## Contents

- **List of contributors** viii
- **Acknowledgements** xviii

Comparative administrative law: an introduction
*Susan Rose-Ackerman and Peter L. Lindseth* 1

### PART 1 HISTORICAL PERSPECTIVES

1. *Révolution, Rechtsstaat* and the Rule of Law: historical reflections on the emergence of administrative law in Europe
   - Bernardo Sordi 23

2. Explaining administrative law: reflections on federal administrative law in nineteenth century America
   - Jerry L. Mashaw 37

3. Testing Weber: compensation for public services, bureaucratization, and the development of positive law in the United States
   - Nicholas Parrillo 47

4. Administrative law and the public regulation of markets in a global age
   - Marco D’Alberti 63

5. Administrative law in East Asia: a comparative-historical analysis
   - John Ohnesorge 78

6. Administrative state socialism and its constitutional aftermath
   - Kim Lane Schepple 92

### PART 2 CONSTITUTIONAL STRUCTURE AND ADMINISTRATIVE LAW

7. Written constitutions and the administrative state: on the constitutional character of administrative law
   - Tom Ginsburg 117

8. Good-bye, Montesquieu
   - Bruce Ackerman 128

9. Comparative positive political theory
   - *M. Elizabeth Magill and Daniel R. Ortiz* 134

10. Overseeing the executive: Is the legislature reclaiming lost territory from the courts?
    - Tom Zwart 148

11. ‘Creatures of the state’: regulatory federalism, local immunities, and EU waste regulation in comparative perspective
    - Fernanda G. Nicola 161
Comparative administrative law

PART 3 ADMINISTRATIVE INDEPENDENCE

12 The promise of comparative administrative law: a constitutional perspective on independent agencies
   Daniel Halberstam
   185

13 The puzzle of administrative independence and parliamentary democracy in the common law world: a Canadian perspective
   Lorne Sossin
   205

14 Presidential dominance from a comparative perspective: the relationship between the executive branch and regulatory agencies in Brazil
   Mariana Mota Prado
   225

15 Experimenting with independent commissions in a new democracy with a civil law tradition: the case of Taiwan
   Jiunn-rong Yeh
   246

16 Understanding independent accountability agencies
   John M. Ackerman
   265

17 Independent administrative authorities in France: structural and procedural change at the intersection of Americanization, Europeanization and Gallicization
   Dominique Custos
   277

18 A comparison of US and European independent agencies
   Martin Shapiro
   293

PART 4 TRANSPARENCY, PROCEDURE, AND ADMINISTRATIVE POLICY-MAKING

19 Comparing regulatory oversight bodies across the Atlantic: the Office of Information and Regulatory Affairs in the US and the Impact Assessment Board in the EU
   Jonathan B. Wiener and Alberto Alemanno
   309

20 Towards a third generation of administrative procedure
   Javier Barnes
   336

21 Participation and expertise: judicial attitudes in comparative perspective
   Catherine Donnelly
   357

22 Administrative agencies as creators of administrative law norms: evidence from the UK, France and Sweden
   Dorit Rubinstein Reiss
   373

PART 5 ADMINISTRATIVE LITIGATION AND ADMINISTRATIVE LAW

23 The origins of American-style judicial review
   Thomas W. Merrill
   389

24 The powers and duties of the French administrative judge
   Jean Massot
   415
25 Judicial review and merits review: comparing administrative adjudication by courts and tribunals
Peter Cane
26 Judicial review of questions of law: a comparative perspective
Paul Craig
27 Judicial deference to legislative delegation and administrative discretion in new democracies: recent evidence from Poland, Taiwan, and South Africa
Cheng-Yi Huang
28 Where too little judicial deference can impair the administrative process: the case of Ukraine
Howard N. Fenton

PART 6  ADMINISTRATIVE LAW AND THE BOUNDARIES OF THE STATE

A. The Boundary between Public and Private

29 Three questions of privatization
Daphne Barak-Erez
30 Contracting out and ‘public values’: a theoretical and comparative approach
Jean-Bernard Auby
31 Organizational structure, institutional culture and norm compliance in an era of privatization: the case of US military contractors
Laura A. Dickinson
32 Financial crisis and bailout: legal challenges and international lessons from Mexico, Korea and the United States
Irma E. Sandoval
33 The role of the State in (and after) the financial crisis: new challenges for administrative law
Giulio Napolitano

B. Administration Beyond the State: The Case of the European Union

34 A restatement of European administrative law: problems and prospects
George A. Bermann
35 Adversarial legalism and administrative law in the European Union
R. Daniel Kelemen
36 Supranational governance and networked accountability structures: Member State oversight of EU agencies
Johannes Saurer
37 Individual rights and transnational networks
Francesca Bignami

Index