

Transatlantic Perspectives on Administrative Law

Introduction

Herwig C.H. Hofmann¹, Russell L. Weaver²

This book focuses on two important trends in the future of Administrative Law. The first is the relevance of administrative law for developing legitimacy and accountability of multi-level regulatory systems. In a time of global trade in goods and services, as well as increasing interconnectedness of public institutions, administrative law is in a period of growth and transformation. This book examines these transformations in the context of global administrative law, as evidenced by increasing interest in the nature and conditions of EU administrative law, and the movement towards increasingly intense regulatory cooperation in bilateral settings (for example EU-US) as well as multilateral *fora* (for example in international organizations such as the WTO).

The second trend involves the renaissance of comparative administrative law. Comparative administrative law offers insights that can lead to the improvement of regulatory systems in individual countries, as well as bilateral and multilateral institutions. For the European Union, which has a comparatively young administrative law regime, comparative analysis is essential to productive development. By examining the administrative experiences of other countries, both EU Member States and the European Union itself can gain insights regarding how to improve their own systems. For the United States and Canada, comparative analysis helps lawyers and academics better understand their own systems and consider alternatives.

The following papers vary as to topic, but all involve cutting-edge issues in comparative and international administrative and regulatory law. The first part of the book contains overview articles observing the state of knowledge and the pressing questions in relation to administrative law on both sides of the Atlantic. The opening contribution by Richard Murphy and Sidney Shapiro is entitled *Eight Things Americans Can't Figure Out About Controlling Administrative Power*. It is a witty overview that suggests various ways the U.S. administrative law system could benefit from comparative insights. The paper is informative far beyond the American context insofar as it points out central issues that need to be clarified before being examined on a global scale. The second chapter of this part of the book contains Herwig Hofmann's article entitled *The European Picture: Ten Challenges Facing EU Public Law in the Coming Decade*. It is not a *réplique* to Murphy and Shapiro's contribution but instead contains a review of the state of affairs and the challenges to public law, especially administrative law research in the EU. Both chapters provide background and set the stage for the chapters that follow.

The second part of this book touches on systemic problems of modern administrative law, including issues relating to separation of powers, judicial review, the organization of administrative networks, and the nature and role of agencies. Contributions to this part of the

¹ Professor of European and Transnational Public Law, Director of the Centre for European Law, University of Luxembourg, Faculty of Law, Economics and Finance.

² Professor of Law & Distinguished University Scholar, University of Louisville, Louis D. Brandeis School of Law.

book deal with regulatory questions from both institutional-design and procedural perspectives, which often have serious implications for the substantive aspects. Charles Koch's contribution entitled *Collaborative Governance: Lessons for Europe from U.S. Electricity Restructuring* raises questions regarding how to regulate network industries in multilevel systems in order to ensure a functioning market across jurisdictional borders as well as security of supply. The policy area of food safety is discussed in a paper by Udo Fink, François Lichere, and Russell Weaver called *Protecting Consumers in an Era of World Trade*. Denis Lemieux's paper *Fair Procedures and the Contracting State* discusses questions of public contracting and conditions thereof.

The third part of this book focuses on horizontal topics related to the design and structure of administrative systems. The papers in this vein include the thought-provoking pieces *A Common Framework for EU Agencies and the Meroni Doctrine* by Jens-Peter Schneider and *Agencies Versus Networks: From Divide to Convergence in the Administrative Governance in the EU* by Wolfgang Weiß. Michael Asimow and Lisl Dunlop's contribution *The Many Faces of Adjudication in the European Union* discusses approaches to decision-making and adjudication (in the American administrative law tradition's sense of the word) from a comparative United States–European Union perspective. William Funk's article *Public Participation and Transparency in Administrative Law* touches upon the critical topics of legitimacy and accountability in administrative law systems. The final contribution, Peter Strauss's *On Capturing the Possible Significance of Institutional Design and Ethos*, outlines the need for comparative analysis on fundamental administrative law topics.

Taken together, these papers offer important comparative insights and critical evaluation of modern administrative law problems in the European Union and North America by some of the leading academic experts in these countries. In addition, the papers suggest insights regarding how critical concepts might be transferred between legal systems either horizontally or internationally. The papers discuss interesting differences between U.S. and EU approaches and offer insights into those differences. The importance of these perspectives is underscored by the fact that the different jurisdictions operate under different federal systems, and their administrative structures have developed largely independently of each other and the international system.