NEWSLETTER 14 JUL 2026 *WHAT'S NEW IN THE COMPARATIVE ADMINISTRATIVE LAW WORLD?*

Comparative Administrative Law Scholarship Corner

Affiliation with the Yale Comparative Administrative Law Listserv

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This edition summary:

Human Agency in the Age of Algorithms: Challenges for Democracy and Public Governance

Written in: Jun 12, 2026; Posted in SSRN: Jul 08, 2026

Adeola, Folorunsho;
Noel, Dave

The increasing integration of algorithmic systems into democratic governance and public administration has significantly transformed how decisions are made, implemented, and evaluated within modern states. While these technologies enhance efficiency, scalability, and data-driven policymaking, they also raise critical concerns regarding human agency, transparency, accountability, and democratic legitimacy. Algorithmic systems are increasingly used in areas such as welfare distribution, predictive policing, taxation, immigration control, and public service delivery, where they influence outcomes that directly affect citizens' rights and opportunities. However, the opacity of many algorithmic models, combined with the potential for embedded bias and uneven data representation, poses risks to fairness and institutional trust. This paper examines the implications of algorithmic governance for human agency in democratic systems, highlighting how reliance on automated decisionmaking can reshape power relations between citizens and the state. It further explores the ethical, political, and regulatory challenges associated with algorithmic deployment in public governance and argues for strengthened oversight mechanisms that preserve transparency, accountability, and democratic control in the age of intelligent systems.

Artificial Intelligence in European Public Administration: A Data-Driven Analysis of Adoption, Capabilities, and Impact

Written in: Jun 14, 2026; Posted in SSRN: Jul 10, 2026

Arias Sierra, Daniel Orlando

This work examines how Artificial Intelligence is being adopted across European public administrations, using the Public Sector Tech Watch (PSTW) dataset compiled by the European Commission's Joint Research Centre as an empirical foundation. Through a descriptive and exploratory analysis of 1,805 AI-related cases, the analysis examines patterns of adoption across countries and regions, the distribution of AI capabilities across government sectors, and the impacts that AI deployments are reporting in practice. The findings show that AI adoption is geographically concentrated in Western and Northern Europe, with Learning-based systems dominating across most sectors. Internally-focused deployments are slightly more common than citizen-facing ones, yet service-related impacts are the most frequently reported, suggesting that internal modernization often translates into tangible improvements in public service delivery. Governance-related impacts, such as transparency and public participation, remain comparatively marginal. The analysis also reveals significant documentation gaps around GovTech participation, pointing to a broader limitation in how public sector AI initiatives are currently reported. Overall, the results offer a data-driven snapshot of where AI stands in European public administration today.

🗁 Sidelining the Public

Arizona Law Review, Volume 68, Number 2, Summer 2026

Bernstein, Anya;
Staszewski, Glen;
Wagner, Wendy E.:

This Article challenges the widely held view that Congress is the American government’s institution closest to the people, while administrative agencies are unaccountable and unresponsive. Providing a systematic, side-by-side institutional analysis, we compare the actual practices and capacities of these two institutions to engage affected publics in policymaking. We find that despite the democratic bona fides of an elected legislature, agencies possess superior capacities, more evolved practices, stricter rules, and stronger incentives for meaningful public engagement. Yet these capacities have been eroded—particularly over the last 50 years—by intensifying legal, political, and managerial obstacles. The Supreme Court and political actors have increasingly curbed agency authority, often in the name of democratic accountability. But as we show, agencies are uniquely positioned to enable democratic deliberation in policymaking. By taking stock of how Congress often fails to deliver meaningful public engagement—especially compared to agencies’ more developed participatory practices—this Article sounds the alarm, offering both a warning and a blueprint for institutional reform. Rather than sidelining agencies, we should recognize, protect, and strengthen their role as vital engines of public participation in legitimate and effective democratic governance. Supporting agencies’ ability to convene the public, we suggest, should be an all-of-government effort.

