Index

Aarhus Convention (1998) 367
Abilene Cotton Oil Co. (1907) 397–8, 400
access to justice 420–21
accountability 2, 5
agencies 7
enhanced by regulatory oversight 310–11
EU see accountability of EU agencies
independent see independent accountability agencies
democratic 1, 7, 9, 11, 18, 294
democratic deficit see democracy
EU, and 304–5, 613
technocracy, and see technocracy
globalization, and 337
‘networked’ see supranational governance and networked accountability structures
political 122, 258, 298–9
economic emergency 583–5
EU Commission 319
ROBs 312, 319
technocracy, and see technocracy
accountability of EU agencies 11–12, 303–5, 603, 618–25
accountability framework of European agency administration 620–21
multi-principals system 620
unity and diversity of accountability designs 620–21
comparison of EU/US/German agencies 625–7
Germany and 623–4
indirect administration to governance of administrative networks 618–19
institutional design 620–21
oversight mechanisms of Member States 621–5
compensatory and complementary functions 627–8
expert committees 622
external mechanisms 622–5
internalized mechanisms 621–2
judicial review 622–3
see also judicial review
management and administrative boards 621–2
oversight through political processes 623–5

Ackerman, Bruce 5, 137, 138
Ackerman, John M. 8
acte administratif see France
administrative adjudication see judicial review and merits review
administrative agencies see agencies
Administrative Appeals Tribunal Act (1975) see United Kingdom (UK)
administrative independence 2, 6–8
agencies and tribunals, importance for 8
Australia 219–21
Brazil 226–8
Canada 213–16
meaning and concept 6, 212–13, 216–22
New Zealand 221–2
UK 216–19
US 227
see also independent administrative agencies; independent regulatory agencies and commissions
administrative judges 3, 12–13, 33, 284, 416, 586
tenure see tenure
see also judiciary
administrative law 1, 23
adversarial liberalism, and see adversarial liberalism and administrative law
boundaries 120–21
constitutional character of 117–23
localism 119–21
constitutional law, and 4–6, 117
constitutionalism in 186–92
identifying the agent’s principal 189–92
independent agencies and implementation of policy 188–9
institutional implications of administrative law 186–8
theory versus practice of ‘administrative’ law 188–92
East Asia see East Asia administrative law
EU see European administrative law
Europeization 606, 611
see also adversarial liberalism and administrative law
evolution and historical institution, as 2–4, 23–36, 76
Revolution, and 23–8
financial crisis, and see financial crisis

639
Susan Rose-Ackerman and Peter L. Lindseth - 9781849808101
Downloaded from Elgar Online at 03/20/2019 06:52:34PM via free access
functions 118–19
independent commissions, and 256–7
institutions enduring 121–2
market and public regulation see public regulation of markets in global age
new 336–42, 352–4
global administrative law 336–7
new governance models 339, 344, 352–4
new procedural functions for new administrative law 340–42
partnerships and collaborative governance 337–8
separation of powers, interactions between 338–9
shortcomings of traditional administrative procedure acts 339–40
systems as an element of uncodified constitutions 125–6
independent commissions, and 256–7
inferiority of 123
transfer programs, and 578
administrative litigation 2, 12–14, 89
see also judicial review and merits review under Australia
administrative procedure 14,
growing importance of 341
independent commissions, and 257–8
model for economic emergencies 585–6
notice and comment 89, 154, 258, 345, 373, 443, 627
United States see United States (US)
participation 2, 8, 10, 11, 17, 193
demands for 614
EU 304–5, 610, 614
expertise, and 357–72
see also judicial review
France 284–5
privatization, in 504–5
stakeholders 284
reason-giving 16, 144, 195, 284
contracting out 514
EU, and 613
EU agencies 300
regulatory agencies 11, 300
rule-making see rulemaking procedures
shortcomings of traditional administrative procedure acts 339–40
third generation procedures 343, 344,
349–54
individual decision procedures 350–51, 352
procedural arrangements for new modes of governance 352–4
rulemaking procedures 352
three generations of 19, 342–54
first generation procedures 343, 344–5
second generation procedures 343, 344, 345–9
third generation procedures 343, 344, 349–54
transformation of administrative procedure 342–4
transparency 2, 3, 5, 6, 8, 10, 11, 12, 15, 16
agency rule-making 10–11
bailout 544, 547, 549, 557–9, 563–6, 585
comitology 299
consultation and utilities regulation, and 374–85
contracting out 514, 516, 519
demands for 5, 8, 614
EU 299, 304–5, 610, 613–14
major systems 120
privatization, and 16, 505, 525
South Korean bailout 558
Administrative Procedures Act see United States
administrative rulemaking see rulemaking procedures
administrative state socialism see rulemaking procedures
administrative state socialism 4, 92–114
administrative states 92
comparative administrative law 4, 92–114
administrative states 92
Hungary see Hungary
Imperial Russia 92, 94–5
Russian historical trajectory and model of soviet governance 94–100
All Russian Congress 96–7
centrality of administration 95–6, 110
Communist Party influence 98–9, 100
centration of power in few bodies 99
Constitution 96–7
Council of People’s Commissars 98
defined by state socialism 96
ideological collapse 93
perestroika 102
political revolutions 93
privatization 93
regulation and rule by administration 93
Russia’s move from 111
Stalin Constitution 97–9
Supreme Soviet 98
USSR Constitution 98
administrative states 92
written constitutions, and 123–5
adversarial legalism and administrative law 17,
87, 606–15
adversarial legalism in European administrative law 611–15
ECJ development of administrative law 611–13
European integration promoting 606, 608–11
economic liberalization 608
political fragmentation 608–11
European variant 607, 610–11
political foundations in EU 606
see also Kagan, Robert
Africa (also African) 1, 19, 415
agencies 3, 6–8
accountability see independent accountability agencies
administrative 6–8, 193, 256–7
independent see independent administrative agencies
administrative norms, as creators of 373–86
audit 5, 124, 311, 316, 318, 321, 325, 620
process and policy 9–12
regulatory see independent regulatory agencies
role 7, 8, 15
US/German/EU agencies compared 625–7
agency capture
avoiding 8, 260, 270
consumer input 12
oversight preventing 8
risk of 7, 12
social pressure 268
vested interest 260
Air France 519
Alemanno, Alberto 9–10, 11
Alexander II 94
Alien Torts Claims Act see United States (US)
America 19
Latin see South America
US see United States (US)
American International Group (AIG) 563–4, 565
American Law Institute 596–7
Americanization 279, 286–9, 291, 384
AngeloPharm (1994) 366
arbitrary and capricious review see judicial review
Aristotle 128
Asia (also Asian)
East see East Asia
South 19
Association AC! et autres (2004) 424
Auby, Jean-Bernard 15
audit
agencies, and 5, 124, 311, 316, 318, 321, 325, 620
offices 5, 124
Australia (also Australian)
agencies and tribunals 7
administrative independence 219–21
Kerr Committee 219–21, 428–9, 437, 447
Constitution 427, 433, 442
contracting out 512, 518, 522
judiciary 427–8, 439
merits review 13, 158, 426, 427–34, 437, 444–7
Administrative Appeals Tribunal, creation of 428–9, 435–6
concept of 429
country information 439–40
development of 427–9, 435–6
error of fact 431–2
error of law 431
judicial review, and 433–4, 442
Kerr Committee 219–21, 428–9, 437, 447
policy review 430–31
precedent 437
procedural element of 432
remedial element of 432–3
substantive elements of 429–30
taxation cases 428–9
separation of powers 219, 433, 442
Austria 28, 31, 168
administrative courts 415
retroactivity 424
authorization schemes 67–9, 75, 344, 350, 627–8
Bagehot, Walter 33
bailout 15–16, 493, 543–66
balancing considerations 543
bank stockholders’ risk 546, 548
capture, and 543, 547
‘corrupt legislation’ 543
distributional coalitions, dominance of 543–4, 547, 548, 566
Mexico see Mexico
moral hazard avoidance 546–7, 548, 565, 574–5
new economic role of the state 546, 572–3, 588–9
objectives 573
programs 573–6, 588–9
social legitimation for 547, 548, 558
South Korea see South Korea
strategies
‘permissive’ 546
three principles of ‘tough’ strategy 546–7
theoretical approach 544–6
coalition building 545
economistic perspective 544–5
state-centric perspective 545–6
transparency, importance of 566
US see United States (US)
see also financial crisis
Bank of America 564, 565
banking and financial institutions 197
bailout see bailout
Basel Committee on Banking Supervision
71–2, 337, 634
capture 547
central banks 130, 258, 270
delegation balanced by 586
European Central Bank 186, 189, 299–300, 588
independence, value of 587–8
financial crisis, and see financial crisis
increased public oversight 579
administrative law rules, and 585–6
Mexico, privatization in 544
regulation 15, 328–9
Barak-Erez, Daphne 14, 16
Barnard, Chester 529
Barnes, Javier 10, 11
Basel Committee on Banking Supervision
71–2, 337, 634
Belgium 168, 415
Bell Canada v Canadian Telephone Employers Assn (2003) 214
Bernanke, Ben 564
Bentham, J. 34, 55
Benzene (1980) 360
Bermann, George A. 17
best practices
European administrative law 595–6, 597–9, 660, 601–4
ReNEUALaul Project 595–6, 597–9
transparency 558
Better Regulation initiative 11, 315, 316, 321
Beveridge, William 34
Bignami, Francesca 18, 611
Blackstone, William 32
Blanco (1873) 418–19
Braudis, Louis 403, 409
Brazier, Professor 159
Brazil (also Brazilian) 8, 19
Constitution and governance 124, 232, 239
independent regulatory agencies
administrative independence 226–8
delegation: principal-agent framework 228–9
transplanting to 226–8
whether President should control 238–41
Presidential dominance, theory of 231–8
budgetary control 233–4
control over appointments 234–5
new legislation 236–8
budgets 258–9, 265, 268–9, 296, 317, 318, 329
burden of proof 484–5, 486
bureaucracy (also bureaucratic and bureauocratization) 3, 4, 7, 15, 17, 18
American antipathy to 41
bureaucratic stagnation 271
compensation for public service in US, and 47, 48, 51, 53, 57, 59–60
continental 33
de-bureaucratization 624
EU, and 299, 302–5, 610
independent commissions, and 259
neutrality in Canada 207
structures 24
Buren, Martin Van 41
Bush administration and George W. Bush 304, 569
bailout 560, 564–5, 569
Bush/Gore election contest 130
detainee treatment rules 536–7
ROBs 314, 317, 325–6
Campbell and Fell v UK (1985) 217
Canada (also Canadian) 19, 205–24
agencies and tribunals
Military Police Complaints Commission
case 205, 206, 207, 210–12, 215
deference see deference
human rights 205, 206, 207, 210–12, 214
independence of agencies and tribunals
government 213–16
meaning 212–13
threat to 206
judicial review 14, 213–16
questions of law see questions of law
judicial review of legal and political context of independence
in common law world, and 212–22
partisanship, politics and independence
206–12
political interference and law 213–15
Index 643

