Index

accountability
  administrative agencies/institutions
    EU, in 246–7
    hybrid institutions 584
    India, in 222–3, 229–31
administrative independence
  Canada, in 160–61
  United States, in 239–40
contracting out 558–9
expertise, conflicts
  expert reviews of experts 462
  public participation, and 371–83
  UK Competition Appeals Tribunal cases 468–75
Importance 251
military and security contractors 567–8, 574
models 253–4
  New Public Management 359–61
  United States, in public participation vs. expertise 371–4, 383
reason-giving 268–72, 278–80
administrative agencies/institutions, generally see also administrative independence;
  Regulatory Oversight Bodies
  constitutional controls 67
  controls mechanisms 67, 143
  endurance 65–6
  functions 159, 282
  instrumental rationality 142–3
  legal norms, distinction from 65–6
  legitimacy 147
  principal/agent relationships 143–6
  private rights protection, and 112
  procedural requirements 112–13
  public interest standards 143
  Administrative Burden Reduction program (EU) 342
administrative courts
  constitutional controls 67–8
  establishment 64
  France, in 64, 435
  Germany, in 64
  historical development 435
  Hungary, in 125–6
  Italy, in 104–5, 110
  role of 64
Taiwan, in 207–8, 479, 482–5, 488–9, 493–4
US, in 141–2
administrative discretion
  Canada, in 160–61
  comparative perspectives 641–2
    bounded discretion 644–7
    construct of law, as 642–3
    contextual influences 643–4
  EU, in
    authority for 627–8, 633–7, 675
    bounded discretion 646–7
    development 627–8
    ESMA ruling 633–7, 645, 688–91
    judicial review 635–9
    Meroni doctrine 620, 627, 634–6, 673–4, 688
    political vs. technical interpretations 633–5
    Tetra Laval standard 636
    wide vs. clearly defined powers 633–7
  France, in 637–9
  Germany, in 639–41
  Hungary, in 130
  Italy, in 105, 109, 640–41
  US, in 58
administrative independence see also separation of powers
  Australia, in 174–5
  autonomy, and 143, 146, 155–6
  Canada, in 159–70, 165–9, 178–9
  capacity-building 211–12
  constitutional values, and 147
  cultural influences 213
  definition 139, 145–6
  France, in 139, 144–5, 151–5
  Germany, in 139, 144–5, 150–51, 154–5
  impartiality, and 251
  judicial independence 175
  justifications for 155–6
  leadership, and 212
  political influences 159–70, 178–9, 212–13
  political interference 159, 166
  positive political theory
    capacity-building 211–13
    control model 210–11
    neutrality and impartiality 211–12
    political insurance model 211
    social need, and 212
    trust model 210–11
Comparative administrative law

role of, generally 139, 156, 159–60
US, in 139, 148–9, 154–5
Congressional oversight 48, 53–5, 338
Interstate Commerce Commission 103, 148–9, 234–40
Presidential powers 41–2
administrative law, generally
constitutional law, and
administrative agencies 67, 142–6
administrative courts 67–8
administrative functions, constitutional treatment 65–8
choice, implications of 140–42
differences 60–62
ECJ role 683–5, 687–96
endurance 65–6
EU conflicts 623–4, 670–77, 681–3
France, in 284
localism, and 62–4, 66
overlap 60–62, 69, 586–7
public service controls 67
structural flexibility 65–6
symbolic values 66
UK, in 28–9, 667
unwritten constitutions 68–9
written constitutions 65–8
constitutionalism, and 28–9, 142–7
development 23, 35, 352–3
Anglo-American 28–31
centralization 29
constitutionalism 28–9
convergence, and 62–4
delegated legislation 29
economic interventionism 32–3
financial bailouts, and 354
financial crisis, and 352–8, 367
France, in 23–6
‘general’ legislation trends 363–4
Germany, in 26–35
global law emergence 116
governance trends 353–4
Industrial Revolution 29
interpretation conflicts 23
judicial review 25–6, 365
New Public Management, and 353, 358–9
ordinary law, role of 30–31, 107–8
Parliamentary Sovereignty 29–30
political freedom, limits on 26–8
political obligation, attitudes to 26
principle of legality, and 27–8
public spending policies, and 354–6
rights of individual 30–31
rule of law 28–35, 64
Russia, in 32
separation of powers 25–6
social reform impacts 24–5, 32–4
social welfare programs, and 355
state interventionism, and 31–5
strategy conflicts 354–6
trends 363–5
World War I/II 33–5
digital government, and 361–3
EU law influences 113–16
instrumental rationality, and 142–3
norm-creation role 319, 330–31
Americanization 330
challenges 330–31
EU, in 320–22
France, in 326–30
network pricing regulation, in 320–30
public consultation 319–30
study trends 319–20
Sweden, in 325–6
transparency 319–30
UK, in 322–5
organization theory, and 570
parliamentary vs. presidential systems 45–8
principal/agent relationships 143–6
theory vs. practice 142–6
vs. ordinary law 30–31, 107–8, 141
administrative law scholarship
Germany, in
background 85
challenges 85–6
constitutionalism 86–7
contextual influences 94–5
development 5–6, 86–7
EU and international law influences
90–91
exclusions 87–8
interdisciplinary influences 91–2, 95–7
juristic approach 87–9, 94–5
Neue Verwaltungsrechtswissenschaft
approach 91–7
regulative law crisis 88–9
rights-based interpretation 86–7
rule of law, and 86–7
steering theory 5–6, 93–4
purpose, generally 96–7
Administrative Procedure Act of 1946 (US) 10,
34, 47, 71, 112, 141, 275–6, 279–80, 284,
335, 371, 567
administrative procedures, generally
definitions 302–3
features
collaborative governance 308–11, 315–16
command-and-control governance 307–8
proceduralization 308–9
quasi judicial design 307
quasi legislative style 307–8
Index

functions
defensive vs. collaborative 311, 314–15
governance outcomes 309–10
individual decision-making 313–15
integration 314–15
participation and collaboration 308–15
policy-making 311–12
rulemaking 311–13, 315–16, 612
historical development
features 307–9
first generation 306–7, 309–12
law, relationship with 310–11
phases 306–11
second generation 306–13
third generation 306, 308–11, 313–16
influences on
autarchic vs. heterarchical processes 304
ex officio investigation vs. shared
information processing 304
implementation/enforcement processes vs.
full policy cycle processes 305
influences on 303–6
law-applying vs. law-creating 303–4
legality protection policies vs. policy
improvement strategies 305
public bodies vs. private party procedures 305–6
public power vs. public values 305

Algera and others v Common Assembly (EU) 656
Aman, Alfred 553
American School of Magnetic Healing v. McAnnulty (US) 271
Angelopharm GmbH v. Freie Hansestadt Hamburg (EU) 378
Anisminic Ltd v Foreign Compensation Commission (UK) 391
Appleby v. United Kingdom (EU) 521
Argentina 427–8, 430
Arnold v. Mundy (US) 519
Associated Provincial Picture Houses Ltd v. Wednesbury Corporation (UK) 78–9, 111, 410, 463–4
Aubry, Charles 424

Australia
administrative independence 174–5, 611
administrative law 174–5
contracting out, statutory controls 560
judicial independence 174–5
judicial review framework 174
public power concentration 604
separation of powers 602

Ball v. Herbert (UK) 517
Barnhart v Walton (US) 398–9, 403

Bato Star Fishing v. Minister of Environmental Affairs (SA) 485–7, 490–91
Bell Canada v. Canadian Telephone Employees Assn (Can) 169
Ben-Atiyah v. Minister of Education, Culture & Sports (Isr) 407–8
Bernstein, Steven 590
Blundell v Catterall (UK) 517
Brazil
administrative agencies/institutions
appointments, influences on 185–6, 188–91
budgetary controls 183–5, 187–8
delegated powers, views on 193–4
funding sources 183–4
independence 182–93
legislative power restrictions 186–7, 191–2
presidential controls 183–92
regulatory state intervention trends 182–3, 192–6
US and EU influences on 181
constitution 67
presidential powers 181–2, 192–3
neoliberal reforms 193–4
Burkow, R.E. 212–13

Campbell and Fell v. UK (EctHR) 170–71
Canada
administrative independence
accountability, and 160–61
discretion, processes 160–61
judicial appointments 162–5, 173
judicial independence 161–5, 161–8
judicial interpretation 165–70
political interference 159–70, 178–9
separation of powers 166
Charter of Rights and Freedoms 589
judicial review 399–400, 402
non-state regulation, recognition 589–90
privatization 539
proportionality principle 410, 417
Cane, Peter 175
Carpenter, Daniel 319–20
central banks 40, 241
Chaoulli v. Attorney General of Quebec (Can) 539
Charter of Fundamental Rights (EU) 114–15, 624, 652, 676
Chevron USA v. Natural Resources Defense Council (US) 42, 56–7, 276, 394–9, 402–3, 449, 690–92
Chile 425, 430, 433
China, Republic of 67, 365, 411–12

