Susan Rose-Ackerman, Peter Lindseth and Blake Emerson (eds.), *Comparative Administrative Law*, Cheltenham: Edward Elgar Publishing 2017, 2nd edn., ISBN 9781784718657, xxii + 723 pp.

In light of the threats to physical, political, social and financial security which have been relentlessly influencing the agenda of many Western liberal democracies since the turn of the XXI[th] century, individual freedom is calling for enhanced protection from state encroachments. Administration, especially as one of the most conspicuous links between government, society and market, is currently attracting renewed academic interest, not only from a domestic perspective but also from a comparative one. In pursuing such a line of inquiry, it is hoped that a systematic comparison of administrative law might grant a better understanding of how administrative power works and how individual freedom can best flourish, protected from power abuses. In recent years, two such endeavours have been prominent. The first one, *Controlling Administrative Power*, single-authored by Professor Peter Cane, revolved around a systematic analysis of American, Australian and English administrative law through a historic lens.[1] The second one, *Comparative Administrative Law*,[2] is an edited volume by Susan Rose-Ackerman and Peter Lindseth which brought together 37 contributions in which administrative law was understood as a stage where the confrontations and interactions between law and politics and their transformations over time were expressed.[3] While this edited volume focused mainly on comparative public law, the editors have now produced a second edition of this collection, with an even stronger focus on administrative law. This review further discusses this second edition.

Based on a meeting of the contributors in 2016, this second edition of *Comparative Administrative Law* is markedly different from the first edition, since most of the 41 contributions are either new or strongly adapted, with only six initial contributions maintained in the second edition (p. xxii). This second edition is organized in six parts: (1) *Constitutional structure and administrative law: traditions and transformations*, featuring eight chapters by Bernardo Sordi, Bruce Ackerman, Peter Strauss, Tom Ginsburg, Elizabeth Magill, Daniel Ortiz, Andreas Voßkuhle, Thomas Wischmeyer, Marco D'Alberti, Kriszta Kovacs and Kim Lane Scheppele; (2) *Administrative independence*, with six chapters by Daniel Halberstam, Lorne Sossin, Mariana Mota Prado, Jiunn-rong Yeh, Arun Kumar Thiruvengadam and Martin Shapiro; (3) *Transparency, procedures, and policy-making*, which includes eight chapters by Susan Rose-Ackerman, Jerry Mashaw, Dominique Custos, Javier Barnes, Dorit Rubinstein Reiss, Jonathan Wiener, Alberto Alemanno, Giulio Napolitano and Catherine Donnelly; (4) *Administrative*

1 Cambridge: Cambridge University Press 2016, xxiii + 583 pp.
2 Cheltenham: Edward Elgar 2010, xviii + 668 pp.
3 *Ibid.*, p. 18.

litigation and administrative law, featuring nine chapters by Paul Craig, Jud Mathews, Gabriel Bocksang Hola, Jean Massot, Michael Asimo, Yoav Dotan, Athanasios Psygkas, Cheng-Yi Huang, Narufumi Kadomatsu and Thomas Perroud; (5a) *Administrative law and the boundaries of the state – public and private*, with four chapters by Daphne Barak-Erez, Jean-Bernard Auby, Laura Dickinson and Victor Ramraj); and (5b) *Administrative law beyond the state – the case of the EU*, including six chapters by Peter Cane, Johannes Saurer, Joana Mendes, Herwig Hofmann, Jens-Peter Schneider, Matthias Ruffert and Peter Lindseth.

Overall, this edited collection mainly discusses Western administrative law systems, prominently featuring the USA, France, Germany and the UK across chapters or on their own. European legal systems, such as those of Hungary and Italy, are mainly discussed in detail in chapters of their own. Sweden is included in a chapter discussing administrative agencies in the UK and France, while Poland is discussed in a chapter on new democracies that compares Taiwan and South Africa. Other major legal systems, such as Canada and Brazil, are discussed on their own from the perspective of independent administration. Finally, additional chapters bring India, Israel and Japan, either on their own or comparatively, into the overall picture in this edited collection. Although a decolonizing critique targets mainstream comparative law for being too Western-centred,[4] the very efforts to bring so many countries into one single collection in order to give readers the possibility of becoming familiar with some of the basic tenets of their administrative law are very commendable; this is a necessary first step before any more research (critical or otherwise) can be done with any chance of success.

