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John Bell , François Lichère
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CONTEMPORARY FRENCH ADMINISTRATIVE LAW

Despite the growing scholarly interest in comparative public law, there remain relatively few works on the subject. *Contemporary French Administrative Law* aims to redress that imbalance, offering English-language readers an authoritative introduction to the key features of French administrative law and its institutions. The French legal system is among the most well-developed and influential in the world, and, as procedures continually adapt to European and international influences, it has never been more worthy of research, study and interrogation. This book employs a wide range of recent, illustrative cases to demonstrate how French administrative law works both in theory and in practice. Using a systematic approach and covering everything from judicial review to public contracts, this is a highly valuable text for any student or researcher with an interest in French law. The book is also available as Open Access.

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Contemporary French Administrative Law

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Preface

There have been many presentations of French administrative law to an English-speaking audience since Dicey wrote more than 135 years ago. The most comprehensive coverage was last written more than twenty years ago. One of the co-authors was an author of that edition of Brown and Bell, *French Administrative Law* (5th edition). A lot has changed in that time, not least the importance of the European dimension in French law (and its decline in English law). It seemed best to both of the present authors to start a contemporary presentation of French administrative law from a clean slate.

As we explain in Chapter 1, the importance of French constitutional law, European Union law and the European Convention on Human Rights has reshaped French administrative law in the past fifty years. In their turn, French administrative lawyers have also contributed to shaping these influential sources of law. French administrative law is less a self-standing branch of law than it once was.

The aim of this work is to provide an introduction to French administrative law, so it is necessarily limited in length. Although *Legifrance* and the Conseil d'Etat websites provide some translations of legislation and case law, they are limited. In order to go further, the reader really does have to make use of French-language sources, many of which are available electronically.

We have worked together on the different chapters. Our aim has been to blend French rigour, system and principle with English attention to cases and empiricism. We hope we have taken the best of both pedagogical traditions and made them into a coherent whole. We also hope that this collaboration will encourage similar collaborations between colleagues from different jurisdictions in the future.

We each owe debts of gratitude to various individuals. We both took part in a number of meetings over the best part of a decade in which French judges

and academics met with British judges and academics, often supplemented by members of the European courts and some national jurisdictions. These meetings enabled us to test out the extent of differences between the different legal traditions and to understand contemporary points of convergence and divergence. We are grateful in particular to the former president of the Section du Contentieux, Bernard Stirn, who made possible these meetings. Particularly important in organising those meetings and in shaping our ideas were Mattias Guyomar (now of the European Court of Human Rights) and Duncan Fairgrieve. Among the active participants was Lord Reed, whose insights into British and European laws was particularly helpful.

John Bell owes a particular debt of gratitude to Neville Brown, who gave a young academic opportunities to work on French law, and who was a cheerful and supportive collaborator. We shared membership of Pembroke College Cambridge. Roger Errera gave an opportunity to be a *stagiaire* in the Conseil d'Etat for six months in 1986, which provided the chance to understand how French administrative law operates in practice. Tony Bradley gave the first chance to write on comparative administrative law, bringing contacts with French lawyers and judges.

François Lichère owes debt to the members of the Conseil d'Etat just quoted, who embody French administrative law and helped him to better understand the rationale of French administrative law. He is also indebted to John Bell and Duncan Fairgrieve for introducing him to English administrative law, which in turn helped him to better understand French administrative law.

We have tried to make the text accurate up to 1 May 2021. The production process in the period of the Covid-19 pandemic has inevitably been longer than usual, but we hope this has not affected the currency of what we have written.

Abbreviations

AJDA	Actualité Juridique Droit Administratif
App.	Application (to the European Court of Human Rights)
Brown and Bell	L. N. Brown and J. Bell, <i>French Administrative Law</i> , 5th ed. (Oxford: Oxford University Press, 1998)
Cass ch. mixte	Cour de cassation, chambre mixte
Cass.civ.	Cour de cassation, chambre civil (with a number indicating which chamber)
CC	Conseil constitutionnel
CCP	Code de la commande publique
CCSDN	Commission consultative du secret de la défense nationale
CDBF	Cour de discipline budgétaire et financière
CE	Conseil d'Etat
CE Ass.	Conseil d'Etat, Assemblée du Contentieux
CE ord.	Conseil d'Etat, ordonnance de référé
CE Sect.	Conseil d'Etat, Section du Contentieux
Ceseda	Code de l'entrée et du séjour des étrangers et du droit de l'asile
CESER	Conseil économique, social et environnemental régional
CGCT	Code général des collectivités territoriales
CGPPP	Code général de la propriété des personnes publiques
Chr.	Chronique
CJA	Code de la Justice Administrative
CNDA	Cour nationale du droit d'asile