CIN Properties Ltd v. Rawlings (UK) 521
Citizens to Preserve Overton Park v. Volpe (US) 451
City of Arlington, Texas v FCC (US) 399
climate change 262–3
Colombia 428
comitology 375–6
Commission v. Tetra Laval (EU) 636
common law systems
administrative independence 168–70
judicial review 111
negotiated regulation 108
ordinary court jurisdiction 141
political interference 159–60
Australia, in 174–5
Canada, in 159–70, 178–9
New Zealand, in 176–8
reasonableness, and 268–9
types of law 268–9
Commonwealth v. Davis (US) 520
Community Plant Variety Office 627
Constant, Benjamin 147
cost-benefit analysis 262
Costa Rica 425
Costa v. ENEL (EU) 624
Council for Civil Service Unions v Minister for the Civil Service (UK) 463
Craig, Paul 413, 464
CUPE v. Ontario (Minister of Labour) (Can) 162–5
Currie, David 150
d’Aguesseau, Henri-Francois 423
Dame Veuve Trompier-Gravier (Fr) 289
Danthony (Fr) 297–8
Datla, Kirti 212
Declaration of Rights of Man 1789 25, 523
delegation of powers see also judicial deference
constitutional controls 478–9
EU, in 688–96
democracy
administrative law, and
EU, in 673–4
independent election commissions 39–40
legitimacy, and 251
developing democracies
delegation of powers, controls 478–9, 494–5
judicial deference 488–95
procedural fairness, importance of 494–5
public participation, and 251
vs. expertise 371–83
deregulation
financial crisis, and 356–8
policy development 259, 356–8, 366
Devolvè, P. 638
Dewey, John 251
Dicey, A.V. 30–32, 35, 63, 103, 141, 586
Dickinson, Laura 554
digital government 361–3
distributive justice 32
Donnelly, Catherine 79
Dunsmuir v New Brunswick 400, 402
Ecuador 425
electoral commissions 39–40
E. ON case 129–30
Epoux Barbier v. Air France (Fr) 560
Equator Principles 584–5
errors of law see under judicial review
EU
accountability
administrative agencies, of 246–7
technical expertise, and 375–9
administrative agencies/institutions
accountability, and 246–7
anti-discrimination policies 244
appointments to 242, 247
background 241
challenges 245–7
competences 620
constitutional influences over 670–77, 681–2
coordination 245–8, 652
democracy, impacts on 245
discretionary powers 627–8, 632–47
financial crisis impacts 621–3, 632
financial securities regulation 621–2
judicial review 242, 245, 673–4
law reform 620, 623–4
legislative powers 245–6, 624–6, 674–5
legitimacy 626–7, 673–4
pluralization 672–3
political influences 246–7
powers over 241–3, 673
procedural safeguards 629–30
regulatory cooperation 295
regulatory oversight 245–6, 336–9
regulatory powers 621–3, 672
restrictions on 619–20
role of 241–2, 246–7, 672–4
soft vs. hard rules 246–7
structure 242–3, 245
technocratic rationale for 626–7
trends 672–3
US independent commissions, comparison 234, 241–3, 245–8
administrative discretion
authority for 627–8, 633–7, 675
bounded discretion 646–7
development 627–8
ESMA ruling 633–7, 645
judicial review 635–9
Meroni doctrine 620, 627, 634–6, 673–4, 688
political vs. technical interpretations 633–5
Tetra Laval standard 636
wide vs. clearly defined powers 633–7
administrative independence
challenges 242–5
legitimacy 243–4
limitations 242–7
administrative law
challenges of 651–2, 672–3
Commission role 672–3
composite procedures 652
constitutional basis for 667–73
cosnstitutional conflicts 623–4, 670–77, 681–3
democracy, and 673–4
doctrine of conferral 667
European Administrative Space 670
federalism, influences of 670–72
functions 611
good administration principles 652–3
harmonization 652
horizontal and vertical application 671–2
human rights, and 114–15
information provision 314–15
legislative powers 245–6, 611–12
liberalization 114–15
national laws, supremacy over 114–16, 670–72, 687–96
public consultation 314, 608
simplification 314
subsidiarity, and 693–4
administrative law reform
administrative agency powers 620, 623–4
judicial review 620, 623–4
proposals 295
ReNEUAL model rules 295, 650–51, 653–66
administrative vs. constitutional character of 680–81
Better Regulation initiative 237
Charter of Fundamental Rights 114–15, 624, 652, 676
constitutionalism, in 682–8
delegated legislation 688–96
ECJ role 683–5, 687–96
judicial interpretations 688–96
legal entrenchment 684–5
principal-agent relationships 684–5
subsidiarity principle 693–4
Court of Justice 609–10
deregulation policies 356–7
Fiscal Compact 356
general principles 114, 652–3, 675–6
Impact Assessment Board 236–337
individual rights 609–10, 675–6
institutions 608–9, 611
judicial review
administrative discretion 401, 635–6
civil vs. common law interpretations 401
constitutional impacts 624–9
development 620
errors of law 400–401
expert conflicts, and 378–9
grounds for 611
institutional balance principle 375
manifest error 378–9
measures for approximation 625–6
private rights 623
process review 377–8
public participation vs. expertise 375–9, 383
purposive approach 378
representativeness 377
risk assessments, role of 377–9
substantive review 378–9
Treaty of Lisbon reforms 623–4
vertical and horizontal relationships 375–6
legitimacy of 686–7
powers, generally
control regime 610–12
diffusion 604, 612
discourse of conferral 667
governance model 608–10
regulatory oversight 611
separation of 241, 375, 625–6
socio-political influences on 611
supranational 607–10, 682–3, 687–96
privatization 554, 560
proportionality principle 409, 412, 464
public law, and
constitutional conflicts 681–2
public participation 608, 623
authority for 376
civil society engagement 376
comitology process 375–6
consultation standards 376
EU Commission role 375–6
horizontal controls 375–6
judicial review 377–9
vertical controls 375, 377
vs. expertise 375–9, 383
regulatory oversight, generally 236–337, 611
Regulatory Scrutiny Board 245–8, 336–47
separation of powers 241, 375
social market economy 114
structure 240–41, 608–9
transparency 623
values 555, 608
European Central Bank 139–40, 241, 632
European Convention on Human Rights 1950 557
European Securities and Markets Authority (ESMA) 621–9, 633–7, 645, 688–91
European System of Financial Supervision 621
European Systemic Risk Board 621
Executive accountability, and 110, 239
administrative agencies, and 45–8
administrative discretion 53, 165, 168, 312, 396, 479, 632, 645, 646–7
administrative independence 139, 144, 169, 203, 208, 210, 222, 228, 235, 242, 672
administrative law 207, 237, 303, 305, 307, 312, 586
Australia, in 174–5, 611
Brazil, in 8, 183
Canada, in 159, 162, 165–6
Chevron, and 396, 692
common law, and 29, 103, 160, 601
constitutional law 45, 55, 66, 119, 135, 147, 154–5, 203, 542–3, 629, 695
delegation of powers, and 29, 32, 255, 478–9, 628
democratic accountability, and 9, 149, 168, 251, 259, 478–9, 494
ESMA ruling, and 634, 636
EU, in 245–6, 338, 375, 609, 632, 637, 659, 672
France, in 28, 145, 151–2
Germany, in 27, 143–5, 150–51, 628–9, 695
Hungary, in 125, 127, 131–2, 133
India 221
Individual rights, and 133
global governance organizations, and 614
judicial review, and 14, 55–6, 74–5, 104, 110, 125, 127, 131–2, 133, 162, 253, 277, 340, 382, 463, 489, 493–4, 634, 640, 644, 692
legislation/legislative control, and 5, 8, 49–51, 53, 54, 144, 186, 191, 198–9, 278, 338–9, 482, 686
Meroni, and 634
New public management, and 360, 366
New Zealand, and 177
Office of Information and Regulatory Affairs 335–6
parliamentary government systems, and 5, 54, 72–3, 159, 206–7, 223, 629
Poland, in 15, 481–2
Portugal, in 364
private sector role 187, 228
public domain, and 525
public participation 253–4, 312
regulatory oversight, and 11, 48, 143, 334
rule of law, and 29, 103
rulemaking (rule-making), and 252, 254, 304, 309, 660