RIA 67, 76
separation of powers 207
Cane, Peter 13, 220
capture see agency capture; bailout; banking
Cardoso, President 235, 237
Cardozo-Fonseca, Immigration and Naturalization Service v, (1986) 455
Caroline Products (1938) 153
Carpenter, Daniel 373
Carter, Jimmy 313, 321
Charter of Fundamental Rights of the European Union 282
China (also Chinese) 19, 66, 78
administrative law 88, 89–90
civil service 81, 124
commoners petitioning 81
Constitution 247–8
Japan, and 84
law reform 83, 84, 89–90
market economy return 87–8
private law 80
Tang dynasty 79
Chirac, Jacques 198
Chrysler and Chrysler Financial 565
Citigroup Inc. 565
Civil Rights Act (1964) see United States (US)
civil service 1, 2–3
Canada 207
China 81, 124
East Asia 81
EU 299, 300, 301, 302–3
France 285
Parliamentary systems, and 132–3
presidential systems, in 131–3
Taiwan 124
UK 33, 34, 63–4, 367
US 38, 40–41, 43, 63–4, 131–3, 293–4
Civil Service Commission 58, 194
compensation see compensation for public services in United States
Pendleton Civil Reform Act (1883) 38, 43
transnational networks, and see transnational networks and individual rights
Clinton, Bill 314
Code of Good Administration 598
Codex Alimentarius Commission 72
Coke, Edward 51, 55
colllegiality 416
Colombia 415
comitology see European Union (EU)
commissions
broadcasting 5
Brownlow Commission 192
Canadian see Canada
human rights 124
independent regulatory see independent regulatory agencies and commissions
public service 124
Taiwanese see Taiwan
common law
civil law divide 14, 28, 128
jurisdiction of courts 187
reconciling 35
contracting out 511, 521, 522
courts see courts
institutional continuity 31
jurisdictions downplaying public-private divide 1
stresses on system 65
ultra vires doctrine 466
see also ultra vires
world 1, 7, 13
legal and political context of independence in 212–22
origins of administrative law 27
Comparative Administrative Law (Goodnow) 44
comparative institutional analysis 316
compensation for public services in United States 47–60
bounties 52
abandonment 57–60
customs collection 55, 56, 58
increase in 54–7
public prosecutors, and 55–6, 58–9
regulating 53
state and local tax administration 55, 56–7, 59–60
bureaucracy 47, 48, 51, 53, 57, 59–60
changes in 52–3
contracting out 57, 58
facilitative payments 52
regulating 53–4
replacement by salaries 53–4, 58
honorary service 52, 53, 54, 55
positive law, and 54–5
profit-seeking in England 47, 48–52, 56
bounties 49–50, 51
facilitating payments 48–9, 50, 51, 52
honorary service 50–51, 52
annuities/salary-like payments 51–2
military see United States (US)
Comparative administrative law

salaries
annuities/salary-like payments 51–2
replacing other payments 53–4, 58–9
Weber’s interpretation of rise of salaries 47–8, 53–4, 57

competition law 65, 66, 197
bailout 585–6
balancing values and interest 73–4, 75
impact on sectoral regulation and administrative action 69–71
privatization, and 506

Congressional dominance, theory of see United States (US)

Conseil d’Etat see France

Constant, Benjamin 193

countinstitutions (also constitutional) 4–6, 118
administrative state socialism see administrative state socialism
constitutions 119, 121–2
constitutional structure and independent commissions 255–6

constitutional values 628

constitutionalism
administrative law, in see administrative law
as function of 118
values of 192–3

constitutionalization and parliamentarianism 111
functions of 118–19
independent agencies as constitutional reaction 193–200
localism 119–21
regulation through constitutional standards 507–8

uncodified constitutions 125–6
written see written constitutions and the administrative state
contracting out 514
private military contractors see United States military contractors

private entities, imposing public values on 515–16
private military contractors, and see United States military contractors
problems of applicability and processes 515–18

public law contracts, acceptance of concept of 520–21, 522
public values, concept of 513–14
risk of public values avoidance 511–15
threat to public values 514–15
rise of 512–13

see also privatization; United Kingdom (UK); United States (US)

Cooper v United Kingdom (2003) 218
corruption 265, 268, 272
America, in 19th century 41, 43
bailouts see bailout
China 124
contracting out 514

England 51

independent accountability agencies, and 265, 268, 272

India 129

privatization, and 16
private military contractors 525

Ukraine, in post-Soviet government 482
cost-benefit analysis
agency rule-making, and 9–10
judicial review, and 317
regulatory oversight, and 310–11, 314, 317, 327–8, 330

transparency, and 12

cost-effectiveness analysis 311

courts
administrative 14, 76, 121, 122, 124, 128, 140, 143–4, 187

common law 31, 32, 33, 34, 64, 120
constitutional 8, 14, 124, 126, 187, 229, 274
independent accountability agencies, and 265–6

public legitimacy and status 268

second-order accountability and transparency 270–71

see also Australia, Ecuador; Germany, Hungary, Indonesia; Poland; South Africa; Taiwan, Thailand

independence see independence
jurisdiction 187
legislature and executive, and see executive, overseeing
supreme 38, 125, 140, 143, 165, 196, 274

see also judicial review

Craig, Paul 13–14, 368
Index 645

'creature of the state' problem 161, 165
criminal prosecution 55–6, 58–9
Crowell v. Benson (1932) 408–9
CUPE v. Ontario (Ministry of Labour) ('Retired Judges' case) 214–15
Currie, David 196
Custos, Dominique 8, 384
D’Alberti, Marco 3
Davis, Kenneth Culp 411
De Luna, José 558
decentralization 29
ECJ, and 162–3, 165, 168–9, 170, 173–4, 177–8
EU decentralization strategies 162–5
limits of decentralization in EU and US 164–5
local immunities, and 165–9, 170, 171, 178
decision procedures 2
individual 344, 345, 350–51, 352, 602
privatization, decision-making process in see privatization
Declaration of the Rights of Man 26
defence 258
administrative process impaired by too little 482–97
Canada 14, 460
Germany 151
Hungary 108
legislative delegation, to 466–81
courts in new democracies 478–80
Poland: deference and freedom of economic activity 467, 468–71, 478
Taiwan: dejudicialization of environmental regulation 471–4, 478
South Africa: transformation through judicial deference 474–8
participation and expertise, and 366, 369
UK 14, 142, 440
US 13, 14, 87, 142, 410
Chevron text 453–9
contracting out, and 521
see also judicial review
delay 422–3
degraded delegation
administrative powers, limits on 619
Chevron text 454
comitology see European Union (EU) delegated legislation 153–6, 216
economic emergency, in 581–3
EU 299
legislative, judicial deference to see deference
non-delegation doctrines 342
power to legislate in US cannot be delegated 502
principal-agent framework 228–9
democracy (also democratic and democratization) 7
accountability see accountability
bailout 560
bourgeois 4
democratic deficit 294, 301, 303–5, 363, 610, 629
democratic legitimacy 7, 9, 18, 123, 130–31, 303, 346, 357, 384, 466, 583,
globalization, and, 337
democratic public discourse 628–9
emerging and new democracies 8, 14, 259, 261
addressing abuse of administrative power, and 466–7
courts and executive power 478–80
independent accountability agencies 266, 272
judicial deference to legislative delegation in see deference
transition to 124–5, 260, 262
executive policy-making 9–12
independent accountability agencies, and 272
monopolistic interests, and 3
parliamentary 4, 131, 132
Canada, in see Canada
partial in Mexico 544
presidential 5, 131–2
procedural democratization 628–9
self-government 2
Taiwan 254
Démocratie en Amérique (Tocqueville) 28
Demsetz, Harold 528
denationalized administrative governance 16–17
deregulation 15–16, 65–6, 560
agencies, and 624
in 1980s and 1990s 569
retreat of state through 570, 588
Deregulation and Contracting Out Act (1994) see United Kingdom (UK)
Development of Administrative Law in England (Dicey) 34
Dicey, Albert Venn 33, 34, 35, 69, 79, 120, 187
Dickinson, John 393, 410
Dickinson, Laura 15, 513
discretionary administrative powers, reduction of 68–9, 75
Domta, Jean 25
Comparative administrative law

Donnelly, Catherine 11
Donoughmore Committee and Report see United Kingdom (UK)
Douglas, Mary 529
droit administratif see France
dualité de juridiction see France
Duguit, Léon 279

East Asia (also East Asian) 1, 2, 3, 19, 78–91
administrative law in traditional East Asia 79–82
civil service 81
collectors petitioning 81
defined areas of competence 80–81
directly regulatory 80
penal law 80, 81–2
comparative administrative law 78–9
coopération between public and private sectors 558–9
developmental states’, in 85–8
‘post-development-state’, in the 88–9
western administrative law, importation of 82–5
economic and social interests
agencies, and 7
competition, balancing with 71–6
economic interest groups 3
economic planning 65, 66
Soviet Union 93
economic role of the State
impact assessment, and see impact assessment/regulatory impact assessment (RIA)
economic emergency 570, 572, 589
stabilization constitution, and 581–8, 589
administrative procedure model 585–6
delegation in an economic emergency 581–3
political accountability model 583–5
technical advice model 586–8
economic law see global economic law
Ecuador 266, 272–3, 275
Egypt 415
Eisenbeis, Robert A. 562
Elster, Jon 479–80
emergencies and emergency procedure
financial/economic emergencies see economic emergency
waging war 156
England see United Kingdom (UK)