🗁 The Impact of Loper Bright Enterprises v. Raimondo on the Federal Emergency Management Agency (FEMA)

Written in: Jul 08, 2026; Posted in SSRN: Jul 10, 2026

Brady, Richard

When Loper Bright Enterprises v. Raimondo ended Chevron deference, early commentary on the decision's consequences for FEMA predicted that the agency's discretionary authority would still provide significant protection against APA challenges. This article adopts that premise and presses it further: FEMA has little practical incentive to overhaul its regulations or policies at all. Three protections, in descending order of strength, insulate the agency's decisionmaking-discretionary function immunity under 42 U.S.C. § 5148; the express, if general, rulemaking delegation of § 5201; and the Auer and Skidmore doctrines, which Loper Bright left intact and which cover FEMA's regulations and subregulatory guidance respectively. What remains exposed is a narrow band: facial challenges to rulemaking and genuine textual disputes under the Stafford Act, with section 705(c)'s bar on recovering payments the most prominent candidate. The burden of forcing even that narrow reckoning falls to applicants, in arbitration and in the courts, rather than to the agency itself. AI Disclosure: The author used Anthropic's Claude to assist with drafting, editing, and formatting. All analysis, conclusions, and citations were reviewed and verified by the author.

Fighting Risk with Risk

U of Penn Law School, Public Law Research Paper No. 26-19, University of Illinois Law Review, forthcoming

Coglianese, Cary;
Perez, Oren

A growing scholarly and policy debate pits advocates of the precautionary principle, who prioritize risk minimization, against proponents of an innovation principle, who argue that regulation suppresses technological progress. Despite their differences, both camps share the assumption that contemporary regulatory law is shaped by a risk-averse orientation that is fundamentally at odds with the risk-seeking ethos of technological entrepreneurship in fields such as artificial intelligence. What this debate overlooks is an alternative approach altogether—one that deliberately embraces risk as a vehicle for risk reduction. Instead of fighting risk by restricting, delaying, or controlling risky activity, the government sometimes justifiably fights risk by embracing risk under legally structured conditions.

In this article, we introduce and offer a theory of this overlooked strategy. Drawing on examples as varied as so-called ethical hacking used to expose cybersecurity vulnerabilities, prescribed forest burning to prevent catastrophic wildfires, and geoengineering to combat climate change, we explain how fighting risk with risk differs from—as well as shares affinities with some elements of—the two sides of the dichotomous precautionary and innovation-oriented paradigms that make up contemporary debate over risk governance.

We offer a framework for deciding when government is justified to fight risk with risk, and when it should revise or discontinue such efforts. This inquiry implicates first-order questions—namely, the welfare implications of risk–risk tradeoffs and the distributive consequences of shifting exposures to risks—and second-order questions concerning the epistemic challenges in authorizing or deploying risk as a strategy for risk governance. These challenges involve making decisions under uncertainty across the policy life cycle, mitigating institutional and behavioral biases, structuring liability and compensation regimes for the risks that law deliberately embraces, and building reflexivity in an often-fragmented institutional environment.

To address these challenges, we advance a meta-regulatory architecture rooted in reflexivity—the capacity of legal institutions to adapt and update policies as evidence, risks, and priorities evolve. This architecture rests on four interlocking elements, each of which corresponds with the main challenges we identify: dynamic updating; structures to counteract cognitive biases; targeted liability and compensation; and collaborative mechanisms that enable coordinated revision. Without such governance mechanisms, regulatory authorities that embrace risk may inadvertently entrench policies whose harms outweigh their benefits and whose inequitable effects deepen existing vulnerabilities in society.

By highlighting how government can affirmatively embrace risk as a risk governance strategy, we seek to bring a fresh perspective to the precaution-versus-innovation debate and point to other ways that law can confront the harms facing society today. The debate between precaution and innovation is incomplete, if not also overly simplistic. Regulating in a highly dynamic world necessitates an equally dynamic posture toward risk. In a fast-paced era defined by climate change and new technologies, society surely requires some precautionary forms of risk governance that minimize risk, as well as some government policies that promote innovation. But it will also at times require strategies that deliberately deploy risk to avert greater harm. The meta-regulatory framework we propose offers a blueprint for embracing risk by integrating economic efficiency with a commitment to distributive fairness. That framework also points to how regulators should act more generally in the face of the risks of new technologies and a changing world.