Susan Rose-Ackerman, Peter L. Lindseth and Blake Emerson - 9781784718671
Downloaded from Elgar Online at 06/25/2019 04:45:18AM
via free access
Index 705

separation of powers, and 4, 26, 38–43, 46, 32, 147, 382, 601–2, 629, 695
South Africa, in 490
Taiwan, in 67, 146, 198–203, 484
trust, and 401
US, in 45–8, 144, 165, 181, 335–6, 340, 660
UK, in 170–73, 611
voidness, and 421

experts
democratic accountability, and 371–83
expert reviews of experts 462
public participation, role conflicts 253, 370, 383–4
arbitrary and capricious test 373
comitology process, and 375–6
EU, in 375–9, 383
hard look judicial review 373
institutional balance principle 375
notice and comment rulemaking 371–4
substantive judicial review 373–4
transparency, and 371–2
UK, in 379–84, 462, 468–75
US, in 371–4, 377, 382–3, 394–9
value, judicial skepticism 381–3
vertical and horizontal relationships 375–6
regulatory oversight bodies 334
transnational regulation, role conflicts 592

Farina, Cynthia 692
FCC v. Fox Television (US) 374
FDA v Brown and Williamson Tobacco Corporation (US) 396–7

financial crisis
administrative agencies, impacts on 621–3, 632
administrative law impacts 352–8, 367
bailouts 354
deregulation, and 356–8
Fiscal Compact 356
New Public Management, and 358–9
privatization, and 352–3, 356–8, 366, 533
public spending impacts 354–6
sovereign debt impacts 355–6
Finanzausgleich I (Ger) 150
Fleiner, Fritz 405
Fleming, Gabriel 178
Forestry Stewardship Council (FSC) 585, 591–2

France
accountability model 253–4
administrative agencies/institutions 65
centralization 154
independence 139–40, 144–5, 151–4
jurisdictional comparisons 151–5
market regulation influences 152–4
principal/agent relationships 144–5
regulatory oversight 335
role and powers 151–2, 154–5, 294
rulemaking 294–5
administrative court 81
access to justice, and 440–41
adversarial principle 441
annulment, retroactivity reforms 444
appeals procedures 438
constitutitional reforms 68
decisional economy 441–2
emergency procedures 443–4
ethics charter 437
grounds of public policy 441
historical development 435
human rights, and 436–8, 442
incompetence or invalidity claims 441–2
judicial independence, and 435–7
judicial powers, authority and validation 438–9
judicial review 10, 13–14, 286–8, 297–8, 335, 443
judicial role and duties 439–40
legal certainty, and 444–5
pending litigation, applicability of new judicial rules 444–5
procedural reforms 443–4
right to fair trial, and 442
time limits and delays 442–4
administrative law
administrative discretion 637–9
autonomy 102–3
Code of Relations between Public and Administration 364–5
codification 284–98, 364–6, 657–8, 664
constitutitional law, and 284
criticism of 141
historical development 23–6, 102–3
judicial review 25–6, 154, 637–8
Napoleonic influences on 25–6
network pricing regulation 326–30
New Public Management 360
norm-creation role 326–30
proportionality, and 110, 411, 413
public authority concept 106
public consultation 292–5, 298–9, 326–30
public law vs. private law 102–3
regles exorbitantes 102–3
Revolution, influences of 24–5
separation of powers 25–6, 63, 80–81, 103, 144–5
transparency 326–30
vs. negotiated regulation 108
vs. ordinary law 141
Administrative Procedure Code of 2015
(FR)
access to information 291
adversary proceedings 289–90
background 284–7
case law impacts 296–8
case law restatement 288–90, 296–7
codification, resistance to 285–6, 296
Conseil d’Etat, and 286–8, 296–8
dispute resolution 290
due process doctrine 289
general principles of law, and 288–90, 296–7
limitations 288, 294
personal data 291
personal rights under 288–9
public consultation 292–5, 298–9
public interest, and 298–9
purpose 284–5, 296–7
repeal rules 295–6
rights of defense principle 289, 298
rulemaking powers 294–5
simplification 291–2, 295–6
statute law restatement 290–92
structure and coverage 287–8
transparency, and 291, 299
unlawfulness 295–6
voidability principle 297–8, 426
withdrawal vs. abrogation 295–6
constitution 65, 667
administrative court, and 68, 438–9
administrative law codification, and 284
regulatory powers under 151
electoral system 80
invalidity, right to resist 421
judicial independence
colliegiality 436
development 436–7
duty of 436
human rights conflicts 437
impartiality, and 437
juge unique 436
perception of 436–7
powers and authority, impact on 438–9
principles 435–6
protection of 436–7
secrecy, and 436
judicial review 286–8, 297–8, 335, 443
advisory opinions 298
historical development 25–6
law reforms 443
reasonableness review 80–81
separation of powers 80–81
standing rules 525
voidability 297–8, 423–4, 426
privatization 554, 560, 562–3
public contract termination 562
public property law 514–15
public spaces, law of 521
Crown ownership 522–3
enforceability 524
historical development 522–4
inalienability 522–3, 525
judicial review standing rules 525–6
public interest protection 525
public law vs. private law separation 514–15, 522–6
regulatory oversight 335
voidness vs. voidability 423–4, 426
Gaines v. Thompson (US) 269
Gauweiler v. Deutscher Bundestag (EU) 635, 646–7, 694–6
Germany
accountability
chain of legitimacy model 253–4
administrative agencies/institutions 65
independence 139, 144–5, 150–51
jurisdictional comparisons 150–51, 154–5
market regulation influences 150–51, 154
principal/agent relationships 144–5
role and powers 150–51, 154–5
administrative court 81–2, 479
administrative law
administrative discretion 639–41
codification 286
constitutionalism, and 150–51, 667, 694–6
Europeanization and internationalization 90–91
federalism, and 151, 154
Gewährleistung 89–91
historical development 4, 26–8
information society impacts 91
interventionist welfare trend 88–9
New Public Management 89–90, 360
political freedom, limits on 26–8
principle of legality, and 27–8
procedure code 63
proportionality, and 110, 408–10, 413–14, 417
purpose 63
Rechtsstaat 4, 26–31
reforms 89–90
steering vs. governance 5–6, 93–4
vs. negotiated regulation 108
vs. ordinary law 141
administrative law scholarship
background 85
challenges 85–6
constitutionalism 86–7
contextual influences 94–5
development 5–6, 86–7
EU and international law influences 90–91
exclusions 87–8
interdisciplinary influences 91–2, 95–7
juristic approach 87–9, 94–5
Neue Verwaltungsrechtswissenschaft approach 91–7
regulative law crisis 88–9
rights-based interpretation 86–7
rule of law, and 86–7
steering theory 5–6, 93–4
constitutional court
constitutional complaints 132–3
role of 150–51
electoral system 80
essential matters doctrine 628
financial crisis, and 356
invalidity, right to resist 421
judicial review
administrative autonomy, and 144–5
historical development 28
individual public rights 81–2
reasonableness review 80–82
proportionality principle 408–9
public participation
model 253–4
renewable energy policy, in 260–65
separation of powers 80–81, 144–5
constitutional controls 478–9
differentiated system of reservation 482–3
voidness vs. voidability 424, 426, 430
Giannini, M.S. 640
Ginsburg, Tom 510
global administrative law 3, 658
globalization 354
Goodnow, Frank 31–2
government systems, generally see also
parliamentary government; presidential government; public powers
definition 601–2
network governance 613
gridlock tactic 74–5
Habermas, J. 514, 526
Hague v. CIO (US) 520
Hale, M. 518
Hamilton, Alexander 424–5
Hardin, G. 514–15
Harlow, Carol 586–9
Hauriou, M. 523–4, 638
Hilron v. Fruit Council (Isr) 457
human rights law
Declaration of Rights of Man 1789 25, 523
EU Charter of Fundamental Rights 114–15, 624, 652–3, 676
European Convention 114
judicial review, and 111, 464
non-state regulation, and 590
privatization, and 543, 557–60
public values, and 555, 557–9
right to fair hearing 652–3
Hungary
administrative courts 125–6
administrative law
constitutional powers 119–20
discretionary powers 130
EU law influences 119, 122–3, 135
fair administration principle 130–31
General Rules of Administrative Procedure 121–3
human rights, and 122
judicial review 119, 121–2, 125–31, 134
legal remedy, right to 127–8, 131
legality, review of 128
National Judicial Office 125–6
procedural oversight 121–2
proportionality 123, 128
reforms 127
rule of law, and 130
standing rules restrictions 128–30
vs. ordinary law 124
constitutional court 120
competence 131–3
constitutional complaints 131–2
independence 124
judicial review, and 121–3, 125–6, 131–3
legislative reform role 120–22
limitations 133, 135
limits on 124–5
powers of 124–5
procedural scrutiny 121–2
constitutional law
administrative law, and 119–20
amendment powers 119, 123
challenge, powers of 120–21, 125
Fundamental Law 2011 123–8, 134–5
individual decisions, review of 132–3
judicial initiative 132
judicial reforms 124–5
judicial review 131–5
legal norms, review of 131–2
reforms 120–21
rule of law, and 124
written constitutions 119–21, 124
political developments 119–23
ICANN 583, 595
illegality concept 422–3
Comparative administrative law

