## Comparative Administrative Law Second Edition

Edited by

Susan Rose-Ackerman

Henry R. Luce Professor Emeritus of Law and Political Science, Yale University, USA

### Peter L. Lindseth

•limpiad S. Ioffe Professor of International and Comparative Law, University of Connecticut, USA

Blake Emerson

Assistant Professor of Law, UCLA School of Law, USA

RESEARCH HANDBOOKS IN COMPARATIVE LAW



Cheltenham, UK • Northampton, MA, USA

• The Editors and Contributors Severally 2017

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical or photocopying, recording, or otherwise without the prior permission of the publisher.

Published by Edward Elgar Publishing Limited The Lypiatts 15 Lansdown Road Cheltenham Glos GL50 2JA UK

Edward Elgar Publishing, Inc. William Pratt House 9 Dewey Court Northampton Massachusetts •1060 USA

1 Bara

Paperback edition 2019

A catalogue record for this book is available from the British Library

Library of Congress Control Number: 2017931774

This book is available electronically in the **Elgar**online Law subject collection DOI 10.4337/9781784718671

Printed on elemental chlorine free (ECF) recycled paper containing 30% Post-Consumer Waste

ISBN 978 1 78471 865 7 (cased) ISBN 978 1 78471 867 1 (eBook) ISBN 978 1 78471 866 4 (paperback)

Typeset by Servis Filmsetting Ltd. Stockport, Cheshire Printed and bound in the USA

### Contents

	List of contributors Acknowledgements	
	oduction an Rose-Ackerman, Peter L. Lindseth, and Blake Emerson	
PAI	RT I CONSTITUTIONAL STRUCTURE AND ADMINISTRATIVE LAW: TRADITIONS AND TRANSFORMATIONS	
	<i>Révolution, Rechtsstaat</i> and the Rule of Law: historical reflections on the emergence and development of administrative law <i>Bernardo Sordi</i>	23
2	Good-bye, Montesquieu Bruce Ackerman	38
3	Politics and agencies in the administrative state: the U.S. case Peter L. Strauss	44
4	Written constitutions and the administrative state: on the constitutional character of administrative law <i>Tom Ginsburg</i>	60
5	Comparative positive political theory and empirics M. Elizabeth Magill and Daniel R. Ortiz	71
6	The 'Neue Verwaltungsrechtswissenschaft' against the backdrop of traditional administrative law scholarship in Germany Andreas Voßkuhle and Thomas Wischmeyer	85
7	Transformations of administrative law: Italy from a comparative perspective <i>Marco D'Alberti</i>	102
8	Hungary's post-socialist administrative law regimes Kriszta Kovács and Kim Lane Scheppele	119
PAF	AT II ADMINISTRATIVE INDEPENDENCE	

9	The promise of comparative administrative law: a constitutional perspective	
	on independent agencies	139
	Daniel Halberstam	

vi	Comparative	e administra	ative law

10	The puzzle of independence and parliamentary democracy in the common law world: a Canadian perspective Lorne Sossin	159
11	Assessing the theory of presidential dominance: empirical evidence of the relationship between the executive branch and regulatory agencies in Brazil <i>Mariana Mota Prado</i>	181
12	Experimenting with independent commissions in a new democracy with a civil law tradition: the case of Taiwan <i>Jiunn-rong Yeh</i>	198
13	Flag-bearers of a new era? The evolution of new regulatory institutions in India (1991–2016) Arun Kumar Thiruvengadam	218
14	A comparison of US and European independent commissions Martin Shapiro	234
PAF	RT III TRANSPARENCY, PROCEDURE, AND POLICY-MAKING	
15	Citizens and technocrats: an essay on trust, public participation, and government legitimacy <i>Susan Rose-Ackerman</i>	251
16	The rise of reason giving in American administrative law Jerry Mashaw	268
17	The 2015 French code of administrative procedure: an assessment <i>Dominique Custos</i>	284
18	Three generations of administrative procedures Javier Barnes	302
19	Administrative agencies as creators of administrative law norms: evidence from the UK, France and Sweden Dorit Rubinstein Reiss	319
20	Comparing regulatory oversight bodies: the US Office of Information and Regulatory Affairs and the EU Regulatory Scrutiny Board Jonathan B. Wiener and Alberto Alemanno	333
21	Looking for a smarter government (and administrative law) in the age of uncertainty <i>Giulio Napolitano</i>	352
22	Participation and expertise: judicial attitudes in comparative perspective <i>Catherine Donnelly</i>	370

#### PART IV ADMINISTRATIVE LITIGATION AND ADMINISTRATIVE LAW

23	Judicial review of questions of law: a comparative perspective <i>Paul Craig</i>	389
24	Proportionality review in administrative law Jud Mathews	4●5
25	Voidness and voidability of unilateral administrative acts in the Western tradition Gabriel Bocksang Hola	42●
26	The powers and duties of the French administrative law judge Jean Massot	435
27	Judicial review of agency action in the U.S. and Israel: the choice between open and closed review Michael Asimow and Yoav Dotan	446
28	The 'double helix' of process and substance review before the UK Competition Appeal Tribunal: a model case or a cautionary tale for specialist courts? Athanasios Psygkas	462
29	Judicial deference to agency's discrction in new democracies: observations on constitutional decisions in Poland, Taiwan, and South Africa <i>Cheng-Yi Huang</i>	478
30	Legal management of urban space in Japan and the role of the judiciary Narufumi Kadomatsu	497
31	The courts and public space: France, the UK and the US in historical perspective <i>Thomas Perroud</i>	513
PAI	RT V ADMINISTRATIVE LAW AND THE BOUNDARIES OF THE STA	TE
PAI	RT A PUBLIC AND PRIVATE	
32	Three questions of privatization Daphne Barak-Erez	533
33	Contracting out and 'public values': a theoretical and comparative approach <i>Jean-Bernard Auby</i>	55 <b>2</b>
34	•rganizational structure and culture in an era of privatization: the case of United States military and security contractors Laura A. Dickinson	566
35	Transnational non-state regulation and domestic administrative law <i>Victor V. Ramraj</i>	582

viii Comparative administrative law

# PART B ADMINISTRATIVE LAW BEYOND THE STATE: THE CASE OF THE EU

36	A framework for historical comparison of control of national, supranational and transnational public power Peter Cane	601
37	EU Agencies 2.0: the new constitution of supranational administration beyond the EU Commission <i>Johannes Saurer</i>	619
38	Administrative discretion in the EU: comparative perspectives <i>Joana Mendes</i>	632
39	Administrative law reform in the European Union: the ReNEUAL Project and its basis in comparative legal studies Herwig C.H. Hofmann and Jens-Peter Schneider	650
40	The constitutional basis of EU administrative law <i>Matthias Ruffert</i>	667
41	What's in a label? The EU as 'administrative' and 'constitutional' <i>Peter L. Lindseth</i>	680
Inde	e.x	699