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 1

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

- 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

- 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

- 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

CONTENTS

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