**Illinois Central Railroad v Illinois**, 206 U.S. 441 (1907) 274


**Immigration and Naturalization Service v Cardozo-Fonseca (US)** 395–6

Impact Assessment Board (EU) 236–337, 336–7

**independent regulatory agencies** see administrative agencies/institutions

**India**

administrative agencies/institutions

accountability 222–3, 229–31
challenges 224–6, 228–9
depoliticization 226
development 219–24
electricity sector 225–6
financial sector 226–7
historical influences on 9, 221–3
innovations 222
legal basis for 221
limitations 224–9
overview 227
Planning Commission 222–3
powers 223–8
private sector role 226
telecommunications sector 223–5

administrative independence

accountability, and 229–31
benefits 228–9
development 224
dispute settlement 228
institutional powers 224–8
resistance to 230–31
UK influences on 229–30
US influences on 223

administrative law

development 218–20
developmental state concept 222–3
economic crisis, and 219–20
influences on 218–20
liberalization 224–5
reforms 219–20
regulatory state characteristics 220

constitution

accountability 222–3
drafting, influences on 221–3
judicial review 221–2
limitations and omissions 221

national independence

colonial influences on 221–3
economic liberalization, and 218
separation of powers 222

individual rights 30–31, 81–2, 609–10, 675–6

Indonesia 68

**Indus. Union Dep’t, AFL-CIO v. Am. Petroleum Inst. (Benzene Case) (US)** 373

**Intelligible principle** 52–3

**International institutions, generally**

administrative law, national law influences on 116

Interstate Commerce Commission (ICC)

background 234–40
independence 103, 148–9, 235–9
reasonableness review 272–5
role and expertise 236–7

**invalidity** see also voidness and voidability

apparent paradox, and 431
conservation principle, and 430
definition 420–22
historical development 422–5
presumption of validity 421
retroactivity/retrospectivity 431
right to resist 421

**ultra vires acts** 424

**Israel**

judicial review

adjudicative proceeding 453–4, 459
case law trends 454–6
closed record procedures 455–6
court powers 454–6
deference rule 456
development 446, 454–6
general principles 455–8
grounds for 454
initial administrative decisions 453
inquisitorial proceedings 459
model 446
natural justice, and 453, 459
new arguments rules 456–7
new evidence rules 455–6
open review procedures 452–8, 455–6
quasi-judicial actions 453
quasi-legislative functions 452–3, 459–60
reasonableness 457–8
reconsideration stage 453–4
selective enforcement doctrine 458–9
standing, public petitioner concept 457
UK influences on 452, 454
US practices, differences from 458–60
privatization 538, 540

**Italy**

administrative agencies 109, 112–13, 115
administrative courts 104–5, 110
administrative law

administrative acts, authority for 105–6
anti-corruption policies 361
authoritarian model 105–6
concessions and exceptions 107–8
Council of State 105, 110
discretionary powers 105, 109, 460–41
EU law influences 113–16
General law on Administrative Procedure 364
historical development 102–6, 116
human rights, and 115
influences on 102–4, 109
international law influences 116
judicial review 104, 109–11
liberalization impacts 114–15
private interests, and 112–13
proportionality, and 110
reforms 106–7
separation of powers 105
social welfare rights, and 106–8, 115–16
tort liability 109
vs. negotiated regulation 107–8
vs. ordinary law 104–5, 107–9
constitution 115–16
invalidity, right to resist 421
New Public Management 361
privatization policies 357
regulatory oversight 335
voidness vs. voidability 424, 427
im resitendi 421
Jaffe, Louis 271
Japan
administrative law
access to justice, and 365, 506
Administrative Case Litigation Law 505–6
influences on 506
limitations 506
litigation procedure rules 505–8
reforms 497, 505–7
rulemaking 295
digital governance 362–3
judicial review
administrative disposition 506–9
errors in law 511
legitimate interests 508
limitations 506, 511
minimum intervention principle 500, 504, 508, 511
principal-agent relationships, of 510–11
purpose 505–6, 508, 511
reforms 497, 505–7, 510–11
standing to sue 506–8
urban space, interpretation 499–500
land and planning laws
consultation and coordination model 504, 509–10
decentralization 502
development 500–504
governance models 504–10
minimum intervention principle 500, 504, 511
principles 498–500
public participation, and 502–4
purpose 498, 501
rights-based model 504, 507–9
stakeholder conflicts 498–500, 502–3
urban renewal 502–4
urban space partition, interpretation 498–500
urbanization, and 500–504
Joseph v City of Johannesburg (SA) 489–91
judicial deference
Chevron doctrine 12, 42, 57, 276, 394–9, 449, 468, 690–92
democratization influences on 488–95
Israel, in 456
Poland, in 479–82, 488, 491–4
South Africa, in 485–91, 493–4
Taiwan, in 482–5, 488–9, 493–4
US, in 58, 447–8
judicial independence
Australia, in 174–5
Canada, in
framework 161–2
judicial appointments 162–5
judicial interpretation 165–70
political interference 159–66
conflicts 160
depoliticization 162
New Zealand, in 176–8
tory 38–9
UK, in
historical development 170–74
human rights, and 170–71
judicial appointments 173–4
law reform committees 170–74, 178
Military Tribunals 171–2
judicial review
arbitrary and capricious test 76–7, 79–80, 83, 373
bipolar model 268–9, 272
closed review model 446
US practices 446–52, 458–60
development 25–6, 365
errors of law 391–2
Canada, in 399–400, 402
Chevron doctrine 42, 56–7, 276, 394–9, 402–3
collateral fact doctrine 389–91
commencement theory of jurisdiction 391, 394
comparative law role 389, 395
correctness test 400
EU, in 400–402
Comparative administrative law

force of law, and 398–9
formal agency adjudication 399
interpretation difficulties 390
irrationality 78–80, 392, 399–400
jurisdictional error 270–71, 390–91, 393, 399–400, 402
legislative intent 394–9, 402–3
normative assumptions 393–4, 397–9
one vs. two test approaches, comparison 402–3
reasonableness review 400
restrained test 392
step zero 397–9
substitution of judgments 402
textual interpretation 395–9
UK, in 389–94, 402
ultra vires doctrine 391–4, 424
US 394–9, 402–3
EU, in 673–4
administrative discretion 401, 635–6
civil vs. common law interpretations 401
constitutional impacts 624–9
development 620, 673
effects of law 400–402
experts, conflicts, and 378–9
grounds for 611
institutional balance principle 375
manifest error 378–9
measures for approximation 625–6
private rights 623
process review 377–8
public participation vs. expertise 375–9, 383
purposive approach 378
representativeness 377
risk assessments, role of 377–9
substantive review 378–9
Treaty of Lisbon reforms 623–4
vertical and horizontal relationships 375–6
France, in
historical development 25–6
reasonableness review 80–81
separation of powers 13–14, 80–81
Germany, in
administrative autonomy, and 144–5
historical development 28
individual public rights 81–2
reasonableness review 80–82
historical development 25–6
illegality 77–8, 463
irrationality 78–80, 392, 399–400, 468
Israel, in 446–61
non-state regulation, and 587–9
open vs. closed procedures
  closed record procedures 455–6
  closed record requirement 447–50
  closed review model 446
  closed review rule 449–50, 452, 458–9
  Israel, in 452–60, 455–6
  open review model 446
  open review procedures 452–8
  scope of review 446
  US, in 446–52, 458–60
principal-agent relationships, and 510–11
principles of 463
privatization 546
procedural and merits review, combination of
  benefits 473–5
cases 468–73
procedural impropriety 463
public participation vs. expertise
  EU, in 375–9
  notice and comment rulemaking, and 371–4
  substantive review 373–4
  UK, in 379–83, 462, 468–75
  US, in 371–4, 377, 382–3, 394–9
public spaces, law of
  human rights, and 521
public rights, historical development 517–18
reasonable access standard 521
standing rules, and 525–6
reasonableness review
  arbitrary and capricious test 76–7, 79–80, 83, 373
discretionary choice 78
France, in 80–81
Germany, in 80–82
hard look review 373
illegality 77–8
irrationality 78–80, 392, 399–400, 468
Israel, in 457–8
law-fact distinction 274–7
proportionality 78–9, 411, 413
relevancy principle 77–8
South Africa, in 490–91
Sweden, in 326
UK, in 77–80, 111
unreasonableness, interpretation 78–9, 111, 281–2
Wednesbury test 78–9, 111, 410, 463–4
specialist courts, benefits and limitations 367–468, 475–6
trends 365
UK, in
  proportionality, and 111
reasonableness review 77–80, 111
trends 365
*Wednesbury* test 78–9, 111, 410, 463–4
US, in
arbitrary and capricious test 76–7, 79–80, 83, 373
challenges 279–81
damages actions 269
historical development 268–75
ICC reasonableness 272–5
Israeli practices compared 446–61
jurisdictional error 270–71
land claims 270–71
reasonableness review 76–7, 79–80, 83, 111, 272–7
separation of powers, and 14, 279–80
statutory requirements 279–80
substantive review 373–4
timing, relevance of 280–83
voidness vs. voidability 297–8, 420

