

Comparative Administrative Law Scholarship Corner

Affiliation with the Yale Comparative Administrative Law Listserv

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Algorithmic Public Administration and the Right to Reasons: Due Process, Human Oversight and Judicial Review in Bangladesh and the European Union

Written in: Aug 23, 2026; Posted in SSRN: Aug 25, 2026

Akram, Arafat Rahman

Public authorities increasingly use algorithmic systems to rank, screen, predict, verify, allocate and recommend. When such systems influence welfare, licensing, recruitment, taxation, policing, education or other public services, the legal difficulty is not simply whether an algorithm is accurate. It is whether a person affected by state power can identify the basis of the decision, test its legality, obtain genuine human reconsideration and secure effective judicial review. This article develops a comparative publiclaw account of a 'right to reasons' for algorithmic administration in Bangladesh and the European Union (EU). It argues that reason-giving should be understood as a procedural bridge between administrative fairness and technical accountability: an explanation is legally meaningful only when it identifies the decisive grounds, material data, role of the automated system, and the path by which a responsible human decision-maker can reconsider the outcome. In Bangladesh, Article 31 of the Constitution, Article 102 judicial review, and Supreme Court jurisprudence on natural justice, fairness, reasonableness and application of mind provide a doctrinal foundation from which such a duty can be developed. The latest Draft V2.0 of the National Artificial Intelligence Policy 2026-2030 goes further in policy terms by requiring explainability and accountability for high-impact decisions and by recognising contestability, human review and mandatory human oversight in public-sector AI deployment. In the EU, the Charter's right to good administration and effective remedy, the GDPR, CJEU case law, and the AI Act establish a denser regulatory architecture, including human-oversight obligations and a specific right to explanation for certain high-risk AI-assisted decisions. The article contends, however, that neither transparency nor nominal human involvement is enough. It proposes a four-part model for Bangladesh: notice of algorithmic involvement, an intelligible statement of reasons, empowered human reconsideration, and a reviewable audit record. This model would preserve administrative efficiency while ensuring that automation does not create a zone of state power insulated from reasons and law.

Public Administration Is Never Finished: Balancing Bureaucratic Stability, Administrative Adaptability, and Public Service

Written in: Sep 03, 2026; Posted in SSRN: Sep 10, 2026

Bayer, Jeremy

Public administration continually requires governments to reconcile legitimate but sometimes competing organizational values. Administrative systems must provide stability, accountability, consistency, expertise, oversight, and safeguards while also remaining adaptable, responsive, coordinated, accessible, and attentive to equity. This white paper examines the historical and contemporary development of these administrative tensions and argues that neither traditional bureaucracy nor administrative reform provides a universally superior organizational model.

To translate this argument into practice, the paper develops the Adaptive Administrative Balance Framework, a practitioner-oriented evaluative model organized around seven administrative relationships: stability and adaptation; accountability and flexibility; consistency and discretion; specialization and coordination; centralization and delegated authority; administrative safeguards and citizen accessibility and responsiveness; and efficiency and equity. The framework is paired with an 11-question Administrative Evaluation Screen addressing purpose, public values, legal and ethical obligations, equity, risk, operating environment, evidence, workforce capacity, citizen experience, accountability, and adaptability.

The framework treats administrative balance as contextual rather than mathematical. Its purpose is not to identify a universally optimal structure but to help public administrators evaluate whether existing arrangements remain aligned with institutional purpose, public values, operating conditions, evidence, workforce capacity, legal and ethical obligations, citizen experience, and consequences for the public. The paper concludes that administrative design should be treated as a continuing stewardship responsibility: systems should be preserved when they remain effective, modified when evidence demonstrates misalignment, and replaced when they no longer adequately serve legitimate public purposes.

The Immigration and Asylum Bill (Part 1): a proposal to rewire the relationship between asylum appeals and the Home Office

Posted in UKCLA: Aug 26, 2026

Bell, Joanna

The system which handles appeals against the Home Office's asylum and immigration decisions looks set, once again, to be overhauled. If enacted, Part 1 of the Immigration and Asylum Bill would replace the existing First-tier Tribunal (Immigration and Asylum chamber) (FTIAC) with a new body known as the Independent Immigration Appeals Authority (IIAA) (clause 1). The existing jurisdictions of the FTIAC would be transferred to the IIAA meaning that, among other things, it would decide appeals against protection and human rights decisions (here, asylum appeals), immigration bail applications, challenges to citizenship deprivation and cases concerned with the application of the EU Citizen Resettlement schemes (clause 1(2)).