An Institutional Approach to Judicial Independence and Accountability

Posted in: Jul 18, 2026

Daly, Paul

My goal in this contribution is to set out and defend an institutional approach to judicial independence and accountability, drawing on the jurisprudence of the Supreme Court of Canada. By "institutional approach", I mean an approach that focuses on the institutions designed to secure judicial independence and accountability.
In this regard, I will draw on the literature relating to so-called fourth branch or integrity institutions, explaining how the Supreme Court anticipated the key characteristics of expertise, independence and accountability, providing a workable model for other jurisdictions. Across the three aspects of judicial independence -- financial security, security of tenure and administrative autonomy -- the Supreme Court's approach requires the implementation of arm's length institutional mechanisms, interposed between law and politics. These fourth branch or integrity institutions ensure that judges can resolve disputes between private parties or between private parties and the state according to their view of the merits of the cases that come before them, all in the service of public confidence.
Judicial accountability is another matter, as the available mechanisms do not quite have the character or cohesion of the institutions developed to protect judicial independence. Nonetheless, by focusing on the concept of explanatory accountability, I explain how judges are accountable through their reasons for decision and how, in turn, these reasons open up access to institutional mechanisms in the political sphere that can reverse judicial decisions. But these mechanisms should be used carefully and in furtherance of their true purpose, namely ensuring judicial accountability through proper channels, not dragging judges into political controversy.

Whether The Environmental Clearance in India is a Progressive Step towards the Protection of the Environment, or a Disguise in Reality?

Written in: Jun 10, 2026; Posted in SSRN: Jul 08, 2026

Gariya, Hema

One of the most essential instruments of environmental governance in India is the Environmental Impact Assessment (EIA), which is intended to make sure that a project's environmental effects are assessed prior to implementation. This preventive approach is reflected in the EIA Notification, 2006, which requires prior environmental clearance for certain projects. However, there are now major concerns about the performance of the environmental regulatory framework due to the increasing practice of ex post facto environmental clearances.
This paper examines the legal and constitutional validity of retrospective environmental clearances in India. It tracks the development of the EIA framework, examines how executive notifications gave rise to the ex post facto clearance regime, and analyses the judicial reactions in important rulings including Alembic Pharmaceuticals, Common Cause, Vanashakti, and CREDAI. The research argues that retroactive clearances violate the goals envisaged by the Environment (Protection) Act of 1986, diminish environmental accountability, and weaken the precautionary principle.
The paper further argues that ex post facto environmental clearances shift environmental assessment from a preventive precaution to a mechanism for regularizing infractions by analysing concepts of delegated legislation, natural justice, legitimate expectation, and the rule of law. It finds that earlier environmental clearance must be viewed as a substantive legal necessity rather than a procedural formality that may be validated retroactively in order for environmental governance to continue to be successful.

🗁 The Architecture of Addictive Design: Recipient Liability, Public Accommodation Coverage, Disparate Impact, and the Civil Rights Remedy for Platform Design Harm

