

**ADMINISTRATIVE JUSTICE  
IN THE  
UNITED STATES**



**ADMINISTRATIVE JUSTICE  
IN THE  
UNITED STATES**

**THIRD EDITION**

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In Memoriam  
Walter and Clark

and for the living  
Joanna, Ben, Bethany, Noah and Lenox



# CONTENTS

Preface	xiii
<b>I. Introduction</b>	<b>3</b>
<b>II. Constitutional Background</b>	<b>17</b>
A. The General Character of the Constitution	17
B. Stability and change	23
C. The Separation of Powers	28
1. The agencies Congress has created conjoin rather than separate law-making, law-execution, and dispute resolution	32
2. Although Congress is given “all legislative power,” executive agencies (and the courts) are often authorized to adopt regulations that, if valid, have the force of statutes	41
3. Although the Constitution places the “judicial power” in courts enjoying life tenure and other protections, executive agencies are often authorized to adjudicate matters describable as “cases and controversies.”	54
D. Fundamental rights	57
1. Speech/consumer protection	63
2. Inspection/unreasonable search	66
3. Information/incrimination	71
4. “Due process of law” as procedure	74
a. Introductory	74
b. Goldberg v. Kelly	80
c. Threshold issues	83
d. The procedures due	87
5. Due process and the use of secret evidence	93
6. “Due process of law” as substance: the expropriation problem	94
<b>III. The Machinery of Government</b>	<b>99</b>
A. The Actors the Constitution Names	100
1. Congress	100

a. Legislation and appropriations	105
b. Committee oversight of agency functioning	118
c. Congressional agencies	121
2. President	123
a. Political and administrative authority	127
b. Appointments and removals	133
c. "Opinion, in writing"	141
d. The White House staff	151
3. Federal Judiciary	155
a. The Supreme Court	159
b. The Circuit Courts of Appeal	165
c. The District Courts	169
d. Special courts	170
B. The political leadership of administration	171
1. Cabinet departments	172
2. Departmental bureaus	174
3. Independent executive agencies	175
4. Independent regulatory commissions	178
C. The civil service and senior executive service	181
1. The civil service and separation of powers	182
2. Administrative adjudicators and the corps controversy	184
D. Mixed bodies	187
1. Professional regulation	188
2. National corporations and other economic actors	191
3. Subordinate private rulemakers	191
4. Privatization	192
E. State and local government	192
F. Enforcement officials	196
1. Public enforcement	196
2. Private enforcement	199
<b>IV. The Scope of Administrative Law</b>	<b>203</b>
A. Governmental powers generally	203
B. Contexts for regulation	209
1. Economic regulation	209
a. Economic concentration	211
b. Common carrier and public utility regulation	212
c. Regulation of the professions	215
d. Regulation of the economic conditions of labor	217
e. Consumer protection	218



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f. Allocation of artificial or public goods	219
2. Health and safety regulation	220
3. Private land	227
4. Social security, health and welfare	228
5. Taxes and excises	232
6. Public services	233
7. Custodial institutions	236
8. Immigration, deportation	239
9. National Security	241
10. International commerce	243
11. Public land and other state goods	250
12. Government contracting	252
13. State employment	253
14. State enterprises	254
15. Other matters	255
<b>V. The Procedural Forms of Administrative Action</b>	<b>257</b>
A. The sources of structure for federal administrative procedure	259
1. Constitution	259
2. The Administrative Procedure Act	263
3. Other statutes	267
4. Presidential political controls	270
5. The courts	272
6. The agencies	274
B. Adjudication	274
1. Formal agency adjudications	275
a. Model on-the-record adjudication	278
b. License applications	284
c. License sanctions	287
2. Informal agency adjudications	287
3. Participation claims of the protected public	289
a. Private actions requiring initiation of adjudicatory proceedings	291
b. Compulsory private intervention in agency proceedings	293
4. Alternative dispute resolution	296
C. Rulemaking	298
1. The APA models	300
a. Notice and comment rulemaking	300
b. Soft law	303

c. Formal rulemaking	306
2. The transformation of rulemaking	307
a. Bureaucratic structures of rulemaking, the rulemaking “record,” and rulemaking decision	314
b. The uncertainties of “legislative” judgment and disputes about general fact	316
c. The impact of open government legislation	317
d. The “paper hearing”	319
e. The siren call of the judicial trial model	323
f. The impact of increasing political oversight	330
3. Unorthodox Rulemaking	344
4. Negotiated rulemaking	345
5. Effectively delegating rulemaking to others?	347
6. Forcing the agency’s rulemaking hand	349
D. Choice between rulemaking and adjudication	356
E. Investigation	360
1. Inspections	361
2. Required forms and reports	364
3. Compulsory process	366
F. State administrative law	369
<b>VI. Other Than Judicial Controls of Administrative Action</b>	<b>373</b>
A. Internal Structures for Agency Action	373
B. Political intervention or oversight	378
1. In on-the-record proceedings	380
2. Extraneous factors	382
C. “Open government”	383
1. Freedom of Information Act	384
2. Electronic FOIA	392
3. Government in the Sunshine Act	394
4. Federal Privacy Act	396
5. Federal Advisory Committee Act	399
6. Possible Impacts of the Digital Age	400
D. Ombudsmen and watchdog agencies	401
E. Informal policy oversight: the general and trade press	403
F. “Public Interest” model, and actors	405
<b>VII. Obtaining Judicial Review</b>	<b>409</b>
A. Jurisdictional bases for review	411
1. Statutory and non-statutory review of administrative action	411