The reform is being promoted by the Home Secretary, Shabana Mahmood, as a common-sense response to the substantial backlog in the FTIAC. It is no secret that FTIAC is struggling to keep up with a growing case load. (The causes of which have been usefully analysed by Luca Rizzotti & Joe Tomlinson.) The result is that, in June 2026 more than 120,000 asylum appellants were awaiting a decision and parties are waiting 61 weeks, on average, for a resolution.

AI as a Governance Infrastructure: Democratic Authority and its Structural Conditions in the Algorithmic Age

Artificial Intelligence in Democracy: Challenges and Opportunities to Political Regimes (ed. Fernando Filgueiras), Palgrave-MacMillan

Cantero Gamito, Marta

Artificial intelligence is increasingly framed as a tool that can support democratic decision-making, enhance efficiency or improve public administration. This chapter challenges that instrumental understanding. It argues that AI should instead be analysed as a governance infrastructure that forms part of the underlying socio-technical architecture through which public authority is organised, exercised and justified, while simultaneously reconfiguring the conditions under which democratic governance operates. Far from merely automating tasks, AI redistributes authority across epistemic, institutional, temporal and normative dimensions of governance. Building on this premise, the chapter examines four structural transformations of democratic governance: the displacement of human judgment by computational decisionmaking; the incorporation of privately produced technical norms into public governance; the movement from deliberative rationales towards logics of optimisation; and the translation of contestable values into operationalised parameters. These transformations generate a set of democratic tensions around intelligibility, contestability, sovereignty and accountability that cannot be adequately understood as isolated technical or regulatory problems. The chapter conceptualises these tensions as symptoms of structural power shifts. Together, those dynamics challenge core elements of democratic governance, including the space of reasons, institutional accountability and the reversibility of public decisions. It further argues that these challenges crystallise into a governance trilemma, which illustrates a structural tension between effectiveness, democratic legitimacy and innovation that any regulatory framework for AI must navigate but cannot fully resolve. Rather than proposing specific regulatory solutions, the chapter offers a governance-oriented framework for understanding what is at stake when democratic institutions rely on AI. It concludes by arguing that preserving democracy in the age of artificial intelligence requires reclaiming control over how authority, time and normativity are structured in algorithmic systems beyond improving their technical performance.

Historical and Administrative-Legal aspects in the field of urban forestry in the context of European green policies

EU and comparative law issues and challenges series (ECLIC), [S. I.], v. 10, p. 3–47, 2026

Čeko, Ana Đanić
Kasap, Jelena
Lachner, Višnja

This paper analyzes the transformation of legal norms for urban forestry in Croatia from its fragmented 19th-century legal framework to today's holistic legal standards based on EU directives. It tracks the evolution of urban forests from being simply subjects of "regulation of police and community" in the Habsburg legal system to being integral components of the EU's "green infrastructure" paradigm in the environmental acquis. This paper applied historical legal research methodology to show how the Habsburg monarchy influenced Croatian forest law through legislation; and how those legislative developments in turn have had lasting effects on Croatian law. Additionally, a dogmatic legal analysis was performed to analyze the most recent national laws enacted regarding the topic. A comparative methodology has been used to compare the legislative developments in Croatia with that of the EU as detailed in strategic documents including the EU Biodiversity Strategy for 2030, the New EU Forest Strategy for 2030, and the European Green Deal. At the regional level of the European Union, the potential of urban and suburban areas has been highlighted by the European Union Forest Action Plan (EUFAP) since 2007–2011. The New EU Forest Strategy for 2030 encourages the expansion of forest and tree cover specifically in urban areas, supporting these initiatives through the Biodiversity Strategy and the European Green Deal. The discourse centered on the concept of normative fragmentation identified in the field of urban forestry. The law at the time defined street trees as city property or objects of "administrative policing" (primarily for maintaining public order and ensuring sustainable timber) and there were no new issues created due to the intersection of forestry with land use planning and environmental law. The authors argue that the EU policy goals of achieving climate neutrality and creating resilient cities will require a shift in the way that forests are perceived from being "economic resources" to providing "multiple functions as multifunctional ecosystem services". In addition to describing this contrast, the authors portray the difference in legal conservatism in Croatia versus the rapidly changing needs of EU law that requires a comprehensive legal approach to managing urban green space for mitigating the "heat island" effect and the loss of biodiversity. An analysis of the current legal regulations and other legal sources reveals inconsistencies, ambiguities, and legal gaps in the regulation of issues related to urban forestry, which are governed through various legal sources (regulating forests, nature and environmental protection, roads, municipal services, decisions on communal order, spatial planning, strategic documents, and others). Furthermore, problems arise regarding the competences of different public authorities and the scope of their powers. The study concludes that despite a strong legal tradition of sustainability, the Croatian case is stymied by a lack of coherence in urban greening.