Written in: Apr 16, 2026; Posted in SSRN: Jul 10, 2026

Gilly, Travis

In forty-eight hours on March 24 and 25, 2026, two juries returned verdicts against the major social media platforms on records establishing that addictive design was intentional, that internal research confirmed disproportionate harm to vulnerable minors, and that remediation was technically feasible but withheld. A Santa Fe jury assessed approximately $375 million in civil penalties against Meta in New Mexico v. Meta Platforms, Inc.; a Los Angeles jury found Meta and Google liable for negligent design in KGM v. Meta & YouTube. This Article argues that those records, though tried under negligence and consumer protection theories, establish the elements of federal civil rights claims that are categorically stronger and systemically more consequential. Two statutory frameworks reach the conduct in parallel. Section 504 of the Rehabilitation Act reaches the purpose-built education and health care verticals of Microsoft, Alphabet, Apple, and Amazon; ADA Title III, which requires no recipient status, reaches the general consumer platforms under Robles v. Domino's Pizza. Neither framework requires proof of discriminatory intent: Alexander v. Choate holds that Section 504 reaches thoughtlessness and indifference as well as animus, and the platforms' empty design record, containing no documented consideration of accessibility, disparate impact, or alternatives, is affirmative evidence of that standard rather than a defense. The Article maps recipient status under the four pathways of 29 U.S.C. § 794(b)(3), the correspondence between specific addictive design mechanisms and protected disability classes, the inaccessible consent gate as an independent violation, the Sandoval, Cummings, and Section 230 challenges, and enforcement pathways that do not depend on individual damages plaintiffs.

🗁 L'administration fédérale, un quatrième pouvoir? Du pouvoir administratif et de ses limites (The Federal Administration: A Fourth Branch of Government? On Administrative Power and Its Limits)

Revue de droit suisse Vol. II 2026, p. 95-188

Hänni, Dominique

La crainte d'une administration publique qui poursuit ses propres objectifs et qui échappe aux contrôles agite les esprits depuis longtemps; l'administration publique est ainsi parfois qualifiée de «quatrième pouvoir» illégitime au sein de l'État moderne. Tout en rejetant l'approche basée sur le modèle classique de la séparation des pouvoirs, le présent rapport examine cette thématique en se concentrant sur l'administration fédérale suisse, qui doit être considérée comme une actrice politique à part entière. Pour évaluer le risque que celle-ci abuse de son pouvoir, le rapport propose d'analyser, d'une part, le pouvoir administratif direct et indirect et, d'autre part, les nombreuses limites de ce pouvoir. L'enjeu sera alors de trouver un équilibre entre le pouvoir administratif – en soi nécessaire et utile – et ses limites. Toutefois, l'administration tend à conserver une longueur d'avance grâce à son expertise, du moins aussi longtemps que son activité n'est pas rendue suffisamment transparente pour être contrôlée tant par les autres organes de l'État que par l'ensemble de la société.

Translated by AI:
Concerns about a public administration that pursues its own objectives and operates beyond oversight have long been a source of unease; as a result, the public administration is sometimes described as an illegitimate "fourth branch" of the modern state. While rejecting the approach based on the classical model of the separation of powers, this report examines this topic by focusing on the Swiss federal administration, which must be regarded as a political actor in its own right. To assess the risk that the government might abuse its power, the report proposes analyzing, on the one hand, direct and indirect administrative power and, on the other hand, the numerous limits on that power. The challenge will then be to strike a balance between administrative power—which is, in and of itself, necessary and useful—and its limits. However, the government tends to stay one step ahead thanks to its expertise—at least as long as its activities are not made transparent enough to be monitored by both other government bodies and society as a whole.

Judicial Impact Assessment (JIA): A Proactive Framework for Municipal Regulatory Resilience in the Post-Loper Bright Era