These diverse, self-contained chapters are written by a valuable range of representatives of the field, spanning from relatively junior academics to far more experienced ones (p. 19). They bring, to a non-domestic audience, the research topics which comparative administrative lawyers are currently grappling, often in very domestic terms. Three main categories of papers can be distinguished. The first type discusses the developments in administrative law and scholarship in one single country in either general terms (such as Germany, Italy and Hungary) or in a specific administrative law topic.[5] The second type provides neat micro-case studies for comparing administrative law topics. For instance, they investigate how themes that are currently discussed in adminis-

4 M. Cohen, *Decolonizing Comparative Law*, JOTWELL (March 27, 2018) (reviewing Sherally Munshi, *Comparative Law and Decolonizing Critique*, 65 Am. J. Comp. L. 207 (2017), available at SSRN), https://intl.jotwell.com/decolonizing-comparative-law/.

5 Such as American reason-giving, the privatization in the US military and security sector, the French codification of administrative procedure, the powers of the French administrative judge, the review exercised by the UK Competition Appeal Tribunal, and independent commissions in Taiwan.

trative case law and scholarship in one country are addressed in other jurisdictions.[6] The third type suggests tools for organizing administrative law topics from a comparative perspective, either thanks to typologies to map administrative topics across systems[7] or thanks to an historical comparison.[8]

In order to connect these otherwise stand-alone chapters to each other and form a coherent narrative, a well-knitted introduction by Susan Rose-Ackerman, Peter Lindseth and Blake Emerson provides a golden thread across the chapters. Their starting point is to consider the role of the law at the interface between the state and citizens. Their assumption is that the role of the law is twofold: first, to protect individual rights against the state and second, to '*enhance the democratic accountability and competence of the administration*' (p. 1). Thus, the overarching key theme can be summarized as a core concern for administrative democracy and the questions that it triggers in terms of constitutional principles, judicial review, and democratic and political values (p. 2).

As the above shows, this edited volume significantly contributes to mapping administrative comparative law as a distinct field of research, with its own features, thematic questions and possible boundaries. It sets as its ambition to look at the 'institutions of administrative law', which '*include not only the positive legal rules but also the wider political, cultural, technological and economic norms that impinge upon and shape legal doctrine*' (p. 1). Such a broad agenda calls for a far more sophisticated research framework than a single edited volume can bring to readers. This handbook is the first stepping stone towards progressing in that direction. The editors acknowledge this when they write that their objective is to '*attempt (...) to capture the complexity of the field while distilling certain key elements for comparative study*' (p. 3). This broad framework, that the editors label as cross-disciplinary (p. 1), calls for more systematic thinking from the comparative administrative law community. Here, we provide one initial general comment about cross-cutting themes in this edited collection and then three more specific comments on the research agenda that this edited volume might pave the way for in the comparative administrative law community.

Three main cross-cutting themes emerge from this edited collection. The first recurring theme is the tension between the technical expertise and democratic legitimacy of the administration or the tension between the scientific and

6 For compelling illustrations, see the chapter by Thomas Perroud on the courts and public space or the chapter by Paul Craig on judicial review of questions of law.

7 Such as generations of administrative procedures in Javier Barnes' chapter or privatizations in Daphne Barak-Erez' chapter.