The Unitary Executive Theory after Slaughter: A Comparative Hispanic Perspective

Posted in ICONnect: Sep 1, 2026

Hernández, José Ignacio

The majority decision in *Trump v. Slaughter* was not a surprise. As I previously explained in commenting on *Trump v. Wilcox*, the most likely scenario was that the Supreme Court majority would reinterpret the constitutional foundations of independent agencies and ultimately overrule *Humphrey's Executor v. United States*.

In a 6-3 decision written by Chief Justice John Roberts, the Supreme Court concluded that the Federal Trade Commission (FTC) exercises executive functions and that, as a result, the commissioners act within the scope of the executive power that Article II of the Constitution vests in the President. Consequently, Congress cannot deprive the President of control over the commissioners as executive officers, including removing them at will.

However, the decision did not provide any clear constitutional definition of "executive power" to determine when an office created by Congress acts under Article II. Inevitably, this ambiguity created tension with the decision adopted the same day in *Trump v. Cook*, No. 25A312, 609 U.S. ____ (2026), which at least indirectly affirmed the constitutionality of statutory "for cause" provisions regarding the Board of Governors of the Federal Reserve System (FRB). Before *Slaughter*, the FTC was independent because it did not exert substantial executive power; after *Slaughter*, the FTC is not independent because it does. However, the FRB is independent, although it also seems to exert executive power.

This possible contradiction highlights what I see as the key feature of U.S. administrative law: its absence of solid constitutional roots. In contrast, Hispanic-American law (which generally followed the presidential system of the U.S.) demonstrates that administrative law can be strongly grounded in constitutional principles, offering a clear substantive concept of executive power that helps determine the possible statutory limits on presidential control over agencies.

Therefore, my purpose in this post is to put in evidence the "elephant in the room": the fragile constitutional foundations of U.S. administrative law, as demonstrated by the new interpretation of the independent agencies.

The Influencers: Situating Front-end Constitutional Guardianship

Written in: Apr 02, 2026; Posted in SSRN: Apr 20, 2026

Jones, Brian Christopher

Constitutional theory remains obsessed with high-profile constitutional decision-makers, but front-end constitutional actors that provide key support and advice to decision-makers also help protect and defend constitutions. This article profiles a group of front-end constitutional actors that I call 'the influencers', which is composed of: statutory drafters, permanent secretaries, government lawyers, and house officials. After detailing the roles and responsibilities of these actors, I then look at how they influence frontline decision-makers. Next, I examine the perspectives, values, and mentalities that the influencers operate on, all of which are key to further understanding these constitutional actors. This exploration into the influencers contains significant implications for the UK constitution, such as that: disregarding influencer advice can often boil over; back-end constitutional actors are not the sole preservers of the rule of law; and front-end actors may help fill a decisive scrutiny gap regarding legislation. The influencers also contain implications for constitutional theory, in that they challenge some typical narratives found in constitutional scholarship, and they can also significantly impact constitutional success (or failure). Ultimately, deeper insight into the influencers can help us understand how to better protect and defend constitutions on the front-end.

