

ADMINISTRATIVE COMPETENCE

This book, by two of the world's leading administrative law scholars, reimagines administrative law as the law of public administration by making its competence the focus of administrative law. Grounded in extensive interdisciplinary, historical, and doctrinal analysis, Fisher and Shapiro show why understanding both the capacity and authority of expert public administration is crucial to ensure the legitimacy and accountability of the administrative state. To address the current precarious state of administrative law, they support a new study of the administrative process by an Attorney Generals Committee on Administrative Procedure leading to a revised Administrative Procedure Act (APA). This book is a must-read for anyone interested in administrative law and its reform.

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Reimagining Administrative Law

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For Walter Gellhorn

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ABBREVIATIONS

ABA	American Bar Association
ACGIH	American Council of Governmental Industrial Hygienists
ACUS	Administrative Conference of the United States
APA	Administrative Procedure Act
CAA	Clean Air Act
CAB	Civil Aeronautics Board
CASAC	Clean Air Scientific Advisory Committee
Corps	Army Corp of Engineers
CPSC	Consumer Product Safety Commission
CWA	Clean Water Act
DC Circuit	District of Columbia Circuit of the Federal Court of Appeals
DOJ	Department of Justice
EPA	Environmental Protection Agency
FACA	Federal Advisory Committee Act of 1972
FCC	Federal Communications Commission
FDA	Food and Drug Administration
FDCA	Food Drug and Cosmetic Act
FEMA	Federal Emergency Management Agency
ICC	Interstate Commerce Commission
NAAQS	national ambient air quality standards
NCI	National Cancer Institute
NCTR	National Centre for Toxicological Research
NEPA	National Environmental Policy Act
NHTSA	National Highway Traffic Safety Administration
NIOSH	National Institute for Occupational Safety and Health
NLRB	National Labor Relations Board
NRC	Nuclear Regulatory Commission
NRDC	Natural Resources Defense Council
OIRA	Office of Information and Regulatory Affairs
OLC	Office of Legal Counsel
OMB	Office of Management and Budget
OSH Act	Occupational Safety and Health Act of 1970

LIST OF ABBREVIATIONS

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OSHA	Occupational Safety and Health Administration
PEL	permissible exposure limit
REL	recommended exposure limit
SAB	Science Advisory Board
SEC	Securities and exchange Commission
SES	Senior Executive Service
SIP	State Implementation Plan
SSA	Social Security Administration
TLV	threshold value limit
WOTUS	Waters of the United States

ACKNOWLEDGMENTS

Administrative law is currently in a mess. Most administrative lawyers know it. The purpose of this book is simple – to get administrative lawyers to think in a different way about what they do and what they see as important in administrative law. While that will not resolve all the tensions and disagreements in the subject, it will go a long way toward making the subject more coherent and administrative law debate more constructive.

While its purpose is simple, we are acutely aware that our argument is provocative. Asking people to think outside established frames is a big ask. It is all too easy to try and fit what we say in this book back into the binaries that we critique. As a reader, we would strongly urge you not to do that. Rather, see that by moving past those binaries there is much in public administration and administrative law that has been invisible to administrative lawyers.

Like all acts of reimagination this book has not appeared overnight. It has been the product of more than eight years of collaborative work between the two of us. We have explored, examined, and debated much in administrative law during that time. It has been an enterprise in craft reason, and we would like to thank each other for entering into this process with a good faith determination to imagine a better administrative law future grounded in a robust understanding of administrative law both past and present.

We could not have done this project without the intellectual generosity of our colleagues in administrative law and related fields with whom we have discussed these ideas in seminars and over cups of coffee and glasses of wine. They are too many to list here – a reminder that expert capacity is not the province of a single person, but of institutions and communities. Along the way we were supported by a number of able research assistants: Jessica Allen, Hugo Dupree, and Ewan Smith. Jessica, in particular, shepherded us with deft skill in the process of completing the manuscript.

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