*Kadi and Al-Barakaat v. Council of the European Union (EU)* 590
Kelsen, Hans 684
Kettl, Donald 554
Keynes, John Maynard 32–3
Koppell, Jonathan 613–14
Kovacs, A. 130

Laferrière, Édouard 285–6
Latin America see also individual countries
privatization trends 357
voidness vs. voidability 424–5, 427–8, 430, 433
welfare, private sector role 357

*Lebron v. National Railroad Passenger Corporation (US)* 560
Legislation/Legislative control
generally 5, 41, 48, 64, 307, 389
accountability, and 254
administrative agencies, and 282, 307, 310, 319, 371
administrative courts 438–9, 441, 443
administrative discretion, and 57, 143
administrative independence, and 140, 143, 165, 175, 203–4
administrative law, and 83, 94, 96, 112, 237, 654
administrative law scholarship 85, 88–9, 91, 93
Administrative Procedure Act (US), and 71, 112, 237, 275
Australia, in 161, 174–5, 611
Brazil, in 183, 186–7, 191–3
budget, and 54, 143, 168
Canada, in 159, 161–2, 166, 168, 399
*Chevron*, and 57, 394–5, 402, 403, 690
China, in 365
common law, and 7, 30, 168
constitution/constitutional law, and 28, 38–41, 49, 52, 61, 150, 166, 174, 254, 417, 439, 482, 542, 601, 680, 684–8, 695
cost-benefit analysis/regulatory impact assessment 95, 316, 334, 347, 478
deligation of powers, and 14, 29, 46, 61, 149, 170, 245, 254–5, 277, 279, 281, 294, 295, 303, 312, 366, 375, 376, 378–9, 481, 484, 628, 640, 673, 674, 684–8, 692
democratic accountability, and 251–3, 256, 478
effective, and 8, 41, 44, 52, 72–4, 125, 143, 149, 151, 170, 183, 207, 237, 603
expertise, and 149, 255
*ESMA Case* and 689–90
France, in 10, 144, 152, 154, 253, 284, 285, 287, 291, 292, 294, 296, 335, 356, 411, 438–9, 441, 443
Germany, in 85, 88–9, 91, 93, 96, 144, 151, 154, 253, 260, 263, 286, 478–9, 482–3, 657, 695
Hungary, in 120–25
*Illinois Central I*, and 274
Independent regulatory agencies 140, 144, 165, 175, 201, 203–4, 208, 213, 225–56, 235, 237, 240–41
India, in 225–6
International/transnational organizations, and 558, 586, 590, 593, 608
Italy 366, 657
Japan, in 497, 500, 501, 503, 504, 507, 508, 510
Locke, J., and 52
*Merton*, and 688
Netherlands, in 364
New public management, and 361
New Zealand, in 161, 176
Office of Information and Regulatory Affairs (US), and 335, 337, 342
parliamentary government systems, and 5, 42, 45–7, 74, 615
Poland, in 479–80, 481, 482, 491–2
Comparative administrative law

Portugal, in 364, 425, 657
presidential government systems, 45–7, 72, 74, 208
privatization/contracting out, and 539, 544, 546, 553, 556, 557, 560, 561
public domain, and
public participation, 251–3, 256
Rechtsstaat, and 27–30, 482–3
reasonableness/reason-giving 78, 149, 279
regulatory oversight, and 258, 334
rule of law, and 30
rulemaking (rule-making), and 278, 372, 608, 629
separation of powers, and 4, 38–41, 44, 166, 174, 254, 601, 602
South Africa, in 485, 487, 493
Soviet governance, and 121
Spain, in 366, 657
Taiwan, in 67, 201, 203–5, 207, 483–4, 488–9
trust, and 518
UK, in 73, 161, 165, 380, 390, 391, 394, 402, 463, 517, 526, 587, 611, 657
voidness vs. voidability, and 421, 423, 425, 429, 430, 433
welfare, and 107
Livermore, Michael 340
Locke, John 38–9, 52
Long Island Care at Home v Coke (US) 403
Loughlin, M. 517
Lujan v. Wildlife (US) 56–7, 525
Maitland, F.W. 30–31
mandamus actions 269, 272
Marbury v. Madison (US) 55, 269, 280–81
Marcou, Gerard 146
Martin, Kevin 212
Martin v. Waddell’s Lessee (US) 519
Masing, Johannes 151
Massachusetts v. EPA (US) 373–4, 379
Meroni v. High Authority (EU) 620, 627, 634–6, 673–4, 688
Merrill, Thomas 272, 276
Mexico 422
Meyer, Otto 144
military and security contractors see United States
Montesquieu, Charles de Secondat et de 26
separation of powers theory 38–9, 147
Morris v. UK (ECHR) 171–2

Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance (US) 76–7, 83, 373
Myers v. United States (US) 54

nation states, generally
historical development 605
National Association of Manufacturers v. Environmental Protection Agency (US) 374
natural justice 63, 112, 453, 459
Netherlands 357, 363–4
network governance 613
neutralty see also administrative independence
independence, relationship between 211–12
New Public Management
financial crisis, and 358–9
France, in 360
Germany, in 89–90, 360
Italy, in 361
Korea, in 359
potential impacts of 358–9
principles 358
purpose 353, 359
Spain, in 360–61
UK, in 353, 359
US, in 359–60
New Zealand 176–8
Nold v. Commission (EU) 656
non-state regulation see transnational regulation
Norton v. Southern Utah Wilderness Alliance (US) 525
notice and comment rulemaking 258–9, 265, 295, 371–4, 458–9
Ocean Port Hotel v. British Columbia (Can) 165–9
Office of Information and Regulatory Affairs (OIRA)(US)
administrative burden oversight 342
background 335–6
benefit-cost analysis 340–41, 345–7
courts, interaction with 340–41
functions 338, 340–42, 344–6
impacts 345–6
independence 337, 338
limitations 341, 346–7
powers 340–43
procedure rules 342–3
prompt letters 341
review eligibility criteria 346
review methods 346–7
review, place in policy cycle 338, 343–4, 347–8
structure 337–8
time limits 343
transparency 343
ombudsmen 611
open public administration see public participation
organizational theory 570–71
Ostrom, Elinor 526
parliamentary government systems
collective political responsibility 45–6
gridlock tactic 74–5
independent agencies 45–6, 206–7
judicial review, and 72–4, 77–80
policy change, ease of 73–4
PPT predictions 72–4
presidential systems, compared 45–8, 73–5
principles 45–6, 54
private interests 73–5
reasonableness review 77–80
reelection strategies 73, 75
Peru 284
Pfizer Animal Health v. Council (EU) 378–9
Plessix, Benoît 524
Poland
constitutional law
administrative controls 478–9
essential elements reservation 480–82
EU law interaction, and 491–2
legitimate expectations 492–3
restrictions on 480–82
democratization 479–80, 493–4
judicial review
constitutional freedoms, limitations on 480–82
Gambling Act 2009 491–2
judicial deference 479–82, 488, 491–4
proceduralization 479
renewable energy policies 480–82
Police Department of Chicago v. Mosley (US) 520
political insurance model, PPT 211
political interference see also judicial independence
administrative independence, influences on 159–61, 179
meaning 159
role of 161, 178–9
Portugal 364, 424–5, 432
positive political theory (PPT)
administrative independence
capacity-building 211–13
control model 210–11
neutrality and impartiality 211–12
political insurance model 211
social need, and 212
trust model 210–11
application 71–2
development 71
limitations 82–3
parliamentary systems 72–5
judicial review 74–5
policy change, ease of 73–4
reasonableness review 77–80
presidential systems 72–5
judicial review 74–5
policy change, ease of 73–4
reasonableness review 76–7
purpose 71
reasonableness review
France 80–81
Germany 80–82
UK 77–80, 111
US 76–7, 79–80, 83, 111
scholarship influences of 71
US policy, and
Administrative Procedure Act 71–2
reasonableness review 76–7
Prado, Mariana Mota 213, 230
presidential government systems
gridlock tactic 74–5
independent agencies 149–54, 206–7, 210–11
judicial review 76–7, 83
parliamentary government, compared 45–8, 73–5
policy change, ease of 73–4
PPT predictions 74–5
private interests 73–5
reasonableness review 76–7
reelection strategies 73, 75
privatization
administrative processes
anti-delegation presumption 544
conflicts with 582
constraints on 544–7
duty to formulate policy, and 544–5
preliminary decision-making 544
public participation 545
transparency, and 545–6, 560–61
characteristics 534–5
competition, and 546–7
constitutional law, and 538–9, 541–3, 548–9, 560
contracting out, and 536
accountability 558–9, 561–3
applicable law 559–61
development and trends 553–4
international institutions, by 554
judicial redress 561–3
principles 552–3

