

Comparative Administrative Law Scholarship Corner

Affiliation with the Yale Comparative Administrative Law Listserv

Edited by Eduardo Jordão

Professor of Law at Insper (São Paulo)

eduardo.jordao@insper.edu.br

Assisted by Eduarda Onzi

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

eduarda.onzi@fgv.edu.br

To have your paper included in the next listserv, please send it to the editor e-mail address:
eduardo.jordao@insper.edu.br

This edition summary:

- 1. Bar-Siman-Tov, Ittai: Regulating (Ab)uses of Omnibus Legislation through Judicial Review -An Empirical Study**
- 2. Bertelli, Anthony M.: Authorized Partnerships: Lay Participation and the Defense of Democratic Public Administration**
- 3. Damon-Feng, Haiyun: Agency Fact-Making**
- 4. Deininger, Anthony: The Opportunity to be Heard: Post-Loper Bright Analysis of Controlled Substances Act Rulemaking Procedures**
- 5. Duret, Paolo; Ligugnana, Giovanna: Recent Trends in Administrative Justice: A Comparative Perspective**
- 6. Feinstein, Brian D.; Freeman, Jody; Jacobs, Sharon: Faithful Agencies**
- 7. Fernández-I-Marín, Xavier; Knill, Christoph; Steinbacher, Christina; Steinebach, Yves: Bureaucratic Quality and the Gap between Implementation Burden and Administrative Capacities**
- 8. Finder, Susan: A model for local courts to cooperate with local regulators**
- 9. García Llorente, Carlos; Olmeda, Ignacio: Governing Without Enforcing: Foundational Legal Infrastructure and the Capacity–Justiciability Gap in AI Rights Protection**
- 10. Hickman, Kristin E.; Pierce Jr., Richard J.; Walker, Christopher J.: Federal Administrative Law – Cases and Materials (Fourth Edition)**
- 11. King, Bien: Digital Municipal Enforcement Architecture and the Gateway Complaint Problem**

- 12.** Knill, Christoph; Hinterleitner, Markus; Steinebach, Yves: **More Liberty, More Rules? Abortion Policy and the Liberalization-Rule Nexus**
- 13.** Lawrence, Matthew B.: **Antifragile "Administrative Law": The Systemic Effects of Executive Lawbreaking**
- 14.** Lenz, Alexa; Knill, Christoph; Steinebach, Yves: **Addition preferences among policymakers as driver of policy growth**
- 15.** Manko, Oksana: **Interpretive Crystallization: How Loper Bright Changes the Temporal Logic of Administrative Law**
- 16.** Manko, Oksana: **Judicial Impact Assessment (JIA): A Proactive Framework for Municipal Regulatory Resilience in the Post-Loper Bright Era**
- 17.** Parvanova, Iva; Mungiu-Pippidi, Alina: **Does Corruption Increase Inequality? Evidence From a European Fact-Based Assessment**
- 18.** Rothschild, Rachel: **A New Administrative Law for the Production of Scientific Knowledge**
- 19.** Soreide, Tina; Rose-Ackerman, Susan: **Cop or Coach? Alternative Routes to Preventing Money-Laundering and Promoting Efficient Markets**
- 20.** Wagner, Wendy: **The State as Fact-Maker: The Fourth Function of The Fourth Branch**
- 21.** Wan, Trevor T. W.: **Anchoring proportionality in China**
- 22.** Wilson, Amanda; Klassen, Susanna; Brynne, Abra: **Power and Participation: Assessing Collaborative Governance of Organic Standards in Canada**
- 23.** Winter, Gerd; Macrory, Richard; Krämer, Ludwig: **EU Environmental Policy and Law: Reflections at Fifty**

Regulating (Ab)uses of Omnibus Legislation through Judicial Review - An Empirical Study