État de droit 3
Europe (also European) 2, 14, 18, 19
administrative law
ancien régime 24–8, 187
‘century of administration’ 27
decentralization 29
new code civil 25
social question 29, 31
State island 26, 27
agency accountability 10–11
Central 260, 262, 479
Eastern 4, 92, 93, 105, 260, 262, 479, 545
financial crisis see European Union
monopolies 278
Wall Street crash 569
see also France; Germany; Greece; Italy; United Kingdom (UK)
European administrative law 6, 340–41, 514, 595–605
adversarial legalism, and see adversarial legalism and administrative law
best practices 595–6, 597–9, 600, 601–4
ReNEUAL project, and 595–6, 597–9
burden of 606
effectiveness, principle of 612
equivalence, principle of 612
juridification of administrative procedures 606
Research Network on EU Administrative Law (ReNEUAL) 17
aims 595–6, 597–9
classification of administrative processes 600
restatement of administrative law, proposal for 595, 596–8
agencies, and 603
challenges 599–604
comitology, and 598, 602–3
complexity of EU administrative process 602–4
extension to Member States
administrative processes 601
multi-level governance 603
open method of coordination (OMC) 603, 619
reasons for 598–9
relationship to positive law 602
scope of inquiry 599–600
European Agency for the Evaluation of Medicinal Products (EMEA) 619, 620, 621, 627
European Aviation Safety Agency (EASA) 619, 620, 621, 622, 624–5, 627
European Central Bank 186, 189, 299–300, 388
Index 647

limits of decentralization in EU and US 164–5
local immunities, and 165–9, 170, 171, 178
democratic deficit 610, 629
European Commission see European Commission
European Court of Justice see European Court of Justice (ECJ)
‘Europeanization’ (also ‘Europeanized’) 17, 277, 279, 286–91, 362–3
financial crisis, and 570
administrative procedure model 585–6
bailout 575–6, 585–6
nationalization 569, 576
regulatory reform 581
stimulus packages 576–9
technical advice from financial authorities 587–8
four freedoms 72
general principles of law 598
good administration 300, 598
impact assessment see European Commission; Impact Assessment Board
individual decision procedures 350–51
integration 69
judicial review 163, 300, 361–7
participation and expertise 361–4
participation and expertise in the courts 364–7
process review 364–6
questions of law see questions of law, judicial review of substantive review 366–7
judiciary see judiciary
liberalization 66, 277–9, 282–3
economic 608
Member States see Member States
multi-level governance 162, 178–9, 603
Ombudsman 598, 620
open method of coordination (OMC) 603, 619
regulatory agencies 623–4
EU as weak regulatory state 609–11
justification 67
networks 633–4
reform 581
Research Network on EU Administrative Law (ReNEUAL) see European administrative law
RIA 67
ROBs 313, 316, 318–31
see also Impact Assessment Board
separation of powers see separation of powers
service public, and 282–3
Single Market 69, 162–3, 277–9, 607–8, 614
subsidiarity see subsidiarity
supranational governance see supranational governance and networked accountability structures
transnational administration 16–18, 66
utility regulation 374–5, 383
Waste Directive and waste regulation 6, 161, 164
enforcement complications 167–8, 171–8
local dimension of waste legislation framework 166–7
Italy and Greece, in see Italy; Greece
Evans, Peter 559
ex ante accountability 620
analysis 451
impact assessment 327, 332
processes 230, 238, 327, 332
proportionality 75–6
executive, overseeing 5, 148–60
courts as overseers of executive action 148–53
institutional model, development of 148, 149–52
justifying more anxious judicial scrutiny: Lord Woolf’s theory 152–3
judges, whether retreating 159–60
Parliament, whether striking back 153–9
concluding treaties 158–9
degraded legislation 153–6
waging war 156–8
see also judicial review
exhaustion of financial resources of interventionist State 65
expertise 2, 6–7, 9, 11, 622
administrative 358, 359, 394, 472, 475, 477
EU 301, 305
ICC 295–6, 394
civil service 132
courts, and 150–51, 313, 410, 452, 459–64
participation, and 357–72
European Union 361–7
UK 367–70
US 358–61
ROBs 311–12, 316
technical or particular 63, 210, 284–5, 297–8, 311–12, 332, 583–7
tribunals 440, 452

Factortame, R v. Transport Secretary ex.p. (1990) 612
Fair Act (1998) see United States (US)
Fannie Mae 329, 571, 578
federal administrative law in 19th century
America 37–45
challenge for comparative administrative
law 44–5
constitutional arrangements 38–9
growth of state activity 41–2
ideology 40–41
Jacksonian democratic ideology 40–41
Jeffersonian Republicans 40
positive political theory 42–3
pragmatic adjustments to administrative
necessity 43–4
public-private law boundary 39–40
timing or staging of economic and social
development 41
Federal Radio Commission v. General Electric
Co. (1930) 406–7
Federal Radio Commission v. Nelson Brothers
Bond & Mortgage Co. (1933) 407, 409
Federal Reserve Bank 329, 562, 564, 586–7
Federal Trade Commission see United States
(US)
federalism 6
US 161–2, 165
anti-commandeering doctrine 169–70
local immunities 165, 168, 169–71, 178
Feinberg, Kenneth 565
Fenton, Howard 14
financial crisis 15–16, 35
bailout, and see bailout
causes of 2008 financial crisis 560
energy crisis, and 65
global 560
1930s, in 65
nationalization, and 493, 569, 572–3, 575–6,
589
patterns of support during 545
public regulation and intervention, and
66–7
state role and the 2008–09 financial crisis
546, 569–90
bailout see bailout
changing patterns 570–73
deregulation 570–72
economic emergency see economic
emergency
economic institutions of the crisis and
administrative law 569–70
government’s response to the crisis 573–81
market failures, rediscovery of 570–72
nationalization 569, 572–3, 575–6, 589
new challenges for administrative law
after 588–90
new economic role of the state 572–3,
588–9
regulatory reform, strategies of 579–81
regulatory system failures 571
securitization 560, 570–71
stimulus packages: expanding public law
and institutions influence 576–9
Wall Street crisis 64, 569
see also France; European Union (EU);
Germany; Italy; Mexico; South Korea;
Spain; Sweden; United Kingdom (UK);
United States (US)
Fire Brigades Union, R v Home Secretary, ex p.
(1995) 148
Food and Agriculture Organization (FAO)
72
Fox Television (2009) 361
France (also French) 5, 7, 8, 11, 13, 76
acte administratif 1, 32
administration générale de l’État 26, 27
administration publique 24, 25, 32
administrative adjudication 277
administrative courts 76, 120, 121, 143–4,
187, 313
access to justice 420–21
delay 422–3
emergency procedures 423, 425
legal certainty, moderating effects of
rulings and 423–4
operation of 420–24
private bodies reviewing 519
retroactivity 423–4
administrative judges, powers and duties of
415–25
access to justice 420–21
administrative courts, operation of
420–24
classical duties and powers 420
collegiality 416
competitive recruitment 416
consideration of grounds 421
decisional economy 421–2
delay 422–3
development of independence duty and its
legal guarantees 416–17
emergency procedures 423, 425
general principles of law 419–20
hierarchy of norms 418
impartiality 416–17
independence: first duty and basis of
judge’s powers 415–16
legal certainty, moderating effects of
rulings and 423–4
mission 415–20
new duties and powers 422–4
retroactivity 423–4
rulings within reasonable time periods 422–3
safeguarding the general interest: specific duty of judges 418–20
secrecy of deliberations 416
administrative law 24–8, 30, 31, 37, 76, 119–20, 187, 189
administrative procedure, role of 283–4
European influence, under 283–91
Europeanization and broader Americanization 286–9
former procedural characteristics 283–5
new procedural characteristics 285–6
top-down procedural features 284–5
administrative litigation 12–13
agencies 7
accountability 11
EU agencies 624
executive policy-making 9
identifying agent’s principal 190, 191–2
independent administrative 185–6, 188–9, 197–201
utility regulation, consultation and transparency in 380–83
appel 13
bureaucratie 24
cassation 13, 417, 420
Cour de 286–7, 289, 291, 418, 421
civil service see civil service
competition 70, 72
Competition Authority 188, 287, 289, 290
Conseil Constitutionnel 121, 129, 197, 418
Conseil d’Etat 9, 128, 151, 313
administrative law, and 12, 13, 120, 122, 124
administrative judges, and 30, 416–25
contracting out 520
independent agencies, and 188, 191, 197
independent authorities, and 280, 283–91
Constitutions and governance 122, 124, 143, 197
contracting out 511, 512–13, 515, 522
freedom of information, and 519
termination 520
droit administratif 1, 23, 24, 27, 33, 35, 120
dualité de juridiction 1, 12
État de droit 3, 23
État providence 35
exécution de lois 30
financial crisis 545
stimulus packages 577–9
French Revolution see Revolution
independent administrative agencies 65
independent administrative authorities 277–92
Americanization 279, 286–9, 291
central role 277
Europeanization 279, 286–9, 290–91
former regulatory framework 278
French transposition 279–82
Gallicization 278, 279, 282–3, 290–91
independent regulatory agencies 7, 8, 280–81
industrial and commercial service 279
ministry vested with overlapping functions 278–9
new regulatory framework 279–82
procedural change: French administrative law under EU influence 283–91
procedural innovations by 289–90
structural transforming: Europeanization, Americanization, Gallicization 277–83
industrialization 63
judicial review 5, 200
administrative action, of 143–4
administrative procedure, and 283–4
executive, overseeing 151
independent administrative authorities 286–91
positive political theory, and 143–4
judiciary 283, 286, 415–25
juger l’administration, c’est encore administrer 12, 13, 27
justice administrative 32
Napoleonic era 25, 27, 29, 34, 187, 415
nationalization 65
Nazi occupation 416
public-private distinction 14
ROBs 313
sectoral regulation 380–83
separation of powers 200
service public 1, 35, 64, 75, 277–80, 285, 419, 522
waste management 168
Francovich and Bonafaci v. Italy (1991) 612, 613
Frankfurter, Felix 34
Franklin, Benjamin 52
Franks Committee and Report see United Kingdom (UK)
Freddie Mac 571, 578
free trade 68, 69
exceptions 74–5
promoting 74
Freedland, Mark 514
Freedom of Information Act see United States (US)
Freund, Ernest 34, 79

