Contents

List of contributors viii
Acknowledgements xviii

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

PART 1 HISTORICAL PERSPECTIVES

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

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

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

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

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

6 Administrative state socialism and its constitutional aftermath 92
Kim Lane Scheppele

PART 2 CONSTITUTIONAL STRUCTURE AND ADMINISTRATIVE LAW

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

8 Good-bye, Montesquieu 128
Bruce Ackerman

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

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

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

PART 3  ADMINISTRATIVE INDEPENDENCE

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

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

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

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

16 Understanding independent accountability agencies 265
   John M. Ackerman

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

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

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 309
   Jonathan B. Wiener and Alberto Alemanno

20 Towards a third generation of administrative procedure 336
   Javier Barnes

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

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

PART 5  ADMINISTRATIVE LITIGATION AND ADMINISTRATIVE LAW

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

24 The powers and duties of the French administrative judge 415
   Jean Massot
Contents vii

25 Judicial review and merits review: comparing administrative adjudication by courts and tribunals
Peter Cane 426

26 Judicial review of questions of law: a comparative perspective
Paul Craig 449

27 Judicial deference to legislative delegation and administrative discretion in new democracies: recent evidence from Poland, Taiwan, and South Africa
Cheng-Yi Huang 466

28 Where too little judicial deference can impair the administrative process: the case of Ukraine
Howard N. Fenton 482

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 493

30 Contracting out and ‘public values’: a theoretical and comparative approach
Jean-Bernard Auby 511

31 Organizational structure, institutional culture and norm compliance in an era of privatization: the case of US military contractors
Laura A. Dickinson 524

32 Financial crisis and bailout: legal challenges and international lessons from Mexico, Korea and the United States
Irna E. Sandoval 543

33 The role of the State in (and after) the financial crisis: new challenges for administrative law
Giulio Napolitano 569

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

34 A restatement of European administrative law: problems and prospects
George A. Bermann 595

35 Adversarial legalism and administrative law in the European Union
R. Daniel Kelemen 606

36 Supranational governance and networked accountability structures: Member State oversight of EU agencies
Johannes Saurer 618

37 Individual rights and transnational networks
Francesca Bignami 632

Index 639