Written in: Jun 30, 2026; Posted in SSRN: Jul 22, 2026

Bar-Siman-Tov, Ittai

Omnibus legislation-packaging unrelated measures in one long bill, enacted in an expedited process-is becoming a common feature in many legislatures, and recently also in EU lawmaking. While favoured by some for its effectiveness, it is also a matter of intense criticism and seen by critics as anathema to good lawmaking and as antidemocratic. This led scholars in various countries to ask whether courts should intervene and regulate the use of omnibus legislation. In related debates, scholars around the world are debating whether courts should adopt procedural models of judicial review of the legislative process and debating the possible impact of judicial review on legislative behaviour. This article attempts to provide a first empirical answer to these debates, by presenting findings from an extensive, multi-method empirical study on the impact the introduction of procedural judicial regulation on omnibus legislation had on their enactment in Israel. It shows that the introduction of judicial review had manifest, albeit short-term, impact on the scope and size of omnibus laws, but a long-term effect on the quality of their legislative process. It therefore exhibits the potential of procedural judicial review for improving lawmaking.

Authorized Partnerships: Lay Participation and the Defense of Democratic Public Administration

Written in: Jul 16, 2026; Posted in SSRN: Jul 20, 2026

Bertelli, Anthony M.

This paper argues that carefully designed lay participation in administrative processes can reinforce democratic resilience by linking law, mass beliefs, and institutional design. I advance four claims. First, European hard and soft law establishes a practicable framework of authorized discretion that ties bureaucratic decision-making to democratically sanctioned principles. Second, these principles occupy a coherent and resilient position within mass political belief systems. Third, authorized discretion provides a publicly intelligible standard of administrative responsibility, and concrete encounters sharpen citizens' reasoning about it. Fourth, the structural integrity principle embedded in authorized discretion protects democratic governance against destabilizing challenges, such as populist politics. Together, these claims support a normative and practical case for institutional designs that empower citizens to help defend democratic governance against partisan capture.

Agency Fact-Making

The Yale Law Journal, Vol. 135, 2525, May 2026

Damon-Feng, Haiyun

Modern administrative-law scholarship, theory, and doctrine generally conceptualize agencies as engaging in three primary functions: rulemaking, enforcement, and adjudication. This understanding of agencies has informed deep debates surrounding the power, independence, and constitutional legitimacy of the administrative state. But the prevailing account is incomplete. It overlooks a fourth core function of the administrative state: its fact-making, or epistemic, function.

Across the administrative state, agencies create and disseminate information in ways that are uniquely comprehensive and uniquely powerful. Agencies' epistemic outputs include the census generated by the Census Bureau, repositories of public-health information maintained by the Centers for Disease Control and Prevention, weather data generated by the National Oceanic and Atmospheric Administration, and economic data generated by the Bureau of Labor Statistics. This information—agency-made facts—wields official power within our democratic legal system. Political apportionment, monetary policy, climate policy, vaccine distribution, and the allocation of resources and social services all hinge on the administrative state's epistemic work.

The administrative state's fact-making function is critically important to democratic legitimacy and participation, but it has been largely understudied and undertheorized. This Feature begins to fill that gap and makes three primary contributions. First, it provides a historical and descriptive account of the administrative state's fact-making function, demonstrating the robust and longstanding tradition of information production and dissemination by the administrative state. Second, it provides a theoretical account of agency fact-making and argues that fact-making should be understood as a separate—and equally important—function of the administrative state. Third, it explores how politicized control over agency fact-making has the potential to degrade important democratic norms, and how politicized fact-making can disproportionately harm marginalized and politically disempowered groups. It argues that fact-making ought to be conducted under truth-seeking procedures that maintain a degree of independence from politics and the President. These central insights enrich administrative-law theory and complicate ongoing debates about the role and regulation of the administrative state.

The Opportunity to be Heard: Post-Loper Bright Analysis of Controlled Substances Act Rulemaking Procedures

Written in: May 30, 2026; Posted in SSRN: Jun 17, 2026

Deininger, Anthony

Reasonable minds can disagree as to the exact administrative process required to schedule and reschedule drugs and substances under the Controlled Substances Act. The current consensus and position of the Drug Enforcement Agency is that the process follows formal rulemaking. This note argues that post-Loper Bright de novo review better supports a hybrid rulemaking process due to the ambiguous language of 21 U.S.C. § 811(a).