Geithner, Timothy 565
General Agreement on Tariffs and Trade (GATT) 16, 66, 69, 74–5
General Motors 565
general principles of law, EU 598
Georgia 483, 485
Germany (also German) 1, 5, 7, 83, 84
administrative act 88
administrative courts 120, 121, 122, 128, 143, 151–2, 415
retroactivity 424
administrative law 24, 27, 37, 87, 119, 120, 187, 189, 195–6
private industry, and 84–5
agencies 7
agency system criticized 623–4
comparison of EU/German/US agencies 625–7
identifying agent’s principal 190–91
independent administrative agencies 185, 186, 189, 195–7
competition law 65
Constitution and government structure 143, 190, 197, 466
Constitutional Court 151–2, 196
contracting out 522
deference see deference
deliberations 466
financial crisis 545
stimulus packages 578
judicial review 5, 200
administrative action, of 143, 144–5, 146
economic intervention 196
executive, overseeing 151–2
positive political theory, and 143, 144–5, 146
legislative delegation 466
Nationalist-Socialist dictatorship 466
Polizeistaat 27, 33
Polizeiwissenschaft 28
public intervention 65
public-private distinction 14
Rechtsstaat 3, 4, 23, 27, 31, 32, 33
concept of 29–30
deliberation, and 466
fundamental elements 30
legal limits of administrative power 28–31, 32
new democracies, in 471, 478
principle of legality 30

geography

Global administrative law 336–7, 526
US law, and 610
Global Administrative Law (GAL) project 1–2, 514
global economic law 71–5
balancing economic liberties and social values 72, 76
content 72
development 71
globalization 35, 199
deregulation, and 65–6
global market integration 579
global regulatory standards 580–81, 589–90
global trade and models of authority 35
historically 71
law see global administrative law
market regulation in global age see public
regulation of markets in global age
objective market forces, effect of 544–5

GMAC 565
Gneist, Rudolf von 29, 30, 79, 83
Goldman Sachs Group 562
Goodman, Ryan 530
Goodnow, Frank 44, 45, 79
Goodnow, Richard 34
Gorbachev, Mikhail 102, 482
Gore, Al 130
Gourevitch, Peter 545
Government Accountability Office see United States (US)
Gratz, Federal Trade Commission v, (1920) 403–4

Greece
Constitution and governance 171–3
independent accountability agencies 272
waste management in 162, 164, 167, 173–5
Grósz, Károly 102, 103

Haggard, Stephen 558–9
Halberstam, Daniel 7
Hall, Peter 543
Hamilton, Alexander 40, 293–4, 295, 298
Harlow, Carol 606, 611
Hayek, Friedrich 64–5
Hepburn Act (1906) 390, 393, 394–7, 398, 399–400, 401, 408
Hepburn, William 395
Hewart, Lord 34, 435
hierarchy of norms 418
Hoexter, Cara 480
Hofmann, Herwig 603
Huang, Cheng-Yi 14
Huang, Philip 80

**Huang v. Secretary of State for the Home Department** (2007) 438–9

human and fundamental rights
Commissions 124
contracting out, and 514–17, 519
Convention see European Convention on Human Rights (ECHR)
independent accountability agencies, and 265, 272
merging over time 119
privatization, and 16, 493, 500, 503, 509
see also United States military contractors
regulatory networks, and 634
transnational networks and individual rights 18, 632–8
terrorism 635–6
Ukraine 485
US military, and 526, 536–7
violations, private military contractors and 525

**Human Rights Act (1998)** see United Kingdom (UK)

**Humphrey’s Executor v United States** (1935) 256, 260

**Hungary** (also Hungarian) 4, 14, 272
Constitutional Court 101, 104, 105–10, 111, 112
administrative procedure 108–10
judicial review 108–10
Parliament, and 105–8
European Union, and 109, 111
opposition to 111–12
parliamentarianism over administration 102, 107
post-Soviet administrative governance 105–10, 111
Constitutional Court 105–10
constitutionalization and parliamentarianism 111
parliamentarianism over administration 102, 107
rejection of regulation 112
Soviet governance, under 100–102
Communist Party 102
Constitution 100–101, 103
Council of Ministers 101–2, 103, 105
power in hands of few bodies 101
transition, 102–5
transition, in 102–9
constitutionalism 102
new constitution 103–5
opposition to regime 102–3
Parliamentary power 104–5

**Hunter v. City of Pittsburgh** (1907) 165

**ICC v. Union Pacific Railroad Co.** (1912) 399
**Illinois Central Railroad Co. v. ICC** (1907) (Illinois I) 398
**Illinois Central Railroad Co. v. ICC** (1907) (Illinois II) 398–9, 400
impact assessment/regulatory impact assessment (RIA)
EU 67
Impact Assessment Board see Impact Assessment Board (IAB)
regulatory oversight, use of 310, 314, 316
Impact Assessment Board (IAB)
capacity-building 324
comparison with OIRA 319–20, 321, 331–3
impartiality 324
inhibiting undesirable policies 322
leadership 324–5
location in EU structure of government 318–19
origin 315
promoting desirable policies 323
role 315
rules of procedure 324–6
public access to information 326
reviews 325–6
scope of oversight 326–31
administrative costs 327
analytic methods 331
areas of regulation 328
selection of regulations to review 330
timing: ex ante and ex post 327
types of legal action 329

impartiality
ECHR, and 216
Impact Assessment Board 324
impartial expertise and public accountability 2
independence, and 262
judicial 213
principle of 223, 285, 287–8
regulatory 69, 207, 216, 218, 254, 288, 290, 291

independence
administrative see administrative independence
agencies and commissions see independent administrative agencies; independent regulatory agencies and commissions; European Union (EU); United States (US)
courts and judges 5, 206–7, 209, 213–14, 217
French administrative judges see France
meaning of 191–2, 293–5, 299–303
ROBs 312
independent accountability agencies 265–76
in constitutions of the world 271–4
independent regulatory agencies,
distinguished from 267–8, 269–70
institutional dynamics 266–71
bureaucratic stagnation 267, 271
institutional situation, effect of 266–70
institutional strength 267, 268–70
public legitimacy 267–8
second-order accountability 267, 270–71
‘superintendence agencies’ increase of, 266
integration into constitutional framework
265–6
independent administrative agencies 6–8, 68,
185–204
Canada, in see Canada
constitutionalism in administrative law
186–92
identifying the agent’s principal 189–92
implementation of policy, and 188–9
institutional implications of
administrative law 186–8
theory versus practice of ‘administrative’
law 188–92
constitutionalism, values of 192–3
France, in see France
independent agencies as constitutional
reaction 193–200
France 197–200
Germany 195–7
US 194–5
lessons from comparisons 200–201
principles justifying exercise of public
authority 193
role 6–8, 185
independent regulatory agencies and
commissions 5, 6–8, 68, 124, 195, 265
capacity-building for independence of
262–3
control, trust and insurance models
260–61
creation as act of delegation 228
election commissions and institutes 129–30,
265, 268
independence from view of
administrative functions 256–7
administrative procedures 257–8
constitutional structure 255–6
Presidential system 293–9
regulatory policies and budgets 258–9
relationship with bureaucrats 259
state-society relationship 259
independent accountability agencies,
distinguished from 267–8, 269–70
operation and legal and institutional
predicaments 255–9
plural representation, neutrality and
independence 262
political accountability see accountability
principal-agent framework 228–9
privatization, and 8
second-order accountability and
transparency 270–71
separation of powers, and 294
tenure see tenure
theories explaining establishment of
259–62
see also Brazil; Taiwan; United States (US)
India 149–50
individual decision procedures see decision
procedures
individual rights and transnational networks
see transnational networks and individual
rights
Indonesia 124–5
INS v. Chadha 159–60
institutional culture see United States military
contractors
institutions (also institutionalization and
institutionalism) 1, 4, 18
administrative law as see administrative law
administrative law institutions, endurance
of 121–2
banking see banking and financial
institutions
comparative institutional analysis 316
institutional continuity 31
institutional culture 526, 527–32, 537–9
new forms having increasing role 129–31
separation of powers, and 129–3, 338–9
organizations influenced by 530
political 134
Interamerican Development Bank 546
international law norms, compliance with see
United States military contractors
International Monetary Fund 71, 159
international organizations
public regulation of markets, and 71–5
International Peace Operations Association
538
international regulation see regulation
Interstate Commerce Commission (ICC) see
United States (US)
International Competition Network (ICN)
70–71
Comparative administrative law