Judicial Review of Administrative Action in Bangladesh: Doctrinal Analysis of Case Law

Journal of Law, GSTU, Volume 2, Issue 1 (2025), Pages 197-210. ISSN: 3007-7338

Kabir, Md. Humayoun
Zaman, Md. Asif Uz

The power to take administrative actions, i.e., a wide range of power to implement the laws, are exercised by the executive organ in a modern democratic State like Bangladesh. As a consequence of exercising such power, the executive has the opportunity to take actions beyond the authority of law. In this circumstance, the judicial review, i.e., the authority of the courts to review the legislative and executive actions and to decide whether these actions are consistent with the laws and values laid down in the Constitution, plays an important role to control the excessive use of administrative power. Bangladesh does not differ from this trend. There are a large number of instances where the judiciary review administrative actions in Bangladesh. However, the judiciary has some limitations to exercise its power of judicial review. It cannot interfere in every administrative action according to the principle of separation of power among the organs. Therefore, the application of judicial review varies case to case and the judiciary, through doctrinal analysis, determine each case in this regard. Following a qualitative research methodology, the present article analyses some significant judicial decisions and demonstrates doctrinal insights from case law, in order to explore how the judiciary exercises its power of judicial review over administrative action in Bangladesh and to identify ways to widen judicial review over administrative actions in Bangladesh.

From Risk-Based Regulation to Systemic-Risk Governance: Reinterpreting the EU Space Act through Contemporary Regulatory Theory

Posted in SSRN: Sept 15, 2026

Király, Péter Bálint
Lapsánszky, András

The increasing complexity of socio-technical systems has challenged traditional regulatory models centred on the supervision of individual actors. In response, regulatory theory has evolved from responsive regulation and risk-based regulation towards systemic-risk governance, which focuses on resilience, adaptation, and the management of interconnected risks. While this shift has been extensively analysed in financial, digital, and AI regulation, its implications for space governance remain underexplored. This article examines whether the proposed European Union Space Act can be understood as a manifestation of systemic-risk governance. Building on the literature on responsive regulation, risk-based regulation, and systemic-risk governance, it develops a theoretical framework and applies it through a comparative analysis of macroprudential financial regulation, the Digital Services Act, and the AI Act. The analysis demonstrates that the proposed Space Act extends beyond traditional operator-centred compliance by addressing systemic challenges such as orbital congestion, space debris, cybersecurity risks, and vulnerabilities affecting the orbital environment as a whole. Consequently, the regulation reflects key characteristics of systemic-risk governance, including lifecycle oversight, resilience-oriented regulation, and the management of collective vulnerabilities.

Systemic Imbalances in Integrity Management Systems: A Meso-Level Framework From Four Corruption Scandals

Regulation & Governance 1–17; September 2026

Kominis, Georgios

Dudau, Adina

Favotto, Alvise

Rodriguez-Olivari, Denisse

Integrity management systems (IMs) are increasingly promoted to embed ethical conduct, mitigate corruption risks, and strengthen organizational accountability. Yet empirical evidence on their effectiveness remains sparse and contradictory, offering little insight into how these systems operate in practice and why they often fail in heavily formalized organizational settings. This paper addresses that gap by developing a meso-level framework for diagnosing systemic imbalances in IMs. Drawing on systems theory and management control literature, we conceptualize IMs as an integrity management package structured through four levers: belief, boundary, diagnostic, and interactive systems of control. We deploy this framework through an explanatory, multi-case design spanning four major corruption scandals in infrastructure, defense, healthcare, and banking in the UK, Italy, Greece, and the Nordic–Baltic region, drawing on a triangulated dataset built through systematic web scraping. The cross-case analysis shows that integrity failures are not explained simply by the absence of formal controls, but by recurring imbalances among control levers. Organizations tend to privilege boundary and diagnostic systems, such as rules, procedures, monitoring, and performance metrics, while under-investing in belief and interactive systems that should enable ethical culture, dialogue, challenge, and learning. We theorize this imbalance as a compliance façade: formally robust but weakly embedded in organizational practice. The paper thereby reframes the compliance versus values debate in ethics scholarship, offering the first empirically grounded, cross-sectoral model of how integrity is embedded, sustained, and undermined in organizations, with implications for redesigning IMs across public, private, and hybrid settings.