Written in: Jul 08, 2026; Posted in SSRN: Jul 08, 2026

Manko, Oksana

Loper Bright Enterprises v. Raimondo eliminated Chevron deference, requiring federal courts to exercise independent judgment when interpreting ambiguous statutes. Existing scholarship has analyzed this shift almost entirely at the federal level, treating it as a recalibration between courts and agencies. This Article argues that the decision's most consequential effects fall on a layer of government largely absent from that debate: the roughly 90,000 municipalities that draft ordinances, permits, and licensing rules under statutes as ambiguous as anything an agency interprets, with far fewer resources to defend a contested reading. Compounding circuit-to-circuit divergence, an unsettled revival of Skidmore deference, and the elimination of any practical statute of limitations for facial challenges under Corner Post, municipalities now face what this Article calls a judicial lottery: the same interpretive method, applied by different panels in good faith, regularly produces different answers to comparable questions. This Article proposes the Judicial Impact Assessment (JIA), a four-block methodology that scans regulatory text for interpretive vulnerability before adoption, scores litigation and preemption risk through the Municipal Litigation Vulnerability Index, forecasts the fiscal consequences of an adverse ruling, and translates those findings into concrete drafting responses. Comparative analysis of five foreign systems shows that no existing framework, domestic or foreign, is built to answer this question. Retrospective application to Sackett v. EPA and City and County of San Francisco v. EPA, together with a bounded comparative lesson from Ukraine's decentralization reform, isolates a common condition this Article calls interpretive dependence, tests the framework against real outcomes, and proposes an empirical agenda for validating it further.

Algorithmic Government and the Collapse of Traditional Administrative Law: A Paper in Public Law and Constitutional Theory

Written in: Jun 01, 2026; Posted in SSRN: Jul 10, 2026

Mukherjee, Debdeep

The systematic deployment of self-adaptive machine learning across welfare administration, tax enforcement, and biometric surveillance has exposed a structural incompatibility between the technological architecture of the automated state and the humanist premises of administrative law. Classical public law presupposes human officials capable of deliberation, reason-giving, and individual judgment. Automated systems possess none of these attributes, yet they now determine welfare entitlements, tax liabilities, and custodial risk at national scale. By deconstructing the core doctrines of judicial review, including the ultra vires principle, the rule against delegation, the prohibition on fettering discretion, and the duty to give reasons, this paper demonstrates that algorithmic systems systematically evade the supervisory machinery of the courts. Drawing on landmark jurisprudence from the United Kingdom and Australia, principally Pintarich, Robodebt, and Bridges, it exposes how machine opacity and the upstream migration of discretion to private software architects create a computational state immune to judicial review. A four-part constitutional framework is proposed in response: statutory closure of the jurisdictional void automated systems exploit; an Upstream Public Law Standard extending judicial scrutiny to algorithmic design and procurement; an Algorithmic Reasonableness Standard requiring independent empirical audit; and Human-Exclusive Domains prohibiting algorithmic determination in decisions affecting liberty, family integrity, and survival. Unless public law undergoes this structural adaptation, the most consequential exercises of state power will become the least answerable to law. This paper advances the ex-ante paradigm of constitutional adaptation the automated state now demands.

From Welfare State to Digital State: Evaluating Socialist Constitutionalism in India through Aadhaar, AI and Digital Governance

Posted in SSRN: Jul 08, 2026

Munisekhar, Kavali;
Likhitha, Daggupati;
Morarji, Bangalore

India's constitutional identity is anchored in a socialist commitment to social justice, articulated through the Preamble, the Directive Principles of State Policy, and welfare jurisprudence that reads socio-economic security into the right to life. Over the past decade, the institutional vehicle for realising this commitment has shifted from a paper-based bureaucratic welfare state to a digitally mediated one organised around Aadhaar, Digital Public Infrastructure (DPI), and emerging applications of artificial intelligence (AI) in administrative decision-making. This article examines whether this transition strengthens, transforms, or erodes India's socialist constitutional vision. Employing a qualitative, doctrinal-cum-conceptual methodology, the study triangulates constitutional text, Supreme Court jurisprudence, secondary empirical evaluations of Aadhaar-enabled welfare delivery, and comparative governance models drawn from Estonia, the European Union, the United Kingdom, and Singapore. It develops an original construct, Constitutional Digital Welfare Governance (CDWG), denoting a governance model in which digital technologies advance constitutional commitments to social justice, welfare, inclusion, and accountability while safeguarding fundamental rights and democratic values. The analysis finds that India's welfare architecture is undergoing neither wholesale replacement nor frictionless modernisation, but a contested recomposition of entitlement into authentication-conditioned access, whereby infrastructures that enhance targeting, fiscal control, and transactional transparency simultaneously produce exclusion, surveillance, and accountability deficits inconsistent with core constitutional guarantees. The study concludes that a constitutionally grounded digital welfare state is attainable but not automatic, requiring deliberate design choices, statutory accountability, algorithmic transparency, and grievance redress mechanisms oriented toward the constitutional floor rather than fiscal optimisation. The CDWG framework, with its accompanying operational workflow, offers a transferable analytical lens for evaluating digital welfare infrastructures in other constitutionally social-democratic developing states.