Iraq 272, 273
contracting out 513
war 525, 533
irrationality review see judicial review
isomorphism 3–4
Israel 500, 502
Italy 63
administrative courts 76, 415
retroactivity 424
administrative law 76
competition 70, 72
Constitution and governance 175–6
contracting out 522
financial crisis 575
nationalization 575–6
stimulus packages 577–8
independent administrative agencies 65
public enterprises 64
public intervention 65
RIA 76
ROBs 313
waste management 162, 164, 167, 176–8
Jackson, Andrew 38, 40–41, 53, 57, 293–4, 295, 298, 302
Japan (also Japanese) 19, 65, 76, 78
administrative courts 121
administrative law development 82–7, 88–9
administrative litigation 89
China, and 84
judiciary 87, 89
Korea, and 84
Meiji Constitution 83
Meiji Restoration and reform 82–3
Jefferson, Thomas 39, 40
Jennings, Ivor 34
Jensen, Michael 528
Jinks, Derek 530
Johnson, Andrew 38
judicial culture 145
judicial review 5, 187, 189, 258, 341, 600
agencies, Member States of 622–3
arbitrary and capricious review 135, 139–40, 141, 142, 145–6, 300, 317, 359
bailout 585–6
contracting out 517, 520–21
executive and legislature, and see executive, overseeing
illegality and relevance 141
institutional model 148, 149–52
irrationality review 135, 141–2, 146
justifying greater scrutiny 152–3, 159–60
Member States, by 622–3
merits review, and see judicial review and merits review
participation and expertise, and 357–72
PPT, and see Positive Political Theory (PPT)
private rights model 148, 149, 159
privatization tenders and contracts 505–6
proportionality review 135, 142, 144, 439, 613
questions of law see questions of law, judicial review of
reasonableness review 139–40, 141–2, 144, 145–6, 195, 200
Wednesbury principles 151, 412, 430, 439
restrictions on judicial review outlawed by ECJ 612–13
ROBs, as 316
scope 13
ultra vires see ultra vires
see also European Union (EU); France; Germany; United Kingdom (UK); United States (US)
judicial review and merits review 426–48
Australia, in see Australia
modes 426–7
UK see United Kingdom (UK)
US see United States (US)
see also judicial review
judiciary
administrative judges 3, 12–13, 33, 284, 415–25, 586
agencies, and 201, 207, 274
Australia 427–8, 439
defereence, and 478
see also deference
EU 614
administrative institution, as 599–600
France 283, 286, 415–25
Germany 190
independent 138, 411
Japan 87, 89
political interference 609
role and function 12, 150, 196, 268, 345, 360
Rule of Law, and 3
Russia 94, 482
South Africa 479
Taiwan 472–4
tenure 207
UK 120, 152–3
US 7, 40, 360, 394, 400, 406–7, 411, 455
jurisdictional fact 408–9, 449–50
justice-administration distinction 3
historically in Europe 25, 26, 27, 30, 34

Susan Rose-Ackerman and Peter L. Lindseth - 9781849808101
Downloaded from Elgar Online at 03/20/2019 06:52:34PM
via free access
justiciability
constitutional principles, of 186–8
doctrines 139, 150–51
non-justiciability concept 150–51
standing 5, 13, 149–51
in Germany 145
in India 149–50
in UK 140–41
in US 40, 139
timing 13, 144

Kádár, János 103
Kadi v Council and Commission 636
Kagan, Robert 17, 606–7, 611
Kant, Immanuel 29
Kashakari, Neel 565
Kelemen, Daniel 17
Kelsen, Hans 30
Kerr Committee see Australia
Kessler, Timothy 545
Kettl, Donald 513
Keynes, John M. 64
Kilényi, Géza 101
Kim Dae Jung 559, 565
Kim Young Sam 559
Kolko, Gabriel 395
Komani NO v. BANTU Affairs Administration
Board, Peninsula Area (1980) 479
Koster (1970) 364
Kouropitos (Commission v. Greece) (2000) 161,
173–5
Ku Klux Klan 56
Kulcsár, Kálmán 103

Lafourcade, Olivier 546
Lamm, Wanda 101
L'Ancien Régime et la Révolution (Tocqueville)
24
Landis, James 5
Laski, Harold 34
Latin America see South America; see also
individual countries
Laws, Sir John 455
Lebanon 415
Lebron v. National Railroad Passenger
Corporation (1995) 518–19
Lee, Frederick 393
legal certainty 109, 419, 608
moderating effects of rulings, and 423–4
legal orders of States 23
Leggatt Review of Tribunals see United
Kingdom (UK)
Legislative and Regulatory Reform Act (2006)
see United Kingdom (UK)
legislation see positive law
legitimacy 4, 6, 7, 9, 11, 12, 18
Lenin, Vladimir 4, 95–6, 99, 482
Les Verts (1986) 622–3
Levez v. T.H. Jennings (Harlow Pools) Ltd.
(1998) 612
lex mercatoria 66, 72
liberalization
deregulation, and 65–6
see also financial crisis
economic liberalization 559, 608, 615
European Union see European Union (EU)
network industries 277–8, 279
Lisbon Treaty 163–4, 282, 315, 331, 603, 622–3
Littlechild, Professor 376
Livingston, Edward 55
glocal government law 161–2, 164–5, 167,
169–72, 174, 178
Locke, John 128
Lockhat, Minister of the Interior v. (1961) 479
Long Island Care at Home Ltd. v. Coke (2007)
464
Luhmann, Niklas 530
Lujan v. Defenders of Wildlife (1992) 626
Lula, President 235–8
Luxembourg 415, 417
Maastricht Treaty (1992) 163, 168–9, 315
Magill, Elizabeth 5, 37, 374
Maitland, F.W. 33, 34
Mannori, Luca 52
Marais, Bertrand du 188
Marbury v Madison (1803) 150, 391–2
March, James 528
market failures
agencies correcting 9
financial crisis and rediscovery of market
failures 570–72
regulation intervening 68
‘too big to fail’ 15–16
Marshall II (1993) 613
Martinez, Ortiz 547, 550
Marx, Karl 26
Mashaw, Jerry 3, 4, 390
Masing, Judge Johannes 197
Massot, Jean 12, 13
Mayer, Otto 33, 190
McKenzie v. British Columbia (Minister for
Public Safety and Solicitor General) 215
McNollgast 134, 143, 145, 340
Meckling, William 528
Medvedev, Dmitri 111
Member States
acquiescence to ECJ 17

Susan Rose-Ackerman and Peter L. Lindseth - 9781849808101
Downloaded from Elgar Online at 03/20/2019 06:52:34PM
via free access
Comparative administrative law

agencies, and 300–301, 302, 621–7, 629
   EU agencies 7, 623–4
competition law 70, 72, 73–4
   bailout 585–6
dominance as supranational feature 625–7
EU bureaucracy 610
Europeanization of administrative law, and 606
implementation of EU law 17, 161–2, 164–5, 166–8, 299–300, 304–5
courts as administrators 600
European administrative law 606, 611–15
   restatement, and 601
sharing competences 17, 163, 362
oversight mechanisms 17, 621–5
   compensatory and complementary
      functions 627–8
   expert committees 622
   external mechanisms 622–5
   internalized mechanisms 621–2
judicial review 622–3
   see also judicial review
   management and administrative boards 621–2
oversight through political processes 623–5
powers of oversight 17–18
agencies 621–5
RIA 11
state aid 588
merits review see Australia
Meroni v. High Authority (1957–8) 300, 619, 627
Merrill Lynch 564
Merrill, Thomas W. 13, 39
Mexico (also Mexican) 19, 272–4
   bailout 16, 543–4, 546–57, 560, 562, 564, 566
   actors, mechanics and operation 550–57
capitalization and debt purchase program 555–7
   coalitions of corporate monopolists 544
   FOBAPROA 546, 549–57
   Korea, compared with 557–60
   history 547–50
   non-compliance with ‘tough’ strategy principles 546–7, 557–60
state-centric approach 545
temporary capitalization program 552
Constitution 118, 274, 549, 557
democratization, partial 544
election commission 129–30
independent accountability agencies 272–4
   ROBs 316, 327
Meyer, John 530
Middelkoop, Eimert van 157, 158
Middle East 1, 19
military see United States (US)
Mill, John Stuart 33
Minister of Justice v Magiera (2008) 422
Minnesota Rate Case (1890) 396
Mitterand, Francois 199
Montesquieu, Charles de Secondat, baron de 5, 27, 51, 193
reconsideration of approach 128–33
Montreux Document (2008) 519
Morgan Stanley 563
multi-level governance 162, 178–9, 603
Multiple Choice Exam (1991) 151
Murray’s Lessee v. Hoboken Land and Improvement (1855) 405
Myers v. United States (1958) 260
Napoleonic era see France
Napolitano, Giulio 15–16
Nationality, Immigration and Asylum Act (2000) see United Kingdom (UK)
nationalization 65, 66
Europe 569, 576
   financial crisis, and 493, 569, 572–3, 575–6, 589
   France 198
   Italy 576
   UK 576, 589
   US 575–6, 589
natural justice 1, 120, 637
Nelson Brothers (1933) 407, 409
Netherlands, The 153–9
   administrative courts 415
   Better Regulation 316
   concluding treaties 159
   delegated legislation 154–6
   ECtHR, and 417
   ROBs 313, 327
   waging war 156–8
   waste management 168
networked accountability see supranational governance and networked accountability structures
networks, transnational see transnational networks and individual rights
new administrative law see administrative law
New Despotism, The (Hewart), 34
new modes of regulation see regulation
New Zealand
   agencies and tribunals, 7
   administrative independence 221–2
   contracting out 512
Index 657

Nicola, Fernanda 6
Niebuhr, Barthold Georg 30
North, Douglass 528
notice and comment see administrative procedure
Novak, William 54

Obama administration and Barack Obama 131, 314, 332
bailout 565, 569
protection of consumers/investors 581
stimulus packages 578
Office for Harmonization in the Internal Market (OHIM) 619, 620, 627
Office of Information and Regulatory Affairs (OIRA) 9–10, 625
capacity-building 324
comparison with IAB 319–20, 321, 331–3
information burdens and quality 323
information, public access to 326
inhibiting undesirable policies 322
leadership 324–5
location in US structure of government 316–18
origins 313–14
promoting desirable policies 323
rules of procedure 324–6
reviews 325–6
scope of oversight 326–31
analytic methods 330–31
areas of regulation 328–9
selection of regulations to review 330
timing: ex ante and ex post 327
types of legal action 329
Office of Management and Budget (OMB) see United States (US)
Ohnesorge, John 2, 3, 37
Ombudsmen 5, 124, 219, 265, 269, 272
European 598, 620
military contractors, and 538
Sweden 122
UK 521
open method of coordination (OMC) 603, 619
Organization for Economic Cooperation and Development (OECD) 70, 71, 316
organizational structure see United States military contractors
organizational theorists 528–32
Ortiz, Daniel 5, 37
outsourcing see privatization
oversight 5, 8, 189, 265
agencies, of see accountability of EU agencies
ex post and ex ante 229–30, 233, 238
executive, of see executive, overseeing judicial 5, 19
Member States see Member States political 2
privatization, and 15, 16
regulatory see regulation; Regulatory Oversight Bodies (ROBs)
Paperwork Reduction Act (1980) see United States (US)
Papon (2002) 419
Parent (2006) 290
Parillo, Nicholas 3, 37, 39
Parliamentarianism 4, 135–8, 143, 146, 148–9, 152–3, 340
administration, and 92, 102, 107, 111
Canada, in see Canada constitutionalism, and 110–11
c control, regaining 153–9
economic emergency and administrative procedure 585–6
elite power, and 95
executive, oversight of see executive, overseeing executive regulation of law 349
independent regulatory agencies and commissions 255–6, 258
Soviet Union 93, 95, 110–11
Parsons, Talcott 530
participation see administrative procedure
Paulson, Henry 560, 562, 563, 564, 565
Pendleton Civil Service Reform Act (1883) see United States (US)
Peter the Great 482
Petraeus, General David 525
Pfizer (2002) 366
Poland (also Polish)
administrative litigation 14
Constitution enshrining German Constitution principles 467
Constitutional Court 14, 467, 478
deference and freedom of economic activity 468–71
judicial review predating democratization 478–9
rule of law and constitutional principles 479
political accountability see accountability
Politics in Hard Times (Gourevitch) 545
Comparative administrative law