Corruption and Uneven Development: Why Anti-Corruption Fails in the EU's Most Vulnerable Regions

Regulation & Governance 1–18; September 2026

Kubbe, Ina

Panov, Stoyan

Nugroho, Wisnu Setiadi

Kırşanlı, Faith

This article challenges the assumption that legal harmonization within the European Union ensures effective anti-corruption governance. Despite EU-compliant frameworks, institutional integrity remains highly uneven across subnational territories. We introduce the Regional Integrity Framework (RIF), a diagnostic approach that integrates citizen perceptions, procurement indicators, and enforcement activation measures to capture regional integrity performance. The analysis suggests that formal convergence can conceal functional divergence, as peripheral regions often exhibit weaker administrative capacity, limited oversight, and uneven institutional activation. A mixed-methods application that combines panel analysis with an illustrative comparison of Sofia and Vidin, Bulgaria, demonstrates how the RIF can diagnose territorial integrity gaps within a shared legal framework. Conceptually, the study reframes anti-corruption as a territorially embedded problem of institutional activation; methodologically, it offers a transferable framework for identifying enforcement asymmetries and governance disparities in multi-level systems.

The Rational Design of Space Agreements: How Bilateralism Shapes Powerful States' Design Preferences

Regulation & Governance 1–15; August 2026

Morin, Jean-Frédéric
Evoy, Philippe
Couette, Cynthia

The global governance of outer space relies heavily on international agreements, yet the institutional forms of these agreements remain underexplored. This article introduces a new dataset on various design features of 952 space agreements, offering the first large-N overview of institutional design in space governance. Building on rational design theory, this article analyzes how these design features interact with one another and with negotiation structures. Our results reveal systematic trade-offs and suggest that power asymmetry has contrasting effects depending on the context: Powerful states tend to favor greater delegation, precision, and enforcement in bilateral agreements, while often resisting them in multilateral settings. These findings underscore the importance of accounting for both power dynamics and bilateralism, two contextual factors often overlooked in rational design theory. By making the dataset publicly available, the article seeks to foster further research on the causes and consequences of institutional variation in space governance and to advance comparative institutionalist scholarship across issue-areas of global governance.

The Political Economy of Data Protection Governance in Africa: Institutional Revenue Generation, Regulatory Monetisation, and Comparative Compliance Design

Written in: Sept 02, 2026; Posted in SSRN: Sept 16, 2026

Owoade, Adeyemi

Over the past five years, sub-Saharan Africa has produced one of the fastest-growing bodies of data protection legislation in the world, yet the institutional design underlying this expansion has received comparatively little scholarly attention. This article examines a structural feature that distinguishes several of the continent's leading data protection regimes from the European model that inspired them: the deliberate integration of fee-based revenue mechanisms into routine compliance workflows. Drawing on the statutory and regulatory architecture of Nigeria, Kenya, Tanzania, and Uganda, the article maps a common pattern of tiered enterprise registration fees, recurring renewal cycles, mandatory statutory audits, and privatised compliance intermediation, and situates this pattern within the broader political economy of regulatory finance in resourceconstrained states. It then contrasts these monetised architectures with the European Union's accountability-based framework under the General Data Protection Regulation and the United Kingdom's lower-friction cost-recovery model, arguing that the European experience demonstrates that meaningful data protection compliance does not require upfront enterprise monetisation. The article concludes that, left unreformed, monetised registration and audit regimes risk converting data protection enforcement into a transactional exercise in fee collection, with disproportionate consequences for micro, small, and medium enterprises, and proposes a four-pillar reform agenda centred on budgetary independence for supervisory authorities, risk-based audit supervision, fee simplification, and outcome-oriented regulatory performance metrics.

Soft Law with Hard Consequences: The De Facto Binding Nature of Regulatory Notifications in Japanese Pharmaceutical Governance