8 Such as in the chapter by Gabriel Bocksang Hola about the voidness and voidability of unilateral administrative acts or the chapter by Peter Cane about control of public power.

policy questions that riddle the administrative decision-making process. This tension is emphasized in at least five chapters which include: *Citizens and technocrats: an essay on trust, public participation and government legitimacy* (Susan Rose-Ackerman); *Three generations of administrative procedures* (Javier Barnes); *Participation and expertise: judicial attitudes in comparative perspective* (Catherine Donnelly); *The 'double helix' of process and substance review before the UK Competition Appeal Tribunal: a model case or a cautionary tale for specialist courts* (Athanasios Psygkas); and *Transnational non-state regulation and domestic administrative law* (Victor Ramraj). The second recurring theme is the deep transformations that modern states are currently undergoing due to new ways of collaborating with private economic and non-economic actors (see *inter alia* chapters discussing administrative procedures by Javier Barnes, privatization by Daphne Barak-Erez, US military and security contractors by Laura Dickinson, and contracting out and public values by Jean-Bernard Auby, as well as courts and the public space by Thomas Perroud). It is also happening through austerity measures and their impact on the resources available to the administration, which includes driving the government to become 'smarter' in its use of resources (see chapter from Giulio Napolitano on a smarter government in the age of uncertainty), or through the rise of illiberal democracies (see chapter discussing Hungary by Kriszta Kovacs and Kim Lane Scheppele). The third recurring theme is the tension between the general interest, which is often connected to the administration, and particularized interests, which are often linked to associations, as in the chapter about transnational non-state regulation (by Victor Ramraj). The combination of these three cross-cutting themes leads chiefly to the interrogation of the role of associations in the administrative landscape, i.e. do associations become the 'new' administrations of the XXIth century? Are they supplanting the administrative system that the Welfare State once built to protect citizens from the biggest ills? If so, according to which standards do they use their powers? Thus, in some way, compromises between state, society and market have to be worked out anew. It can be suggested that herein lie the specific tasks of administrative law to provide both the techniques and the narratives to do so.

In order to build further on these themes, one thought comes foremost to mind. Attention to research methods and the questions they are apt to answer is an extremely important part of mapping a new legal field. Many of the contributors to this edited collection seem to concur as they often dedicate part of their contribution to discussing aspects connected to research methods and conceptual frameworks, such as positive political theory in the USA, the 'Neue Verwaltungsrechtswissenschaft' in Germany or organizational theory. The chapter 'Good bye, Montesquieu' by Bruce Ackerman indeed calls for building a framework of analysis that matches the distinctive features of administrative law (p. 39). However, all in all, the reader is left with no systematic discussions of the methodological challenges faced along the way by comparative adminis-

trative law scholars. It is likely that cross-disciplinary tools would be needed to gain a better understanding of how administrations actually work and the role that the law plays within these administrations and in the relationships between the administration and citizens. This might, however, become an especially challenging task for comparative administrative law; one may very early on discover that different legal administrative traditions have built stronger links with some disciplines, but have almost entirely excluded other ones. For instance, French administrative law has traditionally developed in connection with sociology,[9] while in the USA, the privileged articulation would seemingly be located within public administration.[10] Yet, this kind of methodological background is very important for equipping comparative administrative lawyers with a toolbox of possible epistemological and conceptual tools with which to frame their research questions and locate their approach within the broader community. Discussions among comparative administrative lawyers about these very tools and their potential and limits would strongly enrich the research agenda and the relevance of research questions for the administration, as well as for citizens. In short, it would be excellent if a third edition of this edited collection were to bring together a specific section dedicated to the research methods available for comparative administrative law research, including an in-depth discussion of their strengths and weaknesses.