Portugal 167
positive law 3, 54–5
Positive Political Theory (PPT) 5, 134–47
application to political institutions 134
comparative perspectives 138–45
reasonableness review in US 139–40, 141, 142
review in UK 140–42, 145
review of administrative action in
Germany and France 143–5
historically in 19th century America 42–3
judicial reasonableness predictions in
presidential/parliamentary systems 135–8
difference made by structural alignment of
interests 135–7
value to judicial review 137–8
lessons 145–6
Posner, Richard 570
powers see discretionary administrative power;
separation of powers
Prado, Mariana 8
Presidentialism 135–8, 143, 146, 195, 239
Brazil, and see Brazil
independent accountability agencies 266
independent regulatory agencies and
commissions 255–6, 258, 260, 293–300
Presidential administration 625
Principles of the Administrative Law of the
United States (Goodnow) 44
Printz v. United States (1997) 161, 170–71
private military contractors see United States
military contractors
privatization 3, 14–16, 66, 493–509
boundaries of privatization 498–9, 501–3
characteristics and scope 494–7
commercialization of the public space 497
cost savings 524
duty to formulate policy 504
administrative transparency and
information rights 505
decision-making process 499, 504–6
equal opportunity and fairness 499
duty to formulate policy 504
judicial review of privatization tenders
and contracts 505–6
participation rights 504–5
privatization by omission 506
securing competition 506
Eastern Europe, in 545
EU, and 302
in 1980s and 1990s 569
increased 35
international 524–5
meanings 14–15
Mexican banks 544, 547
military contractors see United States
military contractors
new procedural approaches 338
organizational structures, and 539
see also United States military contractors
public law of privatization 16, 500–510
administrative transparency and
information rights 505
boundaries of privatization 501–3
constitutional boundaries 501–3
contractual regulation 508–9
decision-making process in privatization 504
duty to formulate policy 504
regulation of privatized functions and
activities 507
regulation through constitutional
standards 507–8
rights-based analysis 503
securing competition 506
statutory regulation 508
ultra vires principles and anti-delegation
presumptions 503
public utilities in France 280
states’ core activities 501–2
traditional approach to 497–500
boundaries of privatization: loose
limitations 498
constitutional neutrality 498
decision-making process: equal
opportunity and fairness 499
limitations on the transfer of rights to
foreign entities 499
regulation of privatized functions and activities 500
*ultra vires* principle and anti-delegation presumptions 498–9
see also contracting out procedures
administrative see administrative procedure
administrative state socialism giving way to 93
generations of procedures see administrative procedure
rulemaking see rulemaking procedures
procuracy 122, 482, 485–6
procurement 71–2, 518, 521
contracting out compared with 512
proportionality 120, 142
agencies, and 624
contracting out 514
EU/ECJ approach 74, 75, 142, 613
ex ante 76
meaning of principle 1
principle growing in importance 75
proportionality tests for regulatory measures 68, 74
proportionality review see judicial review
WTO approach 75
prosecution 55–6, 58–9
*Provincial Judges Remuneration Reference* (1997) 206
Prussia 28, 83
public administration theories 293–4, 302–3
public choice theory 317, 341, 573, 578
public-private distinction 1, 2, 14–16
contracting out 516
partnerships and collaborative partnerships 337–8
US 121
19th century America 39–40
public regulation of markets in global age 63–77
administrative law, and 75–6
features and trends in 67–75
duty to justify: RIA and regulatory necessity 67–8
global economic law 71–5, 76
impact of competition law on sectoral regulation 69–71, 76
reduction of discretionary administrative power 68–9, 75
public regulation of markets in 20th century 63–7
deregulation and liberalization 65–6
see also financial crisis
emergence of public enterprises 64
industrialization 63
*lex mercatoria* 66, 72
modernization of urban areas 64
privatizations 66
public intervention 65
World War I 64
World War II 65
regulatory networks 69–71
see also globalization
Putin, Vladimir 111
Queen v. Crescent Case (1896) 394
questions of law, judicial review of 449–65
Canada 459–60, 462
correctness and rationality 460
contending arguments: one test or two 462–3
EU 461–2, 463
approach of Community courts 461
civil law tradition 461–2
jurisdictional fact 449–50
two tests: criteria for the divide 463–4
UK 449–53, 462–3
eyearly jurisprudence: collateral fact doctrine 449–50, 453
eyearly jurisprudence: tensions within the case law 450–51
modern jurisprudence: normative assumptions 452–3
modern jurisprudence: substitution of judgment for error of law 451–2
US 453–9, 462, 463–4
*Chevron* test 453–9, 463–4
relationship between *Chevron* test parts: intentionalism v textualism 455–58
step zero: additional complexity 458–9
two-part test for judicial review 454
*R v. Commissioners for Special Purposes of Income Tax* (1888) 451
*Rationale of Reward* (Bentham) 55
Reagan, Ronald 314, 625
reasonableness review see judicial review
reason-giving see administrative procedure
Rechtsstaat see Germany
‘Reformation of American Law’ (Stewart) 134
regulation 35
agencies see independent regulatory agencies
banking see banking and financial institutions
Better Regulation see Better Regulation cooperation between supervisory authorities 579–80
deregulation see deregulation
failure 68
financial crisis, after see financial crisis
global regulatory standards 580–81, 589–90
impact assessment see impact assessment/ regulatory impact assessment (RIA)
international 580–81, 589–90, 604
markets in global age see public regulation of markets in global age
new modes 346–7, 352–4
policy analysis, and 11
privatized functions and activities 500, 507–9
contractual regulation 508–9
regulation through constitutional standards 507–8
statutory regulation 508
problems with 310
regulatory impact analysis see impact assessment/regulatory impact assessment (RIA)
regulatory justification 67–8
regulatory networks 633–4
regulatory oversight 309–12
aims 310
banking and financial institutions 579
comparison of EU and US systems 319–20
tools, use of 310–11
see also oversight; Regulatory Oversight Bodies (ROBs)
regulatory reform 309, 318
regulatory state 18, 35, 85, 128, 221, 239, 473, 609
financial crisis 569, 589
ROBs 314–15, 317, 319
reregulation 66, 607, 608, 614
sectoral regulation 69–71, 76, 374–85
consultations and transparency in England 376–8
consultation and transparency in France 380–83
consultation and transparency in Sweden 378–80
control of network prices as core concern 375
world trade regulation 67–8, 71–2
see also World Trade Organization
regulatory impact assessment see impact assessment/regulatory impact assessment (RIA)
economic and social interests 10
Europe, in 10–11
justifying public regulation 67–8, 75
no legal force 10–11
Regulatory Oversight Bodies (ROBs) 216
attributes 311–12
Impact Assessment Board see Impact Assessment Board
mandate and tasks 321–4
capacity building 324
information burdens and quality 323
inhibiting undesirable policies 322
mandate 321–2
promoting desirable policies 323
tasks 322–4
OIRA see Office of Information and Regulatory Affairs
origins 313–16
prompt letters 317, 321, 323, 326, 331, 332
rationale for establishment 309–12
overseeing regulators 310–11
ROBs role in overseeing 311–12
rules of procedure 324–6
review 325–6
scope of oversight 326–31
administrative costs 327
analytic methods 330–31
areas of regulation 328–9
selection of regulations to review 330
standard cost model 327
timing: ex ante and ex post 327
types of legal action 329
structure: constitutional and institutional design 316–21
comparison of EU and US systems 319–20, 331–3
plural ROBs 320–21
Reiss, Dorit Rubinstein 11
ReNEUAL project see European administrative law
Reports of the Commissioners (1787) 49
Research Network on EU Administrative Law (ReNEUAL) see European administrative law
Restatements of the Law 596–7, 599, 602
Revolution 24–9, 30
administrative modernity, and 24–8, 34
American 25, 52, 55
French 25, 29, 31, 313
effects of 25–7
Industrial 31, 41
Russian 4, 94, 95–6
Soviet Union political revolutions 93
Rikhoito, Oos-Randse Administrasieraad en‘n ander v. (1983) 479
risk-risk tradeoffs 311
Robson, William 34, 435
Rojas- Suárez, Liliana 546
Rome Treaty (1980) 518
Roosevelt, Franklin 65, 134, 390, 394, 396

Susan Rose-Ackerman and Peter L. Lindseth - 9781849808101
Downloaded from Elgar Online at 03/20/2019 06:52:34PM
via free access
Roubini, Nouriel 564–5
Rubin, Edward 410, 528, 529
Rule of Law 3, 23, 31–4, 150

discretionary power, and 69
founding principles 33
Poland, ‘democratic state based on rule of law’ doctrine in 479
separation of powers, and 131–2
state, and 121
rulemaking procedures 9–12, 342, 345–9
administrative rulemaking 10, 12, 17
debtation 153–4, 156
East Asia 88
EU 10, 185, 189, 280
France 189, 280–82, 284–5, 288
notice and comment 89, 154, 258, 345, 373, 443, 627
US see United States (US)
participation, and 120, 345, 371
RPBs 329, 330
third generation procedures 352
US see United States (US)
Russia (also Russian) 4, 14
administrative state socialism see administrative state socialism
judicial review 483
judiciary 94, 482
separation of powers 95
Ukraine 482