Recent Trends in Administrative Justice: A Comparative Perspective

ISBN: 9788849562330; Published: 2026

Duret, Paolo
Ligugnana, Giovanna

This volume is the third in a series of studies conducted by a now well-established group of academics from Italy and Eastern and Central Europe EU countries working in administrative law. The topics addressed thus far have included administrative procedure (New Challenges in Administrative Procedural Law. A Comparative Perspective, 2021) and administrative action in relation to the challenges of sustainability (Administrative Action Facing Sustainable Development, 2024). The present volume focuses on justice, in its judicial and administrative dimensions, offering a comparative perspective on each legal system and fostering dialogue between different experiences. Each volume originates from a corresponding seminar held in Verona at the Department of Law and has been published in the Department of Law Series.

Faithful Agencies

Written in: Jul 24, 2026; Posted in SSRN: Jul 27, 2026

Feinstein, Brian D.
Freeman, Jody
Jacobs, Sharon

For nearly a century, Congress's primary instrument for insulating agencies from presidential control was "independence," expressed, quintessentially, as for-cause removal protection for agency heads. That era is over. After the Supreme Court's decision in *Trump v. Slaughter*, removal restrictions are presumptively unconstitutional, and the remaining hallmarks of agency independence, like staggered terms and partisan balancing requirements, are diminished as a result. Meanwhile, successive presidents have embraced a muscular conception of executive power, which the Trump administration has pressed to the limit.

This Article develops principles of institutional design for an era of presidential unilateralism. Even without removal protections, Congress has many tools at its disposal to help agencies resist an arrogating president. Congress can deploy these tools strategically, bundling and layering them, to hamper a president bent on derailing agencies from their statutory mandates. Canvassing the U.S. Code, we identify scores of statutory design features—many obscure and seldom considered together—that promote agency faithfulness to the enacting Congress's objectives. We label these devices fidelity structures and organize them into a taxonomy of four categories: financing arrangements, personnel rules, internal architecture, and external linkages. We then map their presence across every executive department and nine major independent agencies, uncovering several striking patterns in their use—with implications for future institutional designers in Congress.

Fidelity structures, we argue, do more than build agency resilience: they vindicate the separation of powers. Because the laws the president must faithfully execute are overwhelmingly the work of past Congresses, the Take Care Clause is by its nature a command to abide by legislative bargains over time. This intertemporal check—yesterday's legislature constraining today's executive—is especially important now that party unity has weakened horizontal checks between the political branches.

Bureaucratic Quality and the Gap between Implementation Burden and Administrative Capacities

American Political Science Review. 2024;118(3):1240-1260

Fernández-I-Marín, Xavier
Knill, Christoph
Steinbacher, Christina
Steinebach, Yves

Democratic governments produce more policies than they can effectively implement. Yet, this gap between the number of policies requiring implementation and the administrative capacities available to do so is not the same in all democracies but varies across countries and sectors. We argue that this variation depends on the coupling of the sectoral bureaucracies in charge of policy formulation and those in charge of policy implementation. We consider these patterns of vertical policy-process integration an important feature of bureaucratic quality. The more the policymaking level is involved in policy implementation (top-down integration) and the easier the policy-implementing level finds it to feed its concerns into policymaking (bottom-up integration), the smaller the so-called "burden-capacity gap." We demonstrate this effect through an empirical analysis in 21 OECD countries over a period of more than 40 years in the areas of social and environmental policies.