Index 713

Susan Rose-Ackerman, Peter L. Lindseth and Blake Emerson - 9781784718671
Downloaded from Elgar Online at 06/25/2019 04:45:18AM
via free access
Comparative administrative law

importance 254
limitations 254
notice and comment rulemaking 258–9, 265, 295
random sampling 258–9
norm-creation, and
EU, in 320–22
France, in 326–30
Sweden, in 325–6
UK, in 322–5
privatization, in 545
procedural management 257–9, 265–6
public hearings 257
roles of 252–3
stakeholders role 255, 258
public power, control of see also separation of powers
accountability 603
checks and balances 603
diffusion vs. concentration 601–4, 611–12
distribution – control hypothesis 603–4
document of conferment 667
functional vs. soci-political 602, 616
mechanisms 603	nation state, development of 605
ombudsman role 611
sharing vs. supervising 603
supranational powers
definitions 605–6
delegated legislation 688–96
development 605–6
EU, in 607–12, 682–3, 687–96
international organizations, characteristics 605–6
judicial interpretation 688–96
legitimacy concerns 607
private bodies 605
socio-political influences on 611–12
subsidiarity, and 693–4
theories of 606–7
treaty based power 605–7
system of government approach 601–2, 616
transnational powers
accessibility 614
characteristics 613–14
control regimes 615–16
definitions 605–6
development 605–6, 612
functions 612–15
limitations 613
network governance 613
policy-making 614–16
rulemaking 613–14
vertical vs. horizontal 602
public spaces, law of
attitudes, changing 526
common law vs. civil law systems 526
consultation and coordination model 504, 509–10
definitions 513–14, 516
France, in 521
Crown ownership 522–3
enforceability 524
historical development 522–4
inalienability 522–3, 525
judicial review standing rules 525–6
public interest protection 525
public law vs. private law separation 514–15, 522–6
judicial review
human rights, and 521
public rights, historical development 517–18
reasonable access standard 521
standing rules, and 525–6
liberalism, and 516
possessive individualism, and 515
public interest protection 525–6
rights-based model 504, 507–9
rights to use 516
tragedy of the commons 514
UK, in 514–15
Crown ownership, and 516–18
development 516–17
human rights, and 521
inalienability 516–17
Magna Carta 518
public rights, judicial interpretation 517–18
public trust theory 518–19, 524
reasonable access standard 521
US, in 514–15
constitutional protection 525–6
judicial review standing rules, and 525
public forum doctrine 520, 522
public trust theory 515, 518–19, 524
public trust theory 515, 518–19, 524
public values
contracting out, conflicts
accountability 558–9
applicability 557–61
interpretation 554–5
privatization, threats from 555–6
Pushpanathan v. Canada (Can) 399–400
R v. Commissioners for Special Purposes of Income Tax (UK) 391
R (on the application of Mott) v. Environment Agency (UK) 383
Comparative administrative law

R (Jones) v. First-tier Tribunal (UK) 392–3
R v. Hull University Visitor, ex parte Page (UK) 391–4
R v. MMC ex p South Yorkshire Transport (UK) 392
R v. North and East Devon Health Authority, ex parte Coughlan (UK) 472
R v. Panel on Take-overs and Mergers, ex parte Datafin (UK) 587–8
R (on the application of Greenpeace Ltd) v. Secretary of State for Trade and Industry (UK) 472
R (Cart) v. Upper Tribunal (UK) 392–3
Rau, Charles-Frederic 424
Rawlings, Richard 586–9
reasonableness, generally 268–9
damages actions 269
discretion, and 78, 268–9
injunctions 269
unreasonableness, interpretation 78–9, 111, 281–2
reasonableness review
Canada, in 400
discretionary choice 78
France, in 80–81
Germany, in 80–82
illegality 77–8
irrationality 78–80, 392, 399–400, 468
Israel, in 457–8
law-fact distinction 274–7
proportionality 78–9, 411, 413
relevancy principle 77–8
South Africa, in 490–91
Sweden, in 326
timing, relevance of 280–83
UK, in 77–80
Wednesbury test 78–9, 111, 410, 463–4
US, in 111
arbitrary and capricious test 76–7, 79–80, 83, 373
Chevron doctrine 42, 57–8, 276
development 269, 272–7
ICC cases 272–5
law-fact distinction 274–7
Rechtsstaat 4, 26–8
EU, and 624
rule of law, and 29–35
Taiwan, and 482–3
regulatory institutions, generally 64
hybrid bodies 583–4
non-state regulation 583–4
purpose 333
regulatory oversight see also Office of
Information and Regulatory Affairs;
Regulatory Scrutiny Board
bodies 333–4, 333–5, 345, 347–8
challenges 345
Hungary, in 121–2
purpose 333–4, 344–5, 347–8
review methods 346–7
tools 334
regulatory powers, generally see also public
powers
administrative process theory 149
EU, in 621–3, 672
constitutional conflicts 623–4, 670–77, 681–2
legitimacy of 687
national law conflicts 680–81, 688–96
France, in 151
hybrid regulatory bodies 583–4
trends 680
Regulatory Scrutiny Board (EU) 245–6
background 336–7
functions 339, 341–2, 344–6
impacts 345–6
independence 338–9
limitations 341, 343–4, 347
powers 340–43
prompt letters 341
reviews 338–9, 343–8
structure 338–9
time limits 343
transparency 343–4
relative authority theory 594–5
ReNEUAL model rules 295
background 650–51, 665
comparative influences on 654–63, 665–6
impacts of 663–6
judicial influences on 655–6
national codifications, and 656–9, 664
provisions
administrative rulemaking 659–60
decision-making 660–61
general principles 658–9
generally 583–4
information management 662–3
mutual assistance 662–3
public contracts 661–2
purpose 650, 653
renewable energy policies 260–65
Revesz, Richard L. 212, 340
Rex v. Clark (UK) 518
right to be heard 676
Robson, William 33
Roman law 422–3
Romano v. INAMI (EU) 620
Rose, Carol 514–15
Rougham, Nicole 594
Rousseau, Jean-Jacques 257–8
rulemaking (rule-making)
generally 85, 302, 303, 304, 306, 307, 311, 312, 313, 315, 316, 478, 552
administrative law scholarship, and 85
Administrative Procedure Act (US), and 63, 112, 307, 316, 373
EU, in 254, 295, 376, 608, 609, 620–21, 628–30, 660
Executive, and 193, 303
France, in 143, 287, 290, 292, 294, 364
Foreign affairs and, 567
Germany, in 63, 82, 143, 253
global governance organizations, and 613–15
judicial review, and 9, 53, 55, 372–5, 398, 440–41, 460
legislation, and 47, 52, 278, 372, 608, 629
notice-and-comment, and 9, 10, 46, 48, 149, 253, 371–2, 399
public participation, and 63, 252, 255, 264, 207, 312, 545
reason-giving, and 113, 277–83
regulatory oversight 12, 48, 340–43, 347
Taiwan, in 208
rule of law 28–35, 64
Russia 32, 219–20
Rust v. Sullivan (US) 396
Sagen v. Vancouver Organizing Committee (Can) 589
Sanyal, Kaushiki 230
Schwarze, Jürgen 64
SEC v. Chenery Corp. (Chenery I) (US) 448
separation of powers
administrative independence
central banks 40
coordination challenges 40–41
democratic legitimacy, and 40–41
electoral commissions 39–40
limitations on 41
parliamentary systems 42–3
Presidential systems 41–2
Canada, in 166
development 25–6, 80–81
institutions, position conflicts 40–41
Lockean theory 38–9
Montesquieu’s theory 38–9
twenty-first century approaches 39–41
EU, in 241, 375
France, in 25–6, 63, 80–81, 103
Germany, in 80–81, 144–5
institutional independence, and conflicts 159–60
democratic legitimacy, and 40–41
electoral commissions 39–40
judicial review 72–82
political interference, and 159–60
PPT predictions 72–82
public power control, and 602
reasonableness review
France, in 80–81
Germany, in 80–82
UK, in 77–80, 111
US, in 76–7, 111
theory 38–9, 147
US, in
cabinet controls 46, 49–51
delegated legislation, and 51–2
electoral process 40
limitations 41
need for 44
parliamentary systems, compared with 45–8
Shapiro, Martin 230
Shively v. Bowlby (US) 519
Silva, M.B. 181–92
Skidmore v. Swift (US) 398
social welfare rights 32, 106–8, 355
Sorchi v. Interior Office (Isr) 456
South Africa
administrative powers
constitutional controls 67, 478–9, 490
Marine Living Resources Act 1998 485–7
democratization 479–80, 490, 493–4
judicial review
apartheid regime 493–4
judicial deference 485–91, 493–4
proceduralization 479
reasonableness review 490–91
South Korea 359, 361–2, 409, 411
Spain
administrative law 108, 364
New Public Management 360–61
public contracts 561
voidness vs. voidability 425–6, 430
Stalcup v. Peabody Coal Co (US) 374
Stauder (EU) 656
Stewart, Richard 71
subsidiarity principle 693–4
Sullivan v. Everhart (US) 397
supranational power see public power
Sweden 65, 325–6
Taiwan
administrative agencies/institutions
appeals procedures 207–8
Basic Code 2004 201–2
Central Code 212–15
central banks 40
cabinet controls 46, 49–51
delegated legislation, and 51–2
electoral process 40
limitations 41
need for 44
Council for United States Aid (CUSA) 199–200
independent commissions 198–207
Joint Commission on Rural Reconstruction (JCRR) 199–200
Mongolian and Tibetan Affairs Commission (MTAC) 199
National Communications Commission 198, 201–4, 213–14
Overseas Compatriot Affairs Commission (OCAC) 199
social influences 213–14
vs. executive agencies 212
administrative courts
administrative dispositions 207–8
judicial deference 482–5, 488–9, 493–4
pre-appeals procedures 207–8
statutory reservation principle 479, 482–3
administrative functions, and 207–8, 214–15
administrative procedures, and 207–8
budgetary influences 208
bureaucratic relationships, and 209
Central Bank 212–15
commissioner appointments 204
corporal influences 203–4, 206–7
coordination functions 208–9
historical development 198–201, 213–14
legal protection 215
legal recognition 200–201
media mergers, conflicts regarding 204–6
National Communications Commission 8, 198, 201–8, 213–14
practical application 214–15
regulatory functions, and 208
state-society relationships, and 209
structural influences 213–14
administrative law
administrative appeals procedures 207–8
administrative unity, principle of 203
Organic Act of the Executive Yuan 199–200
reforms 201, 213–14, 483–5
regulatory mechanisms 200–201
structure 8, 198–9
constitution
administrative appointments 202–4
administrative controls 67, 479
agency independence, and 203–4, 206–7
amendments 203–4
Interpretation No 613 (2007) 203–4
legislative approval procedures 204
democratization 479, 482–3, 493–4
judicial review
constitutional courts 482–3
German influences on 482–3
powers 207–8
proceduralization 479
proportionality principle 411–12, 414
TalkTalk Telecom Group plc v OFCOM (UK) 469–71
Texas & Pacific Railway Co. v. Ablene Cotton Oil Co (US) 273
Thailand 65, 68
Tocqueville, Alexis de 23–6, 34
transnational power see public power
transnational regulation
administrative law
accountability 584
conflicts with 582, 586–9, 595–6
engagement processes 589–95
incorporation under 587–9, 590–92
isolation from 589–90
judicial review, and 587–9
recognition under 592–3
authority 590–93
relative authority theory 594–5
compliance 584
experts, role in 592
functions 582–3, 585–7, 595–6
global influences on 595–6
human rights law, and 590
hybrid regulatory bodies 583–4
legitimacy 590–93
lex mercatoria, and 584
non-state regulation 583–6
self-regulation 584
trends 582, 595–6
types 582–4
corporate codes 584–5
Equator Principles 584–5
good practices 592–3
multi-stakeholder regulators 585, 592
UN Guiding Principles on Business and Human Rights 585
transparency
French Administrative Procedure Code 2015 291, 299
New Public Management 359–61
norm-creation, and 319–21
EU, in 320–22
France, in 326–30
network pricing regulation, in 320–30
Sweden, in 325–6
UK, in 322–5
privatization, and 545–6, 560–61
public participation vs. expertise 371–2