Algorithmic Fiduciaries: Translating Traditional Duties into Digital Governance

Written in: May 11, 2026; Posted in SSRN: May 11, 2026

Reid, Amanda

The increasing deployment of algorithmic decision-making systems in critical domains (from healthcare diagnostics to financial lending) demands new frameworks for accountability and trust. Traditional fiduciary duties provide well-established principles for protecting individual interests. But applying them to algorithmic systems requires careful translation.
This project examines how core fiduciary duties map onto automated decision-making systems, with particular attention to the accountability gaps created by diffused responsibility, opaque decision-making, continuous adaptation, scale and speed, contextual bias without intent, human–machine hybrid agency, and jurisdictional fragmentation. The project summarizes these gaps, explains why traditional frameworks struggle to address them, and shows how fiduciary duties can be translated into algorithmic applications such as documented diligence, explainable AI, continuous monitoring, fairness-by-design, joint accountability, and cross-jurisdictional disclosure. Thus, the framework demonstrates how manual oversight can evolve into automated monitoring, periodic review into continuous validation, and individual judgment into systematic protocols, while preserving traditional protections and strengthening accountability for policymakers and practitioners.

Damte v Canada, Vavilov, and the Judicial Review of Humanitarian and Compassionate Decisions

Written in: Feb 01, 2024; Posted in SSRN: Jul 12, 2026

Sabzevari, Aminollah

This article critiques the "empathetic approach" in Damte v Canada, which suggested that an administrative decision maker should "step into the shoes" of the applicant when assessing relief under subsection 25(1) of the IRPA. Although Damte did not turn on this reasoning, it has since been cited for the idea that an H&C refusal may be overturned on judicial review for being "insufficiently empathetic." The article argues that this approach is misguided because it blurs the proper role of the decision maker and invites courts to substitute their own views under the guise of empathy. A standard grounded in reasonableness review — not a disguised correctness review — better aligns with the purpose, structure, and extraordinary nature of H&C relief.

Authoritarian Antitrust

Written in: July 07, 2026

Sadami, Arthur

Presidents have never merely watched antitrust from the sidelines. They have used it both to intensify and to restrain enforcement, translating their governing agendas into antitrust policy. But the familiar story of presidential antitrust remains incomplete. Alongside it lies a less noble one: presidents have also used enforcement power to discipline adversaries, shield allies, extract personal political support, displace rival regulatory agendas, and turn antitrust into a lever of presidential control.

This Article brings that hidden history into view by naming a distinct and undertheorized phenomenon: authoritarian antitrust. Authoritarian antitrust is the use of antitrust policy through the deliberate sabotage of the legal, administrative, and political accountability systems that are supposed to keep enforcement democratically contestable. Recovering episodes dating back to Franklin D. Roosevelt, the Article shows that authoritarian antitrust is not simply ordinary politicization, illiberal policy, illegality, or corruption. It is a technique of democratic erosion: the conversion of enforcement discretion into a means of closing democratic contestation and consolidating presidential power. Although authoritarian antitrust became more frequent and systematic under Donald J. Trump, the longer history reconstructed here shows that the recent pattern reflects more than the conduct of any single president. It arises from deeper structural conditions: the expansion of presidential power, the concentration of private economic power, and the erosion of state capacity.