A model for local courts to cooperate with local regulators

Posted in Supreme People's Court Monitor: Aug 03, 2026

Finder, Susan

This post analyzes a case from the Yantai (Shandong) Intermediate People's Court, presented by the Administrative Division of the Supreme People's Court (SPC) as a model of deepened cooperation between local courts and market regulators, intended for replication by other courts and government bodies. The discussion situates this collaboration within broader trends in Chinese administrative law, linking it to the "3+N" mechanism promoted by SPC President Zhang Jun in his 2024 report, which brings together the SPC, the Supreme People's Procuratorate, and the Ministry of Justice to analyze and prevent recurring administrative disputes. The Yantai case further illustrates how such cooperation connects to the policy of "optimizing the business environment" (优化营商环境), a central government priority derived from World Bank business indicators. The court implements a "full-chain legal supervision and collaborative governance closed-loop mechanism," encompassing case guidance, law enforcement self-inspection, judicial feedback, and follow-up rectification, particularly with respect to disputes over administrative penalties against enterprises—a recurring problem involving disproportionate sanctions for minor infractions. In its closing comments, the post examines how Chinese courts have come to compensate for weaknesses in other institutions (such as the still-underdeveloped government legal advisory function) and have assumed an advisory role vis-à-vis government. It also draws on the analysis of scholar Ma Chao, who highlights the absence of comprehensive procedural rules and external oversight mechanisms—legislative, prosecutorial, and societal—in this collaborative framework, raising concerns about judicial neutrality and legitimacy.

Governing Without Enforcing: Foundational Legal Infrastructure and the Capacity–Justiciability Gap in AI Rights Protection

Regulation & Governance, 1–23.

García Llorente, Carlos
Olmeda, Ignacio

Across 124 jurisdictions, formal legal architecture for AI-related rights protection—including data protection legislation, independent oversight authorities, and sanctioning powers—is substantially more developed than the institutional conditions that make those rights operationally enforceable in practice. This paper introduces the concept of the capacity–justiciability gap to capture this structural disconnect: the distance between the formal existence of rights-relevant legal infrastructure and the operational conditions necessary to activate it against algorithmic decisions and impacts. Drawing on an original dataset of 124 countries combining indicators of formal legal architecture with measures of operational institutional effectiveness, we document that this gap is widespread and cannot be explained by legal origin, political North–South classifications, or general measures of institutional quality. We further argue that two structural mechanisms—technological dependency and cost externalization—operate specifically on the operational side of the gap, eroding the effectiveness of oversight, enforcement, and redress mechanisms that formal frameworks establish but cannot guarantee in practice. These mechanisms resist quantitative operationalization with available comparative data and are examined qualitatively through the cases of Bangladesh, Brazil, and Kenya, selected as paradigmatic instances where substantial formal capacity coexists with limited operational justiciability. The findings suggest that AI governance must be evaluated not by the density of its formal frameworks but by the strength of the foundational institutional conditions that enable enforceable rights, with direct implications for how regulatory effectiveness is conceptualized in contexts of structural technological dependency. More broadly, the capacity–justiciability gap may characterize any regulatory domain in which formal authority is systematically decoupled from the material conditions necessary to exercise it—making AI an extreme but analytically generative instance of a wider structural condition in regulatory governance.

Federal Administrative Law – Cases and Materials (Fourth Edition)

Hickman, Kristin E.
Pierce Jr., Richard J.
Walker, Christopher J.

Administrative law is a dynamic field, and there are always interesting new cases being decided and new debates unfolding. The past three years have seen some big administrative law cases from the Supreme Court. In particular, the Court's decision to overturn Chevron deference fundamentally alters how instructors will need to address judicial review of agency interpretations of statutes. We had anticipated publishing a new Fifth Edition of the textbook in time for the 2026-27 academic year. But with the Court overruling *Humphrey's Executor* this Term, we decided to push back the Fifth Edition to be ready for the 2027-28 academic year. In the meantime, this memo provides excerpts and notes for a handful of the most significant cases since the release of the Fourth Edition. For a more comprehensive and detailed summary of recent cases and events in administrative law, we recommend Kristin E. Hickman & Richard J. Pierce, Jr., *Administrative Law Treatise* (7th ed. 2024), and biannual supplements thereto. We hope you find this memo helpful.