Susan Rose-Ackerman, Peter L. Lindseth and Blake Emerson - 9781784718671
Downloaded from Elgar Online at 06/25/2019 04:45:18AM
via free access
Treaty of the Functioning of the European Union
administrative authority 623, 670–72, 675, 689–91
administrative discretion 375, 624–6, 628–30
duty to consult 376
duty to give reasons 661
form and notification of decisions 661
judicial review 623
Trudler v. Elections Officer (Isr) 454
trust, importance of 251
Tuori, Kaarlo 683–5, 687
UEAPME case 377
UK
accountability
technical expertise, conflicts 462, 468–75
administrative independence
dispute resolution 170
historical development 170
human rights, and 170–71
judicial appointments 173–4
judicial independence 170–74
law reform 172–4
ombudsman 611
administrative law
autonomy 103
Big Society concept 353
classic model of 463
constitutional law, and 28–9, 667
deregulation 259, 356
digital governance policies 362
Efficient and Reform Group 359
financial crisis impacts 353–5
historical development 28–31, 103, 141
human rights law interaction with 111, 464
Industrial Revolution, and 29
Magna Carta 518
natural justice, and 112
network pricing regulation 322–5
New Public Management approach 353, 359
norm-creation role 322–5
Parliamentary sovereignty, and 29–30
privatization 259, 356, 553–4, 556, 560
procedural requirements 112
proportionality, and 111, 409–10, 464
public consultation 322–5
public power, concentration 604
rule of law 28–31, 64
separation of powers, and 382
Smarter State concept 353, 359
social welfare role 106–7
transparency 322–5
vs. ordinary law 103, 141
Competition Appeal Tribunal
accountability vs. expertise conflicts 466, 468–75
benefits and limitations 467–8
functions 465–6
grounds of appeal 466
procedural and merits review, cases 468–73
procedural and merits review, combination benefits 473–5
structure 465–6
judicial independence
Franks Committee 170
historical development 170–74
human rights, and 170–71
judicial appointments 173–4
Leggatt Review 170–74, 178
Military Tribunals 171–2
judicial review
abuse of power 381
appeal, compared with 464
collateral fact doctrine 389–91
commencement theory of jurisdiction 391, 394, 402
effects of law 391–2, 402
historical development 463–5
irrationality 392, 468
jurisdictional error 390–91, 393, 402
law, questions of 389–94
limitations 393
normative assumptions 393–4, 402
principles of 463–4
procedural and merits review, cases combining 468–75
procedural and merits review, combination benefits 473–5
process review 380–82
proportionality, and 111, 409–10, 464
public participation vs. expertise 379–84, 462, 468–75
public spaces, public rights to 517–18
reasonableness review 77–80, 111
restrained test 392
specialist courts, benefits and limitations 367–468, 475–6
substantive review 382–3
substitution of judgments 389–94, 402
trends 365, 383
ultra vires doctrine 391–4, 424
Wednesbury test 78–9, 111, 410, 463–4
public participation
capricious unfairness 381
duty to consult 379–80, 382
legitimate expectation 379–81
pluralist influences 379–80
value, skepticism of 381–3
vs. expertise 379–84, 462, 468–75
public spaces, law of 514–15
  Crown ownership, and 516–18
development 516–17
human rights, and 521
inalienability 516–17
Magna Carta 518
public rights, judicial interpretation 517–18
public trust theory 518–19, 524
reasonable access standard 521
voidness vs. voidability 424, 428–9
*ultra vires* doctrine 391–4, 424
privatization, and 544