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2. The presumption of reviewability	416
3. Statutory preclusion of review	419
a. Explicit preclusion	419
b. Implicit preclusion	423
4. Matters committed to agency discretion by law	424
B. Preliminary issues on judicial review	427
1. Standing	429
2. Special rules of timing and place	439
a. Finality	440
b. Exhaustion	444
c. Ripeness	446
d. Primary jurisdiction	449
3. Preliminary relief	450
C. Available judicial remedies	451
<b>VIII. Scope of Judicial Review</b>	<b>455</b>
A. In general	455
1. Constitutional issues	458
2. The APA framework	461
B. Questions of fact	462
1. Substantial evidence	464
2. “Arbitrary, capricious”	469
C. Questions of law	471
1. The American practice of statutory interpretation	471
2. Statutory interpretation at the agency level	484
3. Agency or court?	490
D. Judgment and the exercise of discretion	502
1. <i>Citizens to Preserve Overton Park v. Volpe</i>	503
a. The elements of review	503
b. The problems of record, findings, and reasons	506
c. Inquiry into mental processes	508
2. Consistency	509
3. Hard look review	512
E. “Agency action unlawfully withheld or unreasonably delayed”	514
<b>IX. Liability of Public Authorities and Their Agents</b>	<b>517</b>
A. Relief against the sovereign	518
B. Tort actions as a form of review	521
1. Against governmental units	521

2. Against government officials	524
a. Theories of liability	524
b. Defenses to liability	526
c. Integration with tort action against government	528
3. The implied cause of action	529
C. Liability in contract	531
<b>Table of Cases</b>	<b>533</b>
<b>Table of Statutes</b>	<b>545</b>
<b>Table of Text and Periodical Citations</b>	<b>549</b>
<b>Index</b>	<b>585</b>

# PREFACE

This book had its origin in a project under the editorship of the late Professor Aldo Piras of the University of Rome, to create a collection of essays describing the system of administrative justice in the United States and seven European democracies.<sup>1</sup> His hope was that exposing the governmental law of our countries to professionals trained under other legal systems would both enrich understanding in an increasingly interdependent world, and provide helpful information about alternatives to jurisdictions considering changes in their public law. Professor Piras died before the project could reach completion, but the collection was published by the Guiffre Press. The first and second editions of this monograph were also published separately in the United States, by Carolina Academic Press.

The years following have confirmed the usefulness of this undertaking. In Asia, Europe and South America, this book, in English and in translation, has proved helpful to lawyers and law students seeking a basic introduction to American public law and, in particular, administrative law. It has been useful inside the United States as well, for law students and others seeking an overview of our administrative justice system or a jumping-off place into the voluminous literature on the subject. This new edition has been developed with both audiences in mind, after experiences teaching with it on four continents. It reflects significant changes that have occurred in American administrative law and government, as well as substantial elements of continuity.

Thanks are owing to many in any project like this. My late mentor, Walter Gellhorn, introduced me to Professor Piras, only one of many acts of kindness and support, and he comes first in place. My casebook colleagues Clark Bye, Cynthia Farina, Gillian Metzger, Todd Rakoff, and Roy Schotland, along with past and present colleagues here at Columbia, notably Jessica Bulman-Pozen, Jeremy Kessler, John Manning and Richard Pierce, Kevin Stack of Vanderbilt Law School, Paul Craig of Oxford University, Eberhard Schmidt-Assman of Heidelberg University, and my many friends in the American Bar Associa-

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1. *Administrative Law: The Problem of Justice in the Western Democracies*, (1991). This monograph appeared in Volume I, alongside essays by William Wade (U.K.) and Hans Ragnemalm (Sweden).

tion's Section of Administrative Law and Regulatory Practice, have read and responded helpfully to my work, and added immeasurably to my knowledge of the subject and ability to see its many facets. The faculties of the University of Leiden, the University of Buenos Aires, Ludwig Maximillians University of Munich, Oxford University, Tokyo University, the European University Institute, and the Max Planck Institute of Comparative Public and International Law have been gracious and supportive hosts for weeks of visits that deepened my appreciation of alternative approaches to both the difficult business of securing fair, effective, and efficient government relationships with citizens and their businesses, and the strangenesses that many will find in American approaches. My students, at Columbia and abroad, have through occasional research and the work of our classes together equally helped me to understand what is not so obvious about American administrative law; for this edition, Columbia Law students Elizabeth Brody '17 and Robbie Schwieder '17 have been remarkably helpful research assistants. Ms. Brody has also prepared the index and Michael Roig the tables; Claire Merrill, my extraordinary assistant, cheerfully saw this text through countless revisions and authorial grumbles. Keith Sipe at Carolina Academic Press has been as supportive a publisher as one could wish, and Tim Colton a superb manager in converting this manuscript into print. And none of this, nor much else that is satisfying in my life, could have happened without the patience and love of my wife Joanna.

The present parlous state of American politics, reflected in matters pending on the Supreme Court's docket and in a presidential election contest as I write, suggests that some subsequent events will have had a bearing on the analyses of this book that you, the reader, will need to consider. Although one expects its basic institutions and processes to endure, administrative law is subject to change at every moment, situated as it is on the dividing line between the worlds of law and politics. Yet the process of preparing a published account comes to an end on a date certain. No events occurring after mid-April 2016 could be accommodated here. The demerits of this book are wholly my own. I hope only that, given the vast landscape to be sketched, its temporal limitations and the occasional splotch or want of definition can be forgiven.

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