CNIL	Conseil national de l'informatique et des libertés
concl.	conclusions (of a <i>Rapporteur Public</i> or (earlier) <i>Commissaire du gouvernement</i>)
Crim.	Cour de cassation, chambre criminelle
CRPA	Code des Relations entre le Public et l'Administration
C. santé pub.	Code de la santé publique
D	Recueil Dalloz
DC	Décision de Conformité (Conseil constitutionnel)
DDHC	Déclaration des Droits de l'Homme (1789)
EDCE	Etudes et Documents du Conseil d'Etat
GPA	World Trade Organization Agreement on Government Procurement
<i>Grands Arrêts</i>	P. Delvolvé, M. Long, P. Weil, G. Braibant and B. Genevois, <i>Les Grands Arrêts de la Jurisprudence Administratif</i> , 22nd ed. (Paris: Dalloz, 2019)
Guyomar and Seiller	M. Guyomar and B. Seiller, <i>Contentieux administratif</i> , 5th ed. (Paris: Dalloz, 2019)
JCP	Juris-Classeur Périodique : Semaine Juridique
L	Décision de déclassement (Conseil constitutionnel)
Leb.	Recueil Lebon (decisions of the Conseil d'Etat)
MPO	Médiation préalable obligatoire
OPERA	Office français de protection des réfugiés et apatrides
QPC	Question préalable de constitutionnalité (Conseil constitutionnel)
RAPO	Recours administratif préalable obligatoire
RDP	Revue de Droit Public
Rec.	Recueil des décisions du Conseil constitutionnel
RFDA	Revue française de droit administratif
Rfdc	Revue française de droit constitutionnel
S	Recueil Sirey
TC	Tribunal des Conflits

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1873	8 February	TC	<i>Blanco</i>	24, 140, 148, 234, 236, 251, 268
	30 July	TC	<i>Pelletier</i>	241, 242
	26 November	CE	<i>Pariset</i>	187
1889	13 December	CE	<i>Cadot</i>	64, 89
1895	21 June	CE	<i>Cames</i>	256
1899	5 May	CE	<i>Cook et Fils</i>	156
	9 December	TC	<i>Association syndicale du Canal de Grignac</i>	144
1900	4 May	CE	<i>Héritiers du sieur Gouy</i>	281
1901	29 March	CE	<i>Casanova</i>	157
1902	10 January	CE	<i>Compagnie nouvelle du Gaz de Deville-lès- Rouen</i>	286
1903	6 February	CE	<i>Terrier</i>	139, 148
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1905	20 January	CE	<i>Compagnie départementale des eaux</i>	286
1906	21 December	CE	<i>Syndicat des propriétaires et contribuables du Quartier de Croix-de- Seguey-Tivoli</i>	156, 290
	28 December	CE	<i>Syndicat des Patrons- Coiffeurs de Limoges</i>	157
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1909	19 February	CE	<i>Abbé Olivier</i>	196, 198
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1916	14 January	CE	<i>Camino</i>	93, 188–9
	30 March	CE	<i>Compagnie générale d'éclairage de Bordeaux</i>	287
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	8 August	CE	<i>Labonne.</i>	105, 217
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1923	26 January	CE	<i>De Robert Lafrégeyre</i>	273
	16 June	TC	<i>Septfonds</i>	131
	30 November	CE	<i>Couitéas</i>	257
	14 December	CE	<i>Société des grands moulins de Corbeil</i>	280
1925	4 December	CE	<i>Charton</i>	212
	26 December	CE	<i>Rodière</i>	155, 170
1928	10 February	CE	<i>Chambre syndicale des propriétaires de Marseille</i>	214
	27 July	CE	<i>SA des usines Renault</i>	212
1929	5 July	CE	<i>Ministre de travail</i>	195
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	3 March	CE Sect.	<i>Jamet</i>	219
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	7 July	CE Ass.	<i>Dehaene</i>	217
1951	9 March	CE Sect.	<i>Société des concerts du conservatoire</i>	215
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