United States
accountability
administrative independence, and 239–40
Government Performance and Results Act (GPRA) Modernization Act 2010 359–60
public participation model 254
administrative agencies/institutions
Administrative Procedure Act of 1946 10, 34, 47, 71, 112, 141, 275–6, 279–80, 284, 335, 371, 567
authority and powers 51–3
challenges 238–40
conflicting agencies 238–9
Congressional oversight 7, 48, 53–5, 338
cooperative federalism 154
development 50–51, 335–6
EU independent commissions, comparison 234, 241–3, 245–8
Federal Trade Commission 277–8
financial crisis impacts 622–3
judicial review 56, 141
jurisdictional comparisons 148–9, 154–5
legislative powers 52–3, 628
market regulation influences 148–9, 154
nondelegation doctrine 628
obligation exemptions 567
official, appointment powers 50–51
powers over 139
powers to create 50–51
principal/agent relationships 144
procedural requirements 112
role and powers 139, 148–9, 154–5, 628
rulemaking role 277–83, 612
administrative courts 141–2
judicial review of 447–9
administrative independence 139, 148–9, 234–40
accountability, and 239–40
Challenges 239–40
Congressional oversight 48, 53–5, 338
Congressional powers 238
financial independence 236–7
Interstate Commerce Commission 103, 148–9, 234–40
leadership, and 212
legitimacy, and 148–9
limitations on 41
non-independent agencies, conflicts 238–9
Presidential powers 41–2, 49, 236–7
role of 148–9, 238–9, 278–83
theories of 234–6
administrative law
administrative agencies, powers to create 50–51
Administrative Procedures Act 1946 10, 34, 63, 68–9, 237, 448
Administrative Redundance Act 1980 342
appointments, powers of 46–7, 50–51
collective political responsibility 46–8
Congressional powers 49–51, 238
constitutional limitations of 49–51
Court of Appeals (DC Circuit) 141–2
delegated authority 103–4
deregulation 356–8
digital governance policies 362
due process requirements 112
ex parte communications 237
Fair Deal, and 34
federal vs. presidential powers 44–5
financial crisis impacts 355–5
freedom of information, and 560–61
Government Accountability Office 6–7, 55
Government Performance and Results Act (GPRA) Modernization Act 2010 359–60
Hamiltonian theory 234–5
historical development 33–4, 103–4, 141, 268
intelligible principle 52–3
Jacksonian theory 234–5
judicial independence, and 63
judicial review 34, 141, 238
legislative authority 46–8, 52–3, 63, 237–8
legislative entrenchment 68–9
New Deal, and 33–4, 622
New Public Management approach 359–60
notice and comment rulemaking 258–9, 265, 295, 371–4, 458–9
parliamentary government, differences from 45–8
political interference 44–5
positive political theory (PPT), and 71–2, 79–80, 83
Presidential powers 41–2, 46–8, 236–7
privatization 356–8, 543, 553–4, 556, 560–61
public-private distinction 64
reason-giving in 268–72, 277–83
rotation in office system 234–5
social welfare role 107, 355, 356
spoils system 234–5
theories of 234–6
vs. negotiated regulation 108
vs. ordinary law 103–4, 108, 141
welfare reforms, and 355, 366
Constitution 65
administrative agencies 67
administrative controls 49–51, 67, 667
constitutions outside 68–9
judicial interpretation 68
privatization, and 543, 560
public trust theory 515
Interstate Commerce Commission (ICC)
background 234
independence 6, 103, 148–9, 235–9
reasonableness review 272–5
role and expertise 236–7
judicial review
abuse of discretion 58
access restrictions 56–7
adjudication, formal 399, 447–9
adjudication, informal 447, 449
arbitrary and capricious test 76–7, 79–80, 83, 373
assumptions of authority 397–9
authority for 55
challenges 279–81
Chevron doctrine 42, 57–8, 276, 394–9, 402–3, 449, 690–92
closed arguments/reasons rules 448–9
closed record procedures 455–6
closed record requirement 447–50
closed review models 44
closed review rule 449–50, 452, 458–9
Congressional intent, and 394–9, 402–3
damages claims 269
defereence doctrine 58, 447–8
damages 394–9
discrimination 373
Hepburn Act 1906 273
historical development 34, 268–75
ICC reasonableness 272–5
importance 53
initial agency proceedings 446, 458
Israeli open practices, differences from 458–60
issue exhaustion 449
jurisdictional error 270–71, 399
land claims 270–71
law-fact distinction 274–7
legislation 53, 277–83
legislative intent, and 394–9, 402–3
model 446
Motor Vehicle Manufacturers case 76–7, 83
notice and comment rulemaking 372–4, 399, 450, 458–9
policy implementation review 451–2
political influences 55–8
positive political theory (PPT), and 71–2, 79–80, 83
pre-enforcement review 282–3
process review 372–3
public interest, in 56–7
public participation vs. expertise 371–4, 379, 382–4
purpose 280–81, 446
reasonableness review 76–7, 79–80, 83, 111, 272–7
sandbagging 448, 450
scope of review 446
standing, public petitioners 457
standing rules 525
statutory requirements 279–80
step zero 397–9
substantive test 448
substantive review 373–4
textual interpretation 395–9
timing, relevance of 280–83
judiciary
appointments 45, 47
political influences 56–7
political pressures on 45, 55
legislation
delegated authority 52–3
intelligible principle 52–3
judicial review, and 53, 277–83
Presidential lawmaking 48
military and security contractors
accountability agents integration 572–3
accountability, generally 567–8, 574
administrative control reforms 574–8
codes of conduct 575–7
compliance mechanisms 574–8
deployment trends 554, 566–7
disciplinary powers 574–6
722 Comparative administrative law

ethical duties 573
independence, need for 573–6
international law enforcement, and 568
military court jurisdiction over 575
military lawyer compliance agents 568–9, 572–4
Montreux Document 576
obligation exemptions 567
organizational structure influences 568–9, 574–5, 578
PSC-1 certification 576–7
public values conflicts 554, 566–7, 569, 572–4
rules of engagement 572
training requirements 575–6
Uniform Code of Military Justice 575
notice and comment rulemaking 46, 48, 258–9, 265, 295, 458–9
public participation vs. expertise 371–4
Office of Information and Regulatory Affairs (OIRA)
administrative burden oversight 342
background 335–6
benefit-cost analysis 340–41, 345–7
courts, interaction with 340–41
functions 338, 340–42, 344–6
impacts 345–6
independence 337, 338
limitations 341, 346–7
powers 340–43
procedure rules 342–3
prompt letters 341
review eligibility criteria 346
review methods 346–7
review, place in policy cycle 338, 343–4, 347–8
structure 337–8
time limits 343
transparency 343
President
powers 41–2, 46–8
removal 53–4
privatization
applicable law 556, 560–61
constitutional law, and 543, 560
military and security functions 554, 566–7
trends 356–8, 553–4, 566–7
public participation
hybrid procedures 371
model 254, 377, 382
notice and comment rulemaking 258–9, 265, 295, 371–4
vs. expertise 371–4, 379, 382–4
public power
control mechanisms 611–12
diffusion 604, 612
public spaces, law of 514–15
constitutional protection 525–6
federal land ownership 514
judicial review standing rules, and 525
public forum doctrine 520, 522
public trust theory 515, 518–19, 524
reason-giving
accountability, and 268–72, 278–80
Federal Trade Commission 277–8
historical development 268–9, 277–8
reasonableness review 76–7, 79–80, 83, 111, 272–7
rulemaking, and 268–72, 277–83, 612
reasonableness review 111
arbitrary and capricious test 76–7, 79–80, 83, 373
development 269, 272–7
ICC cases 272–5
law-fact distinction 274–7
timing, relevance of 280–83
rule of law tensions 34, 41–3
separation of powers 235–6
constitutional restrictions 46, 49–51, 279–80
degraded legislation, and 51–2, 279–80
electoral process 40
judicial review 279–80
limitations on 41
need for 44
parliamentary systems, compared with 45–8
trends 543–54
voidness vs. voidability 424–7, 433
Universal Declaration of Human Rights 1948
107
urban spaces see land and planning law under Japan; public spaces, law of
US v Mead Corporation (US) 397–9, 691
validity see also invalidity; voidness and voidability
presumption of 421
Van Gend & Loos v. Nederlandse Administratie der Belastingen (EU) 624
Varja, M. 130
Varoufakis, Yanis 687
Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council (US) 372–3
Vodafone v. OFCOM (UK) 471–3
voidness and voidability
annulment 422
apparent paradox 431
characteristics 421–2
choice of 432–3
conflicts 297–8, 420, 423–5, 432–3
conservation principle, and 430
differences between 429–32
dualist systems, in 426–9
enforcement variations 430
France, in 423–4
functions 429–32
Germany, in 424, 426, 430
historical development 422–5
imprescriptibility of voidness 431
Italy, in 424, 427
Latin America, in 422, 424–5, 427–8, 430, 433
legality, protection of 429–30
monist systems, in 425–6, 433
political influences on 423, 429
radical exclusion of effects 431–2
remedies 422
right to resist 421
rights, protection of 431–2
Spain and Portugal 425–6, 430, 432
UK, in 424, 428–9
United States, in 424–7, 433
valid acts 422
voidable acts 422

\textit{Wednesbury} test 78–9, 111, 410, 463–4
Weiser, Philip 212
welfare state 32
\hspace{1em} administrative law, impacts on 106–8, 355, 366
Wilson, Woodrow 30–31
World Trade Organization (WTO) 116
Wyman, Bruce 269

\textit{Yeap Wai Kong v. Singapore Exchange Securities Trading (Sing)} 588–9