The Article makes four contributions. First, it connects episodes that have usually been treated as isolated abuses and reveals a recurring pattern in presidential antitrust. Second, it explains why antitrust is especially useful to would-be autocrats. Antitrust's normative elasticity allows presidents to stretch or narrow enforcement in the name of competing public values, while its institutional flexibility gives officials broad discretion over theories, investigations, settlements, merger review, and enforcement priorities. Together, these features allow presidents to govern through selective pressure while preserving the appearance of legality. Third, the Article offers a democratic barometer for antitrust governance, rejecting both the technocratic claim that politics has no place in enforcement and the politicalagnostic view that all presidential direction is equally legitimate. Fourth, it points toward reforms that can keep antitrust institutions open to democratic contestation, including information-forcing and conflict-enabling measures that strengthen executive, legislative, and judicial checks.

US APA in the European Countries: A Comparative Perspective

To be published in DPCE 2026

Scarciglia, Roberto

Does comparative research in administrative law require knowledge of a theoretical perspective alone, or must it also encompass operational outlines? Is knowledge of a single method sufficient to conduct such research in depth, or is a multifaceted approach to comparative methodology necessary? To what extent can the idea of a common core of principles governing administrative procedure in Europe afford to disregard the differentiating factors at the level of the mechanics of reality? This paper will attempt to answer these questions by using global legal indicators.

The Principle of Res Judicata and the Validity of Administrative Acts, or Why do Administrative Law Scholars Need Roman Law1?

Written in: Mar 26, 2026; Posted in SSRN: Jul 08, 2026

Sherstoboev, Oleg

This paper was presented at the Annual conference "Modern Administrative Law: Russian Practice and Foreign Experience" dedicated to Professor Ivan I. Veremeenko, organised by the Moscow State Institute of International Relations, on March 26, 2026. Roman law is legacy for legal systems across the world. Many legal scholars have believed that Roman law was identical to private (civil) law, but this is not so. Public law arose in a context in which Roman law played a role as legal theory, and early public law scholars often used Roman law formulas to explain how public authorities should operate and how their decisions could be reviewed by courts or other official bodies. The principle of res judicata is a good example of this conclusion. This formula was transformed from the Roman formula (Ulpian and others) into a principle of civil procedure, and then into a principle describing the validity of an administrative act. Comparative administrative law illustrates this process well. However, administrative law in countries with a civil law system and countries with a common law system has its own peculiarities, but this does not affect the general conclusion.

Regulatory Tripwires: How Arbitrary Thresholds Distort Financial Markets

International Center for Law & Economics, White Paper 2026-05-14, George Mason Law & Economics Research Paper No. 26-11

Zywicki, Todd J.

The use of asset-size thresholds in U.S. financial regulation is widespread. The use of "thresholds" is often promoted for their simplicity, transparency, and administrability. This article examines how thresholds frequently distort firm behavior, undermine competition, and generate unintended consequences that diverge from their stated policy goals. Dodd-Frank dramatically expanded the use of these "regulatory tripwires." The law established systemic-risk tiers (originally at $50 billion, later revised to $100 billion and $250 billion), the CFPB's $10 billion supervisory trigger for depository institutions and "larger participant" rules for nonbanks, and the Durbin Amendment's $10 billion cutoff imposing price controls on debit-card interchange fees. Rather than aligning oversight with actual risk or consumer harm, these bright-line rules create sharp compliance cliffs. Banks respond rationally by slowing organic growth, fragmenting operations, restructuring balance sheets, and pursuing mergers to spread fixed compliance costs.

The article argues that poorly calibrated thresholds too often substitute for reasoned regulatory analysis, invite political rent-seeking, and expand in scope over time without deliberate policy review due to the absence of inflation indexing or periodic evaluation. It recommends repealing or reforming flawed thresholds—particularly the Durbin Amendment—replacing hard cliffs with graduated approaches, indexing remaining thresholds, and modernizing supervision through risk-based frameworks supported by real-time data analytics and advanced technology.

Events and Informations:

- **Arizona Journal of Internacional and Comparative Law: Call for submissions for Spring 2027 Symposium on International Economic Issues – for more information, click here**

  Deadline: September 1, 2026

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