Written in: Aug 21, 2026; Posted in SSRN: Aug 25, 2026

Practitioner GMP

Administrative notifications issued by the Japanese Ministry of Health, Labour and Welfare (MHLW) are formally classified as non-binding soft law. In pharmaceutical regulation, however, these notifications are routinely invoked during GMP and GQP inspections, effectively transforming them into de facto binding standards. This paper examines the institutional mechanism through which inspection practice hardens soft law into operational obligations. Drawing on three case studies—the institutionalization of the L-shaped contractual arrangement, KPI-based oversight of manufacturers by Marketing Authorization Holders (MAHs), and the expansion of duplicated supplier audit expectations—the paper demonstrates how inspection-driven implementation extends regulatory obligations beyond their formal legal basis. Rather than merely strengthening accountability, these developments frequently redistribute responsibility without corresponding authority, information access, or scientific oversight, creating structural inconsistencies within Japan's pharmaceutical governance framework. The analysis further argues that this process is reinforced by two institutional characteristics unique to the Japanese system: the reliance on the Marketing Authorization Document (MAD), rather than the internationally harmonized Common Technical Document (CTD), as the principal operational regulatory reference, and a decentralized inspectorate that relies heavily on administrative notifications to maintain regulatory consistency. As a consequence, soft law increasingly functions as an informal mechanism of norm creation without the procedural safeguards normally associated with formal legislation. A comparative examination of FDA and EMA guidance development highlights the absence in Japan of structured public consultation, systematic post-implementation review, and evidencebased feedback mechanisms. The paper concludes that while soft law remains indispensable in technically complex regulatory systems, its unchecked hardening through inspection practice risks weakening the alignment between legal responsibility, operational authority, information access, and scientific oversight, thereby undermining the scientific governance upon which modern GMP systems depend.

Administrative Law and Public-Private Partnerships: A Comparative Analysis of England and India

ISBN 9781032599656, Published May 29, 2026 by Routledge

Sabhapandit, Santanu

This book develops an understanding of how the public-private distinction operates in judicial review and freedom of information laws in England and India, and examines how the distinction may affect public law accountability for Public-Private Partnerships. Drawing on experiences from England, it examines some of the public law concerns that arise from the participation of the private sector in the provision of public sector services. The comparative approach sheds light not just on the similarities but also on some important differences in the working of the public-private distinction across the two mechanisms of judicial review and freedom of information laws, and across the two jurisdictions. Since differences in drawing those distinctions may lead to different outcomes for the amenability of entities to public law, the research undertaken in this book is helpful not only in expounding, but also predicting the working of the public-private distinction. Scholarship on administrative law from the Global South has hitherto been limited, and this comparative study presents a valuable contribution towards addressing this gap. The book will be of interest to practitioners, academics, researchers and policy-makers working in the areas of Administrative Law and Comparative Law.

Who Governs the Governors? Constitutional Supremacy, Algorithmic Sovereignty and the Democratic Control of Computational Power

Written in: Sept 04, 2026; Posted in SSRN: Sept 15, 2026

Salomão de Oliveira; Northon

Constitutional supremacy doctrine assumes that whenever public power is exercised, that exercise can be traced back, through an identifiable chain of delegation, to a source of authority that is itself subject to legal and political accountability. This article asks whether that assumption still holds for the governance of computational power. Drawing on a comparative analysis of the United States (the end of Chevron deference and the survival of voluntary agency guidance), the European Union (the AI Office, the AI Board, and the 2025-2026 "Digital Omnibus" simplification process), the Council of Europe's Framework Convention on Artificial Intelligence, and Brazilian doctrine on the limits of regulatory delegation, the article identifies a recurring pattern: bodies that exercise substantial normative influence over computational systems are frequently structured in forms—voluntary standards, cooperative agreements, treaty follow-up mechanisms, self-judging security exceptions—that fall outside the categories that constitutional and administrative law use to trigger judicial or legislative accountability. The article calls this pattern "categorical evasion" and argues that it constitutes a distinct constitutional problem, separate from the more familiar questions of algorithmic bias, transparency, or tort liability that dominate the literature on AI governance. The article's original contribution is the identification of instrument-selection, rather than delegation as such, as the operative mechanism of the accountability gap, and the proposal of a Meta-Governance Accountability Standard (MGAS) that conditions the legal effect of technical governance instruments on their reviewability rather than on their formal label. The analysis is doctrinal and comparative rather than empirical, and its conclusions are correspondingly limited to the jurisdictions and instruments examined. characterization of sources, interpretations, and conclusions contained in the final manuscript.

