

# Contents

Preface XI

- 1 **The Development of Administrative Law: Fact and Theory** 1
  - 1 Two Visions of Administrative Law 2
  - 2 Public Administration without Administrative Law 4
  - 3 Administrative Law as a Defining Aspect of the New State of the World 7
  - 4 The Transformation of Administrative Law 9
  - 5 A New Comparative Inquiry 13
  - 6 Limits to the Inquiry 17
  - 7 Structure of the Inquiry 19

## PART I

### *A Diachronic Comparison*

- 2 **Judicial Review of Administration: Institutional Design** 23
  - 1 England and France: Ideal-types and Prototypes 23
  - 2 The Reception of the English Prototype: Belgium and Italy 26
  - 3 The Reception of the French Prototype: Italy and Belgium 28
  - 4 The Austro-German Prototype 30
  - 5 French Systematics in Germany 33
  - 6 German Systematics in Italy 36
  - 7 Beyond the State: Judicial Remedies in the European Communities 37
- 3 **The Judicial Construction of General Principles (1890–1910)** 41
  - 1 An Empirical Analysis 41
  - 2 Administrative Litigation: Similar Problems 42
  - 3 Devising Solutions: Legality and Procedural Fairness 44
  - 4 Devising Solutions: Government Liability 49
  - 5 The Role of Judge-Made Law and the Place of Legal Theory 51
  - 6 The Emergence of Common Principles 53
- 4 **Sowing the Future: Austrian Administrative Procedure Legislation** 56
  - 1 Early Views on the Codification of Administrative Procedure 56
  - 2 The Austrian Turn: Background 58

- 3 The Austrian Turn: Principles 60
- 4 An Area of Agreement between Legal Systems 62
- 5 A Case of Diffusion 64
- 6 The Wider Reach of Austrian Ideas 67
  
- 5 **The Development of Administrative Procedure Legislation 71**
  - 1 Moving towards Administrative Procedure Legislation 71
  - 2 Socialist Legal Systems and the Austrian Legacy 74
  - 3 Spanish Legislation and Its Diffusion in Latin America 77
  - 4 The Scandinavian Standard of Fair Procedure 82
  - 5 Types of States and Administrative Procedure Legislation 85

## PART 2

### *A Synchronic Comparison*

- 6 **Commonality and Diversity in Administrative Procedure Legislation 91**
  - 1 The Diversity of Constitutional Foundations 91
  - 2 The Heterogeneity of Administrative Procedure Legislation 93
  - 3 An Area of Agreement: Administrative Adjudication 96
  - 4 The Closest Things to Invariants: Hearings 98
  - 5 The Closest Things to Invariants: Giving Reasons 101
  - 6 Diversity: Rulemaking 104
  
- 7 **A Factual Analysis: Adjudication 108**
  - 1 Hypothetical Cases 108
  - 2 Freedom from Bias 109
  - 3 The Unfair Dismissal of a Civil Servant 114
  - 4 A License Revocation *Inaudita Altera Parte* 118
  - 5 Administrative Detention without Reasons 121
  - 6 Consultation: The Role of Experts 125
  - 7 An Area of Agreement 127
  
- 8 **A Factual Analysis: Rulemaking 129**
  - 1 Variety of Administrative Rules 129
  - 2 Standardless Discretion? 132
  - 3 Consultation before Policy Change 138
  - 4 Partially Unpublished Rules 141
  - 5 An Unexpected Area of Agreement 145

- 9 **Governmental Wrongdoing** 146
- 1 A Worst-Case Scenario 146
  - 2 Further Consequences of Procedural Unfairness in Adjudication 148
  - 3 Contracts: The Unlawful Exclusion of a Tenderer 151
  - 4 The Violent Police Officer 155
  - 5 Conclusion 159

### PART 3

## *Commonality and Diversity: An Evolving Relationship*

- 10 **Explaining Diversity** 163
- 1 The Causes of Commonality and Diversity 163
  - 2 Context Matters: History 166
  - 3 Context Matters: *Mentalités* in Public Law 170
  - 4 Policy Considerations and Change 175
  - 5 Diverging Traditions: Rules and Legal Formants 178
  - 6 The Legal Relevance of National Traditions 180
- 11 **Explaining Commonality** 182
- 1 The Legacy of *ius commune*: A Qualified View 182
  - 2 The 'Nature of Things' 185
  - 3 Legal Transplants: Authority, Prestige, and Quality 188
  - 4 General Principles 192
  - 5 Legal Harmonization 195
  - 6 Institutional Isomorphism 198
  - 7 The Growing Impact of Common Standards 200
- 12 **The 'Common Core' of Administrative Laws: Concept, Nature, and Extent** 202
- 1 Factual Analysis and Theory Development 202
  - 2 The Common Core: An Overview of the Argument to Come 207
  - 3 The Common Core: Concept and Issues 208
  - 4 A Dynamic View of the Common Core 213
  - 5 The Nature of the Common Core 217
  - 6 The Extent of the Common Core 222
  - 7 The Variety of Uses of the Common Core 224

**Index** 227