eliminates arbitrary variations. "Common Protocol on Algorithmic Adjudication" addresses the Aquind-AI Paradox: full review mandates colliding with opaque AI governance.
Writing in January 2026, Boards face decisive challenges. When ECHA reviews toxicity, EASA evaluates safety, ESAs assess stability, administrative justice quality becomes literally life and death. Success requires evolution toward coherence, independence, and technological capability.

Conducting a Comparative Legal Study: Basic Instructions for Inventing Foreign Law?

Diritto pubblico comparato ed europeo, Rivista trimestrale" 4/2025, pp. 1061-1066, doi: 10.17394/118905

Scarciglia, Roberto

This essay by Roberto Scarciglia provides a critical reflection on Katharina Boele-Woelki's methodology for conducting comparative legal research. The author evaluates the fundamental tension between discovering "new and valuable" legal knowledge and the risk of "inventing" foreign law.
The text examines the multifaceted nature of comparative law, challenging the traditional axiom that it is merely a scientific method. Scarciglia critiques Boele-Woelki's reliance on equivalence functionalism, arguing that functionalism is a divisive issue and that modern research must move toward methodological pluralism and interdisciplinary approaches.

Out from Under the Guise of Judicial Review

Administrative Law Review, Volume 78, forthcoming Sept. 2026; NYU School of Law, Public Law Research Paper Forthcoming

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.

Data Protection and Privacy in the Digital Age: Comparative Perspectives on India's Digital Personal Data Protection Act and the EU General Data Protection Regulation

Posted: 5 Feb 2026; Written: January 09, 2026

Siddiqui, Anam

Digital technologies have transformed personal data into a critical resource, raising urgent questions of privacy, accountability, and regulation. This paper examines India's Digital Personal Data Protection Act, 2023 (DPDP Act) in comparison with the European Union's General Data Protection Regulation (GDPR). It highlights key similarities-such as consent requirements and individual rights-and differences, including enforcement mechanisms, scope, and penalties. Through comparative analysis, the paper argues that India's framework, while a significant step forward, requires stronger institutional safeguards and cross-border data transfer rules to align with global standards. The study proposes a layered approach to privacy protection, emphasizing transparency, accountability, and harmonization with international norms.

The Structural Corruption Disclosure Act

Posted: 10 Dec 2025; Written: November 12, 2025

Tabor, Richard

This Article presents *The Structural Corruption Disclosure Act*, a public, educational model for reconstructing how a modern republic can make administrative reasoning, influence pathways, and deviations from historical practice visible to the people it serves. Drawing on principles of constitutional accountability, institutional memory, and structural integrity, the model proposes a unified framework through which agencies generate a "Public Memory Record" for every major administrative action. These records include rationale chains, aggregated and non-identifying influence summaries, deviation reports, and evidence bibliographies—each designed to strengthen transparency without compromising the confidentiality or independence required for lawful governance.
The Act also outlines an Annual Public Memory Ledger to consolidate agency outputs in a searchable, machine-readable format, enabling long-duration civic understanding and legislative calibration. The legislation is not prescriptive or enforceable; it creates no rights and imposes no obligations. Instead, it functions as conceptual public scholarship—illustrating how the administrative state might structure its reasoning processes to improve legitimacy, enhance civic comprehension, and support a healthier constitutional ecosystem.
The drafting process included the use of multiple AI research assistants for structural refinement, synthesis of administrative-law doctrine, and calibration of transparency mechanisms.

AI in Kenyan Administrative Law: Examining Efficiency Opportunities and Limits in Ensuring Fair Administrative Decision-Making Through Artificial

Posted: 27 Feb 2026, Written: 31 December 2025

Tungwet, Josaiah

The fourth IR is with us and AI is revolutionizing things with every aspects trying to cope up with the changes. Technological determinism theorists are seeing their theory in practice as AI is changing the social manners of human life. Social determinism theorists have also not been left behind, they are witnessing the desires of humans to make their life simple pushing humans to innovate systems that will lead them there. AI's intake in our day to day activities has increased and the administrative sector has not been left behind. The use of AI in administrative decision making has presented some gaps demanding attention. The versions of AI including Automated Decision Making is discussed to decipher their meaning. Article 47 demand of efficient administration is used as framework by this article to investigate the possibilities and limits to be considered in the use of AI administrative decision-making. The efficiency possibilities of saving costs and accurate results is considered and the efficiency limits of AI taking into account irrelevant considerations and poorly exercising discretions are brought into light. Finally, the article highlights the challenges and makes recommendations for the instances where human involvement is desirable in AI administrative decision-making.

The Substantiation Gap AI-Mediated Record Formation Under Administrative Law

Posted: 14 Feb 2026, Written: 31 Jan 2026

Verloop, Daniel

When administrative acts are contested, the authority must demonstrate what was considered and why. Where AI mediates record formation without preserving case-bound traces, that demonstration fails: the authority cannot show what information was available, how it was framed, or what the official adopted, regardless of output quality or human review. The result is a substantiation gap: a structural inability to demonstrate lawful procedure in the individual case.
The gap originates in epistemic delegation: where AI mediates retrieval, summarisation, or drafting, what information reaches the official is determined not by the official's engagement with primary sources but by systems whose per-case operation is not preserved in reconstructible form. Two diagnostic instruments follow. The Decision-Grounding Use (DGU) trigger specifies when AI use becomes procedurally relevant. The Decision Provenance Bundle (DPB) defines the evidentiary minimum: retrieval logs, configuration snapshots, and adoption records, retained through challenge periods and producible as case documents. Existing governance instruments audit the processing infrastructure; they do not show what flowed through it in the individual case. While grounded in Dutch administrative law (Awb), the logic extends to any jurisdiction where contested administrative acts must be substantiated. The argument clarifies what administrative law already requires; it does not propose reform. It applies only where deployments cannot produce a case-bound DPB under ordinary operational conditions; where they can, the thesis does not hold for that deployment.