Sabel, Charles F. 628
salaries see compensation for public service in the US
Sandoval, Irma E. 15–16
Sauer, Johannes 17–18, 633
Scalia, Justice Antonin 87, 189, 391, 455–8
Scharpf, Fritz 193, 629
Schepple, Kim Lane 4, 14
Schneider Electric S.A v Commission (2007) 613
Schoenman, Roger 545–6
Schurmans, Franz 546
Schwarze, Jurgen 121, 611
Scott, Richard 528, 529
secrecy of deliberation 416
sectoral regulation see regulation
Securities and Exchange Commission (SEC) see United States (US)
financial crisis, and 571
securitization 560, 570–71
separation of powers 2, 5, 200, 294
‘institutional balance’ in EU 362
Europe, historically in 27, 30
new governance, and 338–9
new institutions requiring new form of 129–3, 338–9
Rule of Law 131–2
see also Australia; Canada; France; Germany; Montesquieu; Russia; United Kingdom (UK); United States (US)
service public see France
Shapiro, Martin 6, 7, 614
Sherman Antitrust Act 125
Sierra Leone 513
Simon, Herbert 528
Simpson, Sally 528–9
Single European Act (1987) 315
Single European Market 69, 162–3, 277–9, 607–8, 614
Skidmore v Swift & Co, (1944) 459
Skowronek, Stephen 394, 395, 400
Smith, Adam 311
social and economic interests see economic and social interests
Social Security Act (1998) see United Kingdom (UK)
Sordi, Bernardo 2, 3, 37, 52
Sossin, Lorne 7
South Africa (also South African) 19, 272–3
administrative litigation 14
Constitution 118, 125–4, 273, 480
right to administrative justice 467
Constitutional Court 14, 467–8, 474–5, 478
transformation through judicial deference 474–8, 479–80
courts in pre-democratic South Africa 479
independent accountability agencies 272–3
judiciary 479
South America (also Latin America) 1, 19, 225, 231–2
Brazilian executive and regulatory agencies see Brazil
Constitutions 122
independent accountability agencies 266, 272–4
South Korea (also South Korean) 19, 78, 88
administrative courts 121
administrative law development 85–6, 87, 88–9
administrative litigation 89
bailout 543, 544, 557–60, 565, 566
international best practices on transparency 558
nationalization 558
proactive program 557–8
democratization 88, 89
economic liberalization 559
law reform 83–4
ROBs 316
Soviet Union 14
administrative state socialism see administrative state socialism break-up 483
Parliamentarianism 93, 95, 110–11
political revolutions 93
Ukraine 482
S.P. Gupta v President of India (1981) 149–50
Spain 41, 72, 167
financial crisis 578
public contracts law 520
Spain v. Eurojust (2005) 623
Spaventa, Silvio 30
Stalcup v. Peabody Coal Co. (2007) 361
Stalin, Joseph 97–9
Standard Cost Model (SCM) 327
standing see justiciability
State, economic role of see economic and social interests; financial crisis
State Farm (1983) 360
state-society
distinction 3, 18
economic success, importance for 546
independent commissions, relationships with 259
partnerships and collaborative governance 337–8
Sté Tropic travaux signalisation (2007) 424
Stein, Lorenz von 79, 83
Stewart, Richard 134
Stiglitz, Joseph 565
stimulus packages 576–9
public works programs 578–9
social welfare expenditure 578
state aids 577
tax cuts 576–7
subsidiarity 6, 163–4, 175, 514, 623–4
Sullivan v Everhart (1990) 457–8
supranational governance and networked accountability structures 18, 618–29
accountability framework of European agency administration 620–21
multi-principals system 620
unity and diversity of accountability designs 620–21
democratic promise of networked accountability 628–9
dominance of Member States as supranational feature 625–7
EU, in 17, 66, 336–7, 618–29
evolving structures of networked accountability 620
forms of networked administrative governance 619
indirect administration to governance of administrative networks 618–19
institutional design 620–21
oversight mechanisms of Member States 621–5
compensatory and complementary functions 627–8
expert committees 622
external mechanisms 622–5
internalized mechanisms 621–2
judicial review 622–3
see also judicial review
management and administrative boards 621–2
oversight through political processes 623–5
Sweden (also Swedish)
agency accountability 11, 315
financial crisis 545
ombudsmen 122
utility regulation, consultations and transparency in 378–80, 384
waste management 168
Switzerland 636
Taggart, Michael 514
Taiwan (also Taiwanese) 8, 19, 87, 88
administrative law development 84, 85–6, 87, 88–9
administrative litigation 14, 89
Constitutional Court 8, 14, 246, 253–5, 467, 471, 478
dejudicialization of environmental regulation 471–4, 478
Rechtsstaat doctrine, and 471, 478, 479
reclaiming constitutional power 479
statutory reservation principle 467
democratization 88, 89
independent commissions 246–64
administrative functions, independence from view of 256–7
administrative procedures, independence from view of 257–8
analysis of social context for establishment 261–2
capacity-building for independence of 262–3
control, trust and insurance models 260–61
Constitutional Court rulings and political response 253–5
constitutional structure, independence from view of 255–6
creating commissions 247–51
creating independent commissions 251–5
definition 251
foreign voices: in the 1950 and 60s 248
in response to social/political demands: since the 1980s 249–51
legal recognition in government reforms 251–2
National Communication Commission, establishment of 246–55, 252–3
operation and legal and institutional predicaments 255–9
regulatory policies and budgets, independence from view of 258–9
relationship with bureaucrats, independence from view of 259
representation commission: the 1940s 247–8
state-society relationship, independence from view of 259
theories explaining establishment of 259–62
judiciary 472–4
law reform 84
recruitment of state officials 124
tax administration 55, 56–7, 59–60
Taylor, Serge 529
technocracy (also technocratic) agencies in EU 7, 11, 303–5
distrust of 614
ROBs 311–12, 319
technocratic expertise and accountability 9, 11, 303–5
UK 11
US 11
tenure
agencies and commissions 207, 209, 220, 260, 294, 297, 300, 319
judicial 207
ROBs 312
Tenure in Office Act see United States (US)
Teoh, Minister for Immigration and Ethnic Affairs v. (1995) 158
terrorism 635–6
Teubner, Gunther 531
Texas and Pacific Railway Co. v. Abilene Cotton Oil Co. (1907) 397–8, 400
Thailand 122, 274
administrative courts 125, 415
Constitutional Court 124–5
Thatcher, Mark 374
Thatcherism and Margaret Thatcher 152, 278, 512
third-generation procedures see administrative procedures
Tocqueville, Alexis de 24, 26, 27, 28–9
transnational networks and individual rights 18, 632–8
defining regulatory networks 633–4
safeguarding rights in 634–5
transparency
administrative procedure, and see administrative procedure
independent accountability agencies 270
independent regulatory agencies and commissions 270–71
treaties, concluding 158–9
Treaty on European Union (TEU) 170, 171, 595
Treaty of Rome 72, 424
Treaty on the Functioning of the European Union 70, 73, 169, 363, 598, 622
Tribunals, Courts and Enforcement Act (2007) see United Kingdom (UK)
Turkey 415
UEAPME (1998) 365
Uggl, Frederick 269
Ukraine (also Ukrainian)
administrative litigation 14
administrative process impaired by too little judicial deference 482–97
background to administrative justice system 482–3
burden of proof on government agency 484–5, 486
courts, role of 482, 485
procuracy, role of 485
protection of rights of private parties 485–6
reform of administrative justice system 483
rejection of exhaustion of remedies requirement 483–4, 486
weaknesses of administrative justice system 485–6
Constitution 483
Soviet Union 482
ultra vires 141
anti-delegation presumptions, and 498–9, 503
common law doctrine 466
review 390–91, 412, 451–3
uncodified constitutions 125–6
see also constitutions
Comparative administrative law

Unidroit 66
United Kingdom (UK) (also Britain and British) 3
Administrative Appeals Tribunal Act (1975) 429
administrative law, development of 23, 24, 31–4, 37, 120
administrative tribunals 64, 120
appeal 13
agencies and tribunals 7, 185
accountability 11
administrative independence 216–19
independent administrative agencies 65
technocracy, and see technocracy
utility regulation, consultations and transparency in 376–8, 384
aviation safety and EASA 624–5
Better Regulation 316
civil service see civil service
competition 72
contracting out 511, 512, 515, 519
judicial review, and 521
Parliamentary Commissioner 522
Private Finance Initiatives (PFIs) 511, 512, 514, 521
courts, common law see courts
defence see deference
Deregulation and Contracting Out Act (1994) 515
Donoughmore Committee and report 34, 216, 435
financial crisis 545
nationalization 576
stimulus packages 578
Franks Committee and Report 216, 219, 435
Industrial Revolution 31, 63
Human Rights Act (1998) 142, 500, 519
judicial review 5, 13–14, 412
contracting out 521
executive, overseeing 148–9, 151
greater scrutiny 152–3, 160
participation and expertise in context 367
participation and expertise in the courts 367–70
positive political theory, and 140–42, 143, 145
process review 367–9
questions of law see questions of law, judicial review of
judiciary 120, 152–3
Leggatt Review of Tribunals 216, 218–19, 222, 435
Legislative and Regulatory Reform Act (2006) 154, 160
merits review 426–7, 434–40, 446–7
asylum and immigration and asylum tribunals 437–40
historically 434–5, 442
planning cases 442
social security tribunals 436–7
tribunals after Tribunals for Users: One System, One Service 435–6, 440
Nationality, Immigration and Asylum Act (2000) 437, 440
nationalization 65
natural justice 1, 120, 637
ombudsmen 521
Parliamentary system 31, 32, 33, 148–9, 152–3
class-based structure 128
concluding treaties 159
control, regaining 153–9
delegated legislation 153–6
PPT, and see Positive Political Theory (PPT)
waging war 156–8, 160
profit-seeking in public services 47–52, 56
public and private enterprises 64
public intervention 65
RIA 67, 76
ROBs 313, 316, 327
Rule of Law 31–4
sectoral regulation 376–8, 384
separation of powers 148, 153, 369
Social Security Act 436, 437
Thatcherism 278, 512
Tribunals, Courts and Enforcement Act (2007) 120, 219, 435–6, 447
Welfare State 34, 35
United Nations
privatising work 525
Security Council 635, 636
United Nations High Commissioner for Refugees (UNHCR) 513
United States (US) (also American) 3, 5, 19, 225
administrative judges 426, 440
administrative law 1, 6
development 33–4, 35, 37, 76, 87
19th century see federal administrative law in 19th century America
private industry, and 84–5
regulatory agencies, and 296–7
administrative law judges (ALJs) 287, 426, 440–45
Administrative Procedures Act (APA) 9, 11, 87, 133, 284, 426
Index 665

