 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.


The aim of this series is to produce leading monographs in constitutional law. All areas of constitutional law and public law fall within the ambit of the series, including human rights and civil liberties law, administrative law, as well as constitutional theory and the history of constitutional law. A wide variety of scholarly approaches is encouraged, with the governing criterion being simply that the work is of interest to an international audience. Thus, works concerned with only one jurisdiction will be included in the series as appropriate, while, at the same time, the series will include works which are explicitly comparative or theoretical – or both. The series editor likewise welcomes proposals that work at the intersection of constitutional and international law, or that seek to bridge the gaps between civil law systems, the US, and the common law jurisdictions of the Commonwealth.

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ADMINISTRATIVE COMPETENCE

Reimagining Administrative Law

ELIZABETH FISHER
University of Oxford

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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

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>OSHA</td>
<td>Occupational Safety and Health Administration</td>
</tr>
<tr>
<td>PEL</td>
<td>permissible exposure limit</td>
</tr>
<tr>
<td>REL</td>
<td>recommended exposure limit</td>
</tr>
<tr>
<td>SAB</td>
<td>Science Advisory Board</td>
</tr>
<tr>
<td>SEC</td>
<td>Securities and exchange Commission</td>
</tr>
<tr>
<td>SES</td>
<td>Senior Executive Service</td>
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<tr>
<td>SIP</td>
<td>State Implementation Plan</td>
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<tr>
<td>SSA</td>
<td>Social Security Administration</td>
</tr>
<tr>
<td>TLV</td>
<td>threshold value limit</td>
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<tr>
<td>WOTUS</td>
<td>Waters of the United States</td>
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</table>
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 reimagining 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.

Our final thank you is to our families – for their constant support and their belief in this exercise in craft.

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