Foreign law before the Italian Administrative Law Courts

To be Published in Italian Reports to the 22nd Congress of the International Academy of Comparative Law, Berlin, Humboldt Universität, 28 September - 2 October 2026

Scarciglia, Roberto

This report examines the limited but evolving role of foreign law before Italian administrative courts. Historically marginalized by the autonomous doctrinal tradition of Italian administrative law, foreign law has gained relevance only in the past few decades, largely driven by European integration, the case law of the Court of Justice of the European Union, and the transnational circulation of legal principles. The author distinguishes between the mandatory and voluntary examination of foreign law, identifying key contexts in which Italian administrative judges are required to engage with foreign legal materials—including the recognition of foreign administrative acts and qualifications, immigration and international protection proceedings, and civil status matters formed abroad. The analysis further explores the methods by which foreign law is applied (as *lex causae* or as a factual prerequisite), the indirect influence of European Union law—itsself shaped by German, French, English, and Scandinavian legal traditions—and the operation of Italian private international law (Law No. 218/1995), which since 1995 has entrusted judges with the *ex officio* ascertainment of foreign law. Practical obstacles are also addressed, notably linguistic barriers, the scarcity of specialized institutional resources, and the emerging but still judicially subordinate role of artificial intelligence tools in legal research. The report concludes that, despite occasional instances of indirect or "spillover" comparativism, Italian administrative judges rarely engage in genuine comparative methodology, reflecting broader gaps in academic training and institutional culture regarding comparative administrative law.

Making Water Investible: Development Banking, Regulatory Governance, and the Institutional Production of Sanitation Infrastructure in Brazil

Regulation & Governance 1–11; September 2026

Schramm, Charles Corrêa
Gabriel, João Paulo Nicolini

Why did long-horizon private investment in Brazilian water and sanitation expand after 2016 despite fragmented authority and persistent political contestation? This article places the Brazilian Development Bank (BNDES) inside, rather than outside, the credible-commitment framework. It argues that the bank operated as a credibility intermediary: it assembled service territories at investible scale, financed and coordinated project preparation, translated statutory goals into comparable contracts, and linked concessions to long-term finance. These functions complemented courts, legislatures, the national standard-setting role of the National Water and Basic Sanitation Agency (ANA), and post-award supervision by infranational regulators. Process tracing of laws, concession documents, regulatory instruments, auction records, corporate filings, and attributable investor statements shows how this architecture was repeated across the Temer, Bolsonaro, and Lula administrations, albeit under different political framings. The mechanism is sequence-sensitive but not universally necessary: Chile demonstrates an alternative route through regional utilities and a central regulator, while Colombia illustrates the continuing constraints of fragmented provision. The article also distinguishes investibility from legitimacy. Financial and contractual discipline can make commitments more legible to investors, but it neither replaces public-law oversight nor resolves disputes over affordability, participation, and the human right to water.

The Administrative Three-Body Problem: Loper Bright and the Regulatory Center of Gravity

11 U. Penn. J.L. Pub. Aff. 1 (2026)

Strada, Matthew

The administrative state is defined by a complex set of relationships among the executive, legislative, and judicial branches. The laws, norms, and practices that govern the three bodies in the administrative system collectively establish a decision-making center of gravity that, for forty years, favored agencies because federal courts were required to defer to agency interpretations of ambiguous statutory language. In *Loper Bright Enterprises v. Raimondo*, the Supreme Court disturbed the administrative threebody system and put in motion shifts that will result in a decisional center of gravity that favors courts and Congress. While many commentators have noted that this change will result in the deprecation of expertise in decision-making, its impacts will be more profound. The agency decision-making framework is uniquely suited to high-quality decision-making. It includes laws and norms that promote transparency, stakeholder participation, the use of the best available evidence, avoidance of conflicts of interest, and coordination. Agencies also act under express mandates to consider the public interest in their decisions. The judicial and legislative frameworks lack this full array of controls and processes and thus are less favorable environments for high-quality decision-making. As a result, *Loper Bright* is likely to lead to lower-quality regulatory decision-making unless the courts or Congress use the tools that remain available to them to ensure that agencies retain primacy.

Delegation and Independent Judgment

Notre Dame Law Review, Vol. 101, forthcoming 2027

Walker, Christopher J

In *Delegation and Time*, Jonathan Adler and I argued that Congress should revive a regular reauthorization process to address the temporal problem with statutory delegations to federal agencies. That is, Presidents and federal agencies use broad delegations in old statutes to address new problems in ways that the enacting Congress would not have contemplated and the current Congress would not authorize. In the six years since that article's publication, the Article II “delegation and time” problem has been compounded by an Article III “delegation and independent judgment” problem. Perhaps in response to the temporal challenges of delegation, the Supreme Court has introduced the major questions doctrine and replaced *Chevron* deference with a command that courts exercise independent judgment to resolve ambiguities in statutes that agencies administer. While arguably aimed at reining in the President and federal agencies, these doctrines also make it harder for Congress to legislate. Worse, the doctrines introduce the significant risk that courts will exercise their independent judgment to interpret statutes in ways contrary to the will of either the enacting Congress, the current Congress, or both.