Digital Municipal Enforcement Architecture and the Gateway Complaint Problem

Written in: Feb 24, 2026; Posted in SSRN: Aug 05, 2026

King, Bien

In the wake of Loper Bright, administrative law scholarship has focused on the contraction of federal agency deference. Less attention has been paid to a parallel transformation occurring at the municipal level: the rise of digitally mediated enforcement architecture. Across the country, municipalities rely on third-party complaint platforms that intake, classify, route, and retain allegations of regulatory noncompliance. This Article introduces the concept of the "gateway complaint"-an allegation that, irrespective of ultimate disposition, embeds a subject within enforcement architecture and recalibrates the practical threshold for future scrutiny. Drawing on a documented municipal dataset reflecting 168 complaint submissions over a fourteen-month period, with a substantiation rate of 1.1%, the Article argues that intake-stage priority coding, cross-domain routing prior to validation, and durable record persistence can erode procedural insulation without any formal rule change. In a decentralized regulatory environment, attention to the intake layer offers a complementary lens for evaluating how enforcement discretion is structured through software design rather than statutory interpretation.

More Liberty, More Rules? Abortion Policy and the Liberalization-Rule Nexus

Comparative Political Studies, Vol. 58, Issue 12, October, 2025

Knill, Christoph
Hinterleitner, Markus
Steinebach, Yves

While conventional wisdom often equates liberalization with deregulation, theoretical arguments from different scientific backgrounds suggest that states tend to increase their rule stock when they adopt more liberal policies. This article studies the case of abortion policy to better understand the liberalization-rule nexus. By examining data from 25 countries over 50 years, we empirically assess the dynamics between liberalization events and corresponding regulatory changes. Our findings reveal that while the majority of countries does indeed introduce more rules upon liberalizing abortion, the extent of these regulatory changes varies considerably. The analysis suggests that the extent of rule growth depends on the conflicts that characterize liberalization processes in particular countries and time periods. Right-leaning governments, religious groups and institutional veto players are shown to have a positive influence on rule growth. On the contrary, higher levels of liberalization reduce the necessity for additional rules. By illuminating a contested empirical relationship, the article helps to better understand the implications of liberalization in modern democracies.

Antifragile "Administrative Law": The Systemic Effects of Executive Lawbreaking

Written in: Mar 21, 2026; Posted in SSRN: Jun 11, 2026

Lawrence, Matthew B.

Lawbreaking by executive branch actors can weaken democratic capacity by undermining the legitimacy of the administrative state, eroding the rule of law, driving expert civil servants from the workforce, shifting blame for legislative and executive inaction to the judiciary, and supporting a deconstructive attorney workforce skilled only in combatting agency action. From the perspective of longstanding movements that oppose democratic capacity, these systemic effects favor the use of lawbreaking as a deconstructive tool, a reason to err on the side of illegality while in power or even deliberately act without regard for law. In a word, the tendency of executive lawbreaking to weaken democratic capacity makes administrative law fragile; the more administrative laws are broken, the weaker the administrative state becomes. It is possible to counteract the usefulness of lawbreaking as a deconstructive tool because lawbreaking by executive branch actors need not necessarily weaken democratic capacity. Executive lawbreaking can also strengthen democratic capacity by surfacing narratives about the benefits of administration, supporting a constructive attorney workforce, and facilitating constructive organizing. By harnessing the potential for executive lawbreaking to strengthen democratic capacity, institutional designers could make administrative law antifragile; the more administrative laws are broken, the stronger the administrative state becomes.

Those writing laws, crafting doctrines, or developing legal institutions with the goal of building durable democratic capacity must be realistic and work on the assumption that state power will be held, at one point or another, by those who would prefer to dismantle the administrative state. To build durable democratic capacity despite this inevitability, designers should avoid legal rules and institutions that enhance executive lawbreaking's deconstructive effects. To that end, scholars and teachers hoping to build democratic capacity should avoid organizing scholarly inquiry and law school classes into trans-substantive, juris-centric fields like "administrative law" that create a deconstructive attorney workforce with the ability to identify and address the harms of state power but not to help devise and construct programs to secure its benefits in particular substantive domains. Instead, designers should embrace legal rules and institutions that lend antifragility to administrative law, including by expanding the availability of fee-shifting for non-profit entities under the Equal Access to Justice Act, integrating "administrative law" rules in substantively-focused courses rather than vice versa, leaning into the consideration of reliance interests in arbitrary and capricious review, and leveraging associational standing requirements that empower substantively engaged interest groups.