adjudication and rulemaking 440–41
codification of appellate model 389–90
Depression, after 569
independent agencies 296, 300
influencing decision-making process 230
limited record review 484
PPT analysis, and 134–5, 139
ROBs, and 313, 317, 326
rules and special form of jurisdiction 187, 300, 340–41
written constitutions and administrative state 120, 121, 125
adversarial legalism 17, 87
agencies and tribunals 6–8, 134, 261
administrative independence 227
executive policy-making 9–10, 11
independent administrative agencies 64, 65, 194–5, 200–201
Brazil 225–6
comparison of EU/German/US agencies 625–7
constitutional perspective 185, 186, 188–9, 191, 341
independence, and 297–8
independent and non-independent 296–9
political accountability 297–8
Presidential oversight 238–42, 293–300
principal-agent framework 228–9
Congressional dominance theory 8, 225–6, 229–33, 236, 238, 241–2
identifying agent’s principal 189–90, 225
technocracy, and see technocracy
unitary executive thesis 190, 226, 239
Alien Torts Claims Act 521
American Law Institute 596–7
American Revolution see Revolution
bailout 543, 544, 566, 574–6
allegations of fraud and bad practice 563–4
alternative strategies 564–5
conflicts of interest 561–3, 565
criticisms of mechanisms 563–4, 574–5
deregulation ideology 560
mechanisms 560–62
nationalization 575–6
non-compliance with all ‘tough’ strategy principles 546
Obama, and 565
permissive strategy 546
Troubled Asset Relief Program (TARP) 546, 560–61, 563–5, 574
civil rights 39
Civil Rights Act (1964) 125
civil service see civil service
compensation see compensation for public services in United States
competition law 65, 72, 76
Constitution 122
checks and balances 313
contracting out 519
Eighth Amendment 158–9
Federal Reserve Bank, and 587
Fourteenth Amendment 196
individual rights guarantee 519
privatization 502
separation of powers 442
structure of administration 38, 40, 124, 239
Consumer Financial Protection Agency 581
civil service see civil service
election problems Bush/Gore 130
Fair Act (1998) 515
Federal Reserve Bank 329, 562, 564, 586–7
Federal Trade Commission (FTC) 64, 188, 194, 297, 390
review of decisions of 403–4, 407–8
federalism 161–2, 165
anti-commandeering doctrine 169–70
local immunities 165, 168, 169–71, 178
financial crisis 16, 545, 569–72
bailout see bailout
delegation in an economic emergency 581–3
Federal Reserve Bank, and 586–7
increased regulation 580–81
political accountability and stabilization 583–5
stimulus packages 576–9
technical advice model and stabilization 586–7
Freedom of Information Act 86–7
Shelby Amendment 519
General Accountability Office (GAO) 317
Government Accountability Office 6
independent regulatory agencies and commissions 7, 124, 256, 260–61, 263, 280–81
Interstate Commerce Commission (ICC) 6, 64, 194, 293–5, 297, 300
appellate review model 390
Commerce Court, and 401–2
Comparative administrative law

crisis 394
e xpertise 295–6
He pburn Act, and 395–7
historically 390, 392–400, 440–41
independence, and 297–8
less intrusive review after Hepburn Act, and 397–400, 411
Jefferson’s Embargo 39
d judicial/appellate review 5, 13–14, 39, 82, 187, 200, 287–8, 296
advantages 411
alternative systems 411–12
background in 19th century 390, 391–3
Commerce Court 401–2
c onsitutionality of appellate review model 404–9
contracting out 521
economic intervention 196
 emergence of appellate review model 393–401
 entrenchment of appellate review model 401–9
executive, overseeing 153, 159–60
features 389, 409–10
flexibility of 409–10
FTC, review of decisions of 403–4
‘hard look’ doctrine 82, 300, 317, 359–60, 410
He pburn Act (1906) 390, 393, 394–7, 398, 399–400, 401, 408
ICC crisis 394
increased 317
less intrusive review after Hepburn Act 397–400, 411
participation and expertise in context 357, 358–9
participation and expertise in the courts 359–61
positive political theory, and 139–40, 145
process review 359
questions of law see questions of law, judicial review of
reasonableness review 135, 139–40, 141, 142, 195, 200
reasons for continuance of 409–11
source of appellate review model 400–401
‘special tribunal’ for administrative, law 187–8
standards of review 135, 139, 300, 359, 389
‘hard look’ doctrine 82, 300, 317, 359–60, 410
substantive review 359–61, 399
see also judicial review
judiciary 7, 40, 360, 394, 400, 406–7, 411, 455
legislative veto 137, 138, 154, 159–60, 329, 561
Louisiana Purchase 41
merits review 426–7, 440–45, 447
administrative judges and agencies 440, 441–4
precedent 443
role of ALJs 442–5
social security cases 441, 444
military 15, 156
 extent of privatization 524–5
independent hierarchy, need for 535–6
international law norms, and 526
judge advocates’ role 530, 532–6, 537–8
military lawyers on battlefield 532–7
organizational elements creating compliance culture 533–7
organizational practices 529–30
organizational theory and military lawyers 527–37
pensions and compensation 42–3
private contractors see United States military contractors
private military firms threatening core public law values 526–7
New Deal 87, 134, 196, 313, 317, 569, 572, 589
notice and comment 9, 11, 195, 282, 300, 341, 384, 511
judicial review 411, 458–9
participation and expertise 358–9
ROBs, and 317, 326
OIRA see Office of Information and Regulatory Affairs (OIRA)
Office of Management and Budget (OMB) 296, 313, 318, 326, 329, 625
Paperwork Reduction Act (1980) 313, 323
Pendleton Civil Service Reform Act (1883) 38, 43
PPT, and see Positive Political Theory (PPT)
privatization 500, 502, 507
compensation see compensation for public services in United States military contractors see United States military contractors
state action doctrine 507
public administration theories 293–4
public intervention 65
public utility regulation 278, 279, 282
Restatements of the Law 596–7, 599
RIA 67, 76

Susan Rose-Ackerman and Peter L. Lindseth - 9781849808101
Downloaded from Elgar Online at 03/20/2019 06:52:34PM
via free access
Index 667

ROBs 313
rulemaking 10, 195, 238, 287, 325–6, 373, 384, 410–11, 458–9
informal rulemaking 358, 359–60
formal rulemaking 358, 359
notice and comment see notice and comment above
sectoral regulation 71, 76
Securities and Exchange Commission (SEC) 64, 289, 297, 298, 329, 571
separation of powers 11, 130, 131–3, 143, 200, 239, 294–6, 300, 316
agencies, within 442
appellate review model, and 404–9, 410–13
Sherman Antitrust Act (1964) 125
slavery 39
Supreme Court see courts
Tenure in Office Act 38
waging war 156
Wall Street crash see financial crisis
United States military contractors 524–39
challenges of foreign affairs privatization 525–6
compliance agents, effectiveness of 530–31
extent of privatization 524–5
international law norms and US military 526
private military forms threatening core public law values 526–7
military lawyers 526
battlefield, on 532–7
judge advocates’ role 530, 532–6
organizational theory, and 527–37
organizational elements creating compliance culture 533–7
commitment of accountability agents to legal rules and values 534–5
importance of sanctioning authority 536
integration of accountability agents with operational employees 533–4
need for an independent hierarchy 535–6
organizational structure, institutional culture and private contractors 537–9
organizational theorists, four groups of 528–32
organizations as complex decision-making hierarchies 528–30
organizations as complex systems or organisms 530–31
organizations as nexus of contracts 528
organizations influenced by societal forces or institutions 530
organizational theory and military lawyers 527–37
importance of organizational structure and institutional culture 526, 527–32
military lawyers on battlefield 532–7
private contractors, organizational structure and institutional culture and 537–9
accountability system, and 537–8
insufficient advice and training in rules 537, 538
investigating contractor misconduct 537–8
reforms 537–9
US military organization practices 529–30
Universal Camera Corp. v. National Labor Relations Board (1951) 409–10
utilities regulation, and 373–85
EU 374–5
France 380–83
Sweden 378–80
UK (England) 376–8
Venezuela 266, 271–3, 275
Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council (1978) 359
Vivien, Alexandre 30
Vogel, Steven, 608
Waissbrod, Steven 546
war
Vietnam 533, 538
waging 156–8, 160
World Wars I and II 4
Warren, Elizabeth 563
Washington, George 52
Waste Directive see European Union
Weber, Max (also Weberian) 3, 11, 24, 271, 304, 357–8
legal systems 80
salaries 47–8, 53–4, 57
Wednesbury principles see judicial review
Whig fundamentalism 31
Wiener, Jonathan 9–10, 11
Wiener v. United States (1958) 260
Williamson, Oliver 528
Wilson, Woodrow 30, 33–4, 402, 403
Woolf, Lord 148, 152–3, 159–60, 369
Woolhander, Professor Ann 401
World Bank 71, 227, 539
capture of banks 547
economic elites dominating financial system 547
Mexico Department 546
World Development Report (World Bank) 547
Comparative administrative law

World Health Organization 72
World Trade Organization (WTO) 2, 16, 66, 71, 74–5, 76, 159
agreements 72, 74
dispute resolution 71, 75
function 74
world trade regulation see regulation
written constitutions and the administrative state 117–27
administrative law systems as an element of uncodified constitution 125–6
administrative states, and 123–5
constitutional character of administrative law 117–23
constitutional and administrative law compared 117
endurance of administrative law institutions and constitutions 121–2
localism: constitutions converging more than administrative law systems 119–21
symbolism: inferiority of administrative law systems 123
Wyman, Bruce 34
Yeh, Jiunn-rong 8
Yeltsin, Boris 111
Zedillo, President Ernesto 544, 547–8, 550, 558, 559
Zeitlin, Jonathan 628
Zwart, Tom 5