Integrating Climate Considerations into EU Stock Exchange Listing Regimes: Reform Pathways and the Potential Role of the Capital Markets Union

Capital Markets Law Journal, volume 21, issue 1, 2026

Verzobio, Luca

This paper explores the extent to which current EU and Member State stock exchange listing regimes can adequately address the financial risks associated with climate change, particularly in relation to the admission of climate-exposed companies, such as fossil fuel enterprises, to public capital markets. While investor protection remains a core objective of EU capital markets regulation, existing listing and prospectus requirements often fail to ensure meaningful disclosure of climate-related risks or condition market access on adopting Paris-aligned transition strategies. Through comparative analysis of the Italian and German frameworks, the study reveals the fragmented and discretionary nature of national competent authorities' powers, which limits their effectiveness in addressing climate-related financial risks. The paper further examines ESMA's evolving mandate concerning ESG risks and considers its potential role within a reformed, centralised listing authority. It argues for EU-level legislative reform to establish binding, harmonised listing standards, including mandatory sustainability disclosures and credible transition planning requirements at the time of listing. Against the backdrop of the Capital Markets Union, the creation of a single EU listing authority, ideally situated within ESMA, is proposed as a key institutional reform to ensure regulatory consistency, enhance investor protection, and support the EU's broader climate commitments.

Administrative Law (2024 Review of Developments)

New Zealand Law Review, 2024, pp 657-703; The University of Auckland Faculty of Law Research Paper Series Forthcoming

Wilberg, Hanna

This review covers the period from 2020 to mid 2024. It is even more selective than usual, given the longer period covered and the explosion of administrative law developments during that period. I have confined my attention to New Zealand developments, selecting three topics for examination: the legality of Covid measures, with a focus on Bill of Rights issues (part III); the effect of te Tiriti o Waitangi and of tikanga Māori (part IV); and the right to a hearing (part V). Selected other issues are covered in brief in part II: the public function test and freedom of expression; s 5 of the Bill of Rights as a mandatory relevant consideration; heightened scrutiny for unreasonableness; a duty of consistency; and remedies.

Eyes in the Sky, Gaps in the Law: AI-Powered Remote Sensing, Administrative Enforcement, and the Fourth Amendment

Forthcoming in The Cambridge Handbook of Public Law and Artificial Intelligence

Wu, Victor Y.
Ho, Daniel E.
King, Jennifer
Weisberg, Robert

Remote sensing driven by artificial intelligence has the potential to revolutionize administrative enforcement. Technological breakthroughs are enabling agencies such as the Environmental Protection Agency to detect regulatory noncompliance much more effectively. Remote sensing thus offers a novel solution to regulatory underenforcement caused by high monitoring and inspection costs. In fact, agencies are already using remote sensing technology to monitor and detect regulated facilities ranging from concentrated animal feeding operations to unpermitted swimming pools.

But current legal doctrine is poorly suited to govern such uses of remote sensing technology and to address their associated privacy concerns. Remote sensing for regulatory enforcement poses fundamental yet unexplored questions about the structure and reach of administrative law and Fourth Amendment law. In exploring these questions, this paper maps the uncharted legal territory of satellite and aircraft imagery in the administrative enforcement context and makes three distinct contributions.

First, we supply a process-based framework for analyzing the Fourth Amendment implications of new technologies. Although current approaches treat the entire lifecycle of digital surveillance as one seamless search, courts should instead disaggregate the use of a single technology into discrete stages—e.g., data collection, algorithmic analysis, human review, and follow-up physical inspection. We show that Fourth Amendment scrutiny can attach (or not) at several junctures, and each juncture involves various design choices that may exacerbate or mitigate privacy concerns. This granular mapping and analysis of the design choices at each step replaces the prevailing tendency to analyze new technologies as simple monoliths, thus giving courts and agencies a clearer blueprint for pinpointing where privacy interests are implicated.

Second, we reframe how Fourth Amendment privacy should be evaluated, urging a shift from doctrinal proxies to a data-centric inquiry that foregrounds the information actually exposed. Courts currently emphasize outdated factors such as physical trespass, "general public use," and prior third-party searches, even though these factors have become poor predictors of actual privacy intrusions. By emphasizing "privacy-privacy" trade-offs—e.g., how higher-resolution imagery might initially feel more intrusive yet ultimately reduce downstream false positives—we demonstrate that many traditional Fourth Amendment principles are now poor predictors of real-world privacy risk.

Finally, we argue that the presence of a human observer should not be necessary to implicate the Fourth Amendment, especially given recent advances in AI. If a "search" is deemed to occur only when a person observes the collected imagery, an agency maximizes legal latitude by omitting humans from the loop. Algorithms could trawl through vast datasets, flag facilities, and dispatch inspectors—yet the Fourth Amendment never applies until human inspectors actually arrive on site. That perverse incentive structure magnifies privacy intrusions in the form of more needless inspections. We argue that reclassifying certain forms of automated parsing as Fourth Amendment searches realigns incentives, encouraging agencies to keep humans in the loop when doing so would be privacy-protecting.

Events and Informations:

- **ICON•S 2026 ANNUAL CONFERENCE – Dublin, June 29 to July 1 2026 - for more information, click here.**

  The Conference at University college Dublin (UCD) theme is "Reimagining Public Law for a Fractured World: Technology, Identity & Truth". Submissions can be to the conference theme, but other proposals were welcome addressing all areas of public law, broadly defined.

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