Addition preferences among policymakers as driver of policy growth

West European Politics, 1–26

Lenz, Alexa
Knill, Christoph
Steinebach, Yves

Policy growth has become a defining feature of modern governance, contributing to administrative overload and reduced policy effectiveness. While most research addresses this phenomenon from a macro-level perspective, this study examines how individual policymakers contribute to policy growth through a systematic preference for additive policy solutions. Integrating insights from social psychology, public administration, and political science, the article argues that addition preferences stem from cognitive mechanisms, such as subtraction neglect, and strategic incentives linked to policy expansion. Using a survey experiment with 1,454 elected policymakers in Norway, it tests the prevalence of addition preferences and how they are influenced by contextual conditions. The results reveal (1) a persistent addition preference among policymakers; and (2) that information about available implementation capacities can slightly reduce these tendencies. These findings advance behavioural understanding of policy development and democratic governance, emphasising the need to expose decision-makers to implementation realities.

Interpretive Crystallization: How Loper Bright Changes the Temporal Logic of Administrative Law

Written in: Apr 24, 2026; Posted in SSRN: Jun 25, 2026

Manko, Oksana

The Supreme Court's decision in *Loper Bright Enterprises v. Raimondo* (2024) is conventionally understood as a redistribution of interpretive power from agencies to courts. This essay argues that the more significant consequence is temporal: *Loper Bright* changes the mechanism through which statutory meaning stabilizes over time. The essay introduces the concept of "interpretive crystallization" — the gradual accumulation of judicial decisions that progressively narrows the range of plausible statutory interpretations and produces a body of law substantially more resistant to political reversal than administrative reinterpretation under *Chevron*. By reframing the post-*Chevron* debate around temporal stability rather than institutional competition, the essay offers a new analytical lens for understanding the future trajectory of the administrative state.

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.

Does Corruption Increase Inequality? Evidence From a European Fact-Based Assessment

Regulation & Governance, 1–17; Aug 03, 2026

Parvanova, Iva
Mungiu-Pippidi, Alina

This paper examines whether government favoritism in public procurement generates negative social costs, even within redistributive institutional frameworks such as the European Union. Rather than relying on perception-based corruption indicators, we employ an objective proxy of corruption risk—the share of awarded public contracts which received only one bid. This measure captures non-competitive allocation and mitigates reverse causality concerns. Using static and dynamic fixed effects panel models, we find that procurement favoritism is systematically associated with adverse social outcomes across EU member states. Specifically, we document robust, statistically significant negative effects on educational attainment, income inequality, and poverty. Our results suggest that governance quality—and not merely the volume of public expenditure—is a critical determinant of social development, and that distortions in procurement processes can undermine the effectiveness of public spending even where formal cohesion commitments exist.

A New Administrative Law for the Production of Scientific Knowledge

Forthcoming, *Building Democratic Capacity: Essays on Administrative Law's Futures*, Cambridge University Press

Rothschild, Rachel

Federal support for scientific research has paid enormous dividends to Americans from the mid-20th century to today. Investments in science have led to rapid advances in knowledge that have improved living standards, public health, and national security. The federal government has also benefited from expanded science advising on a host of important issues, whether nuclear weapons, contagious diseases, or environmental threats.

The second Trump administration's withholding of research funds and reliance on unqualified experts have upended this partnership between science and the state. Though existing laws appeared to prohibit many of the administration's actions, they provided insufficient legal protections for scientific research and government advisory committees. This chapter assesses the second Trump administration's policies in the context of recent developments in administrative law doctrine. It argues that changes to several key federal statutes – the Tucker Act, the Impoundment Control Act, and the Federal Advisory Committee Act – could better insulate research funding from arbitrary recissions and ensure only qualified experts serve as science policy advisors. Through such reforms, Congress can check autocratic impulses in the Executive Branch and guard against the subordination of science for undemocratic ends.