This Essay argues that, in this new era of Article III independent judgment in administrative law, it is all the more important for Congress to revisit statutes governing federal agencies. Congress must be able to address the Article II problem of Presidents and federal agencies attempting to use and misuse old statutes to address new problems. And now Congress must also be able to address the Article III problem of courts interpreting statutes incorrectly as an original matter or contrary to current congressional preferences. Critics of Article II overreach and those of Article III overreach—who often come from different sides of the aisle—should both embrace regular reauthorization and related tools that encourage Congress to revisit and update statutes governing the administrative state.

Bureaucracy and Distrust: The Civil Service in the Constitution

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Yong, Ben

Faith in democracy and established institutions seems to be at a low ebb. Democratic backsliding – the weakening or evisceration of institutions designed to sustain democracy – appears to be spreading. ‘Intermediary’ institutions like the bureaucracy are seen as obstructing populist politicians. But we are in danger of forgetting that no successful state can function without a bureaucracy. So what is the role of the civil service in a democracy, and what are the limits to that role? This article examines traditional understandings of the UK civil service in public law theory. The civil service has largely been neglected by constitutional scholars, in part because the dominant constitutional doctrine of ministerial responsibility tells us that what matters are ministers. Ministerial responsibility also underpins the internal law of the civil service: the primary duty of civil servants is to support ministers. This duty, however, crowds out other institutional norms and practices that the UK civil service has quietly maintained but whose basis has been kept deliberately ambiguous. An alternative view – that the civil service has a constitutional personality separate from the incumbent government (sometimes expressed as a higher duty to ‘the Crown’ or state) – is explored in this article but found wanting. Finally, this article addresses a hypothetical: how might the civil service respond to a populist government intent on backsliding? It concludes that the UK civil service is highly vulnerable to a government intent on democratic backsliding. It also concludes that preparations for this eventuality should start sooner rather than later.

The Civil Service: A Public Good, Not the Enemy Within

UKCLA August 27, 2026

Yong, Ben

Reform Party MP Danny Kruger is concerned. The UK, he says, has 'a bloated, paralysed centre of government and a mutinous bureaucracy'; and that 'Real power is held not by the elected government but by the permanent Civil Service'. So he has set out some proposed changes for the civil service should Reform become the government. These proposals prompt us to ask: what is the civil service for?

The Unitary Executive and Congress's Options in Delegating Power to Enforce Federal Law

Duke Law School Public Law & Legal Theory Series No. 2026-50

Young, Ernest

The central separation of powers issue of our time is the tension between ensuring democratic accountability of the administrative state and checking the ever-growing power of the President. The first is often thought to be achievable only through the unitary executive—that is, by subordinating all of the federal administrative state to an elected President. But the seemingly unavoidable cost of that prescription is to supercharge the President's personal power by forbidding Congress to shield elements of the bureaucracy from direct presidential control. The Supreme Court's recent decision in *Trump v. Slaughter*, which held that all officers exercising executive power must serve at the President's pleasure, gave new urgency to this dilemma.

This article proposes that at least a partial solution has been hiding in plain sight. Congress retains—and has long exercised—the power to delegate authority to administer and enforce federal law outside the executive branch altogether to states and private persons. Most federal regulatory and benefit schemes are cooperative federalism arrangements under which states exercise a great deal of discretion in implementing and enforcing federal law. And a broad range of federal statutes in securities, antitrust, consumer protection, environmental law, and more employ private attorneys general to supplement governmental enforcement. These arrangements do not violate the unitary executive principle because states and private actors do not exercise the executive power "of the United States." And they offer a degree of independence far beyond that of traditional independent federal agencies. The existing diversification of federal enforcement should allay fears about the demise of Humphrey's Executor and also point the way for further legislative reform.

Events and Informations:

- **22nd General Congress of the International Academy of Comparative Law (IACL) Berlin** – **for more information, click here**
- **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**

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