Once provided with research methods, a second thought comes to mind, namely that of definitions. If comparative administrative law is about comparison, what does it compare in a range of legal systems? At first glance, the answer seems straightforward: Administrative law. However, doubt arises over whether administrative law has the same meaning in all legal systems. Traditionally, a basic distinction has been drawn between systems defining administrative law as a system for setting up mechanisms for controlling the administration on the one hand, and systems where administrative law receives a more positive function, namely that of organizing the administration and its relationships with citizens, hence also facilitating the use of power, on the other hand.[11] A way to bypass this hurdle might be to define the research field that comparative administrative law seeks to examine, not in terms of 'administrative law' but in organizational terms, namely by reference to the 'administration'. This could open the doors to discussing tremendously important topics concerning the protection of individual freedom from administrative action. These include

9 E.g.: B. Latour, *The Making of Law: An Ethnography of the Conseil d'Etat* (Polity: revised ed. 2009).

10 E.g.: P.J. Cooper & C.A. Newland (eds.), *Handbook of Public Law and Administration* (Willey 1997).

11 J.S. Bell, 'Comparative Administrative Law', in: M. Reinmann & R. Zimmermann (eds.), *The Oxford Handbook of Comparative Law* (Oxford: Oxford University Press 2006), 1259-1286.

topics such as local government and self-government – the very first space where citizens learn to practice democracy according to traditional thinking,[12] civil service and the specific ethical norms within which official decision-makers are required to make their decisions, administrative liability (closely connected to the rule of law) and public finances, as the mirror-opposite of taxation. This type of research would then trigger second-order research avenues in providing a more pluralistic approach to the 'administration', 'independent administration' or the law. One might think, for instance, of revisiting the Weberian models of administration, investigating the many relationships that arise between administrations, i.e. control, cooperation or competition, or comparing the multifaceted roles that the law plays in the administration beyond controlling power, such as embedding social practices of good administration, providing an institutional memory or enabling social learning.

Finally, comparative administrative law entered the landscape of comparative research relatively late.[13] Private comparative law has for a long time dominated the field. More recently, systematic constitutional comparative law research has been undertaken by a global community across the world. The community of comparative administrative lawyers may benefit from learning from their predecessors in terms of developing a general agenda of research which focuses on the 'comparative' dimension, its functions and objectives. While this edited collection is definitely one keystone in this process, the next stepping stone might be to unearth the difficult discussions lurking behind comparative administrative law, its values and its conceptual underpinnings. There are indeed different approaches to the role of administrative law, with proponents of a negative understanding of citizens' individual freedoms and proponents of a more positive understanding of citizens' individual freedoms, resulting in different roles for the state and its administration in society. Discussing these differences would lead to reflection on the analytical and/or normative dimensions of comparative administrative law. Regarding the analytical aspects of comparative administrative law, specific comparative topics are likely to emerge, such as discussing legal culture and its counterpart of administrative culture, transplants or judicial conversations that might develop into possible 'administrative' conversations, i.e. conversations between administrations in order to discuss shared issues. This more technical approach to administrative comparative law could extend to experts using comparisons in their reporting. One may think about the United Nations Economic Commission for Europe (UNECE) working groups, such as those on public private partnerships, the

12 J.S. Mill, *Considerations on Representative Government*, 1861, Chapter 15.

13 J. Boughey, 'Administrative law: the next frontier for comparative law', (2013) *International and Comparative Law Quarterly* 55-95.

OECD's good governance programmes or the Council of Europe's many satellites, where domestic experts share information and undertake peer-reviews of national administrative systems, e.g. ombudsmen or local government. Questions regarding methodological tools, legitimacy, procedures or the consequences of activities in terms of learning across systems could augment our understanding of how activities based on comparative administrative law are factors for transformation and changes in domestic institutions. The analysis of dynamics and tensions, such as harmonization, fragmentation, pluralism or differentiation, between domestic administrative laws could drive the research agenda of comparative administrative law even further. Such approaches might open avenues for rethinking our living together in complex societies.

Overall, this edited collection is an incredibly important stepping stone to framing administrative comparative law as a distinct field of research. It is a very welcomed addition to the bookshelves of any comparative administrative lawyer, as well as for many domestic lawyers who will find stimulating challenges directed toward what they take for granted about their own administrative law system. The high quality of the range of issues discussed in this volume will no doubt provide first-class 'food for thought' for the comparative administrative law community and trigger cutting edge research projects in comparative administrative law for years to come.

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