Cop or Coach? Alternative Routes to Preventing Money-Laundering and Promoting Efficient Markets

Yale Law & Economics Research

Soreide, Tina

Rose-Ackerman, Susan

This article compares anti-money-laundering (AML) and antitrust enforcement in Europe and the United States. Although their legal traditions diverge, agencies in both regions emphasize case-by-case adjudication and guidance, rather than binding "secondary legislation" or rules with the force of law. Outlining the limitations of existing regulatory strategies in each region, the authors suggest ways that regulatory agencies can better safeguard market integrity amid complex, cross-border, technologydriven business activity. AML supervision is system-oriented, emphasizing ongoing monitoring and compliance, whereas antitrust enforcement remains investigation-driven and sanction-focused. The difficulty of detecting corporate crime has encouraged reliance on headline penalties. In Europe, high fines imply that administrative enforcement can trigger criminal-law due process protections. In the United States, parallel proceedings and extensive private litigation can prolong disputes and generate high procedural costs with limited guidance that could be transferable across contexts. We propose two reforms: (1) a clearer separation between administrative and criminal tracks, enabling agencies to prioritize supervision, early intervention, and structured self-reporting (serious misconduct would be referred to criminal authorities); and (2) expanded administrative rulemaking under statutory limits, with stakeholder participation and judicial review. Together, we believe, these reforms could reduce enforcement errors, improve resource allocation, strengthen procedural rights, and enhance agencies' capacity to prevent business-related harm without concentrating unchecked power.

The State as Fact-Maker: The Fourth Function of The Fourth Branch

Administrative Law Jotwell; Aug 13, 2026

Wagner, Wendy

This review essay examines Damon-Feng's article *Agency Fact-Making*, which challenges the conventional characterization of administrative agencies as mere "fact-finders" and argues instead that agencies actively produce—or "make"—the authoritative knowledge that shapes governance, public policy, and daily life. The reviewer contends that although this epistemic function is central to the administrative state, as illustrated by examples ranging from the census and Bureau of Labor Statistics data to CDC public-health guidance and National Park Service historical narratives, administrative law scholarship has largely failed to develop a coherent theoretical account of how agency fact-making operates or how it ought to be institutionally structured.

Damon-Feng's analysis reveals that this fact-making process is far from a neutral, technocratic exercise: it entails discretionary methodological choices—what to measure, how to measure it, and what to prioritize—that frequently remain opaque to outside scrutiny, raising concerns about the democratic distribution of knowledge production and the trustworthiness of the resulting information. The review further highlights how agency-produced facts acquire distinctive legal weight in subsequent administrative and judicial proceedings, and how such fact-making can shape collective understanding upstream of policymaking, including the historical record itself.

In its final section, the review turns to the institutional implications of this broader conception of agency epistemic authority, particularly the risk of a dangerous centralization of knowledge-producing power under presidential control—a concern rendered more urgent by recent executive interventions in agency funding, staffing, and research priorities. The reviewer emphasizes Damon-Feng's key insight that scholarly attention should shift from the "politicized use" of facts to the "politicization of fact-making" itself, while suggesting that her framework could be extended to address the analogous roles of Congress and the courts in overseeing this function. The review concludes that Damon-Feng's article offers an essential starting point for administrative law scholarship to grapple not only with the institutions that govern us, but with the ways those institutions shape what we know.

Anchoring proportionality in China

International Journal of Constitutional Law. Published: Jul 11, 2026

Wan, Trevor T. W.

Proportionality, the lingua franca of rights adjudication across the globe, is not a lost cause in China. It has attained a modest jurisprudential, epistemic, and discursive presence, with proportionality-resembling formulations scattered across statutes and judicial decisions. An opportunity structure has emerged in favor of proportionality's expansion into the domain of personality rights adjudication under the Civil Code of 2021—a "surrogate" of constitutional rights review. This opportunity structure is enabled by a semi-autonomous private law sphere lodged within China's dual state, the structure of the Civil Code, which delegates to judges the authority to adopt a stable criterion to assess the scope of personality right provisions and their limits, and the proactive agency of prominent publicists and judges who have advocated for, and experimented with, proportionality in real cases. Despite such impetus, anchoring proportionality remains constrained by two "micro-level" obstacles in everyday judicial praxis, which are the sheer size of the judiciary and truncated judgment-writing practice. Ultimately, the fate of proportionality in China hinges on the extent to which the party-state tolerates the evolution of its private law in a rights-protective direction, which in turn bespeaks the future of the Chinese legal system.

Power and Participation: Assessing Collaborative Governance of Organic Standards in Canada

Regulation & Governance, 1–17;

Wilson, Amanda
Klassen, Susanna
Brynne, Abra

Against a backdrop of increasing political, economic, and ecological volatility, participatory governance could provide a valuable mechanism to counteract democratic backsliding caused by unchecked power and regulatory capture. Food systems in particular are a site where many interests and sectors converge—including health, agriculture, land use, labor, environment, and climate change—and where there has been increasing interest and experimentation in forms of participatory governance. This research uses the example of the organic standards governance process to understand how governance structures can enable transitions to more sustainable and just systems (including but not limited to food systems), and what we can learn from existing participatory governance approaches about how to govern complex systems in a collaborative and inclusive way. We conducted 20 semi-structured interviews with individuals who have participated in recent organic standards review processes and analyzed key documents to characterize the sources and arenas of power at play. We found that formal authority and discursive legitimacy are enabling some participants to maintain influence at a time when increasing professionalization and resource-based power would otherwise dominate the process. In particular, the processes in place to ensure opportunities for public comment, diverse sector representation, and limited political influence all contribute to a collaborative, participatory process. At the same time, the organic sector is facing significant challenges due to the high costs of administering such a labor-intensive process, a lack of consistent funding, and the imminent closure of the Canadian General Standards Board as an institutional structure to support the organic standards review process. Despite these challenges, the governance of the Canadian organic standards has been a robust and unique instance of participatory governance that merits continued support.

EU Environmental Policy and Law: Reflections at Fifty

Release date: May 5, 2026

Winter, Gerd
Macrory, Richard
Krämer, Ludwig

The Avosetta Series publishes texts that present innovative discourse on European Environmental Law.

The last 50 years have seen the creation of a remarkable body of EU environmental legislation, policy, and case-law.

But in an era of international turbulence, the rule of law is repeatedly being challenged. Economic pressures have led to intensified questioning of environmental protection measures. Environmental degradation continues. This major new book is therefore a timely exploration of critical issues concerning the current EU environmental acquis.

Written by 28 of today's leading European environmental law scholars, all members of the Avosetta Group, it provides rich insights on problems and solutions, based on extensive personal experience and knowledge. The book will be essential reading for anyone concerned with the future of environmental law and policy.

In 27 chapters sectoral, horizontal and constitutional problems of EU environmental law are discussed. The topics addressed include: Biodiversity conservation and nature restoration * Air quality * Water pollution and water scarcity * Climate change * Chemicals * Plant protection * Circular economy * Strategic Environmental Assessment * Direct regulation * Economic instruments * Implementation and enforcement * Environmental liability * Criminal law * Public access to information and participation * Principles of effective judicial protection * Rights of indigenous people exemplified with the Saami * Legislative design * Codification * Fundamental rights * Future generations and the law * The role of the Court of Justice of the EU * Critiques of ecological law and policy * External effects of EU environmental law and eco-legal transitology.

Events and Informations:

- **Call for papers: Special Issue Administrative Law and Governance in Contemporary States – for more information, click here (Deadline: May 30, 2027)**
- **Call for papers: Duke Law Journal 57th Annual Administrative Law Symposium February 26, 2027**, at Duke University School of Law, North Carolina – **for more information, click here**
- **The Next Frontier: Rethinking Regulation in an Era of Rapid Innovation: Friday, September 25, 2026**, at Regulatory Studies Center – The George Washington University, Washington, D.C – **for more information, click here**
- **Soft Law Summit - Accelerating Industry Self-Regulation: November 17, 2026**, at The George Washington University, Washington, D.C – **for more information, click here**
- **European Administrative Law Dialogues:** The first REALaw Dialogue of the academic year 2026/2027 will host Professor Paul Craig and will be dedicated to the discussion of the newly published 4th edition of his European Administrative Law book: **September 21, 2026, 16:00 – 17:30 CET (online) – for more information, click here**

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