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## **Administrative Law: Governing Economic and Social Governance**

Cary Coglianese\*

Administrative law refers to the body of legal doctrines, procedures, and practices that govern the operation of the myriad regulatory bodies and other administrative agencies that interact directly with individuals and businesses to shape economic and social outcomes. This law takes many forms in different legal systems around the world, but different systems of administrative law share in common a focus on three major issues: the formal structures of administrative agencies; the procedures that these agencies must follow to make regulations, grant licenses, or pursue other actions; and the doctrines governing judicial review of administrative decisions. In addressing these issues, administrative law is intended to combat conditions of interest group capture and help ensure agencies make decisions that promote the public welfare by making government fair, accurate, and rational.

*Keywords:* Public Administration; Agency Independence; Administrative Procedure; Regulation; Rulemaking; Adjudication; Judicial Review; Governance

Administrative law is sometimes considered to be the law created by administrative agencies that is imposed on the private sector. Such administrative sources of law are significant in many societies and economies, often serving as a key vehicle for implementing legislation aimed at solving market failures and addressing other economic and social problems. In the United States, for example, administrative agencies issue thousands of regulations each year, and administrative bodies in many other economies similarly serve as a key source of binding rules affecting economic and social activity.

Although the law created by administrative agencies can thus be considered “administrative law,” what is usually meant by this phrase is something quite different: it is the law that governs the work of administrative agencies. Administrative law, in other words, refers to the body of rules and procedures affecting government agencies as they implement legislation and administer public programs—and as they go about making law themselves. Under this latter, more common understanding of administrative law, fundamental questions arise about how government authority can and ought to be exercised. These questions often implicate some of society’s most deep-seated values, including those of democracy, equity, efficiency, privacy, transparency, and justice.

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These questions arise as administrative law addresses three broad issues, each of which will be discussed in this chapter: (1) the structure of administrative agencies, including rules about the officials who lead them; (2) the procedures agencies must follow when they take actions to establish or modify legal obligations imposed on private actors; and (3) the opportunities and standards for judicial oversight and review of administrative agencies' actions. Across different countries, the specifics of administrative law with respect to each of these three issues vary, as does the source of the applicable law, whether in constitutions, legislation, court decisions, and even agencies' own rules. But the underlying questions about democratic and technocratic values that are embedded in each of these three issues remain largely the same ones in any legal system.

Administrative agencies possess considerable power and discretion, and one of the main goals of administrative law is to ensure that their power is exercised in a manner consistent with agencies' legal or democratic mandates and in a way that delivers meaningful public value. Given the political and economic significance of administrative power, economists and political scientists have long joined with legal scholars both in developing key concepts that undergird and even animate administrative law, as well as in studying the impact of law on governmental behavior and economic outcomes. Before turning to the three common issues around which most of administrative law is organized—agency structures, administrative procedures, and judicial review—this chapter begins with a brief explication of some of administrative law's overarching goals.

## **1. Administrative Law's Goals**

Each administrative agency has its own set of individual instrumental goals depending on the purposes for which it has been established. An agency established to regulate banks has a different set of instrumental goals than one established to regulate workplace safety and health, which is a different set of instrumental goals altogether than those of an agency charged with dispersing subsistence funds to low-income elderly individuals or with providing medical reimbursements to hospitals. The fundamental goal of administrative law is ultimately to support those various instrumental goals of each agency while also serving broader objectives that characterize good governance (Edley, 1990).

Stated more generally, the core goal of administrative law is to help ensure that administrative agencies deliver meaningful public value to society. The basic idea is that legitimate governance serves not the self-interest of those doing the governing nor that of their friends or benefactors, but the interests of the broader society (Moore, 1995). Nor should legitimate administrative governance advance the narrow ideological preferences of those doing the governing. Rather, the aim of public-spirited governance is typically conceived as requiring the consideration of the relevant values and interests of all members of society and seeking to respond as best as possible to their needs and their views about the preferred policy objectives, even when these needs and views compete with each other. The key goal of administrative governance—and hence of administrative law—is to be “public interested” as opposed to “special interested” (Croley, 2008).

This notion of public-interested governance is widely accepted as the core goal of administrative law. It is reflected, for example, in the principles and best practices articulated by, among other

institutions, the Organization of Economic Cooperation and Development (OECD), which has articulated a vision of “sound public governance” as one that entails the:

design, execution and evaluation of formal and informal rules, processes, and interactions between the institutions and actors comprising the State, and between the State and citizens, whether individually or organised into civil society organisations, businesses or other non-state actors, that frame the exercise *in the public interest* of public authority and decision-making in a way that enables the proper anticipation and identification of challenges and in response sustains improvements to general prosperity and wellbeing (OECD, 2018a).

The OECD framework also emphasizes that sound public governance ultimately depends on the key values of “integrity,” “openness,” “inclusiveness and gender equality,” and “accountability based on the rule of law and access to justice” (OECD, 2018a).

The opposite of such public-spirited governance is sometimes referred to as the state of administrative or regulatory “capture.” Capture occurs when an administrative agency’s decisions come to promote an industry’s private interests to the exclusion of the broader public interest (Stigler, 1971). It can arise due to the ongoing interactions between the agency and the regulated industry, as well as the greater resources (and, if corruption exists, rewards) held by industry vis-à-vis other affected parts of society (Wilson, 1980). Various features of administrative law—such as requirements that call for open public participation, transparency about government information and plans, and judicial review of agency action—seek to make capture less likely to occur (Coglianese, Mendelson & Kilmartin, 2009; Stewart, 1975).

To avoid capture and promote public-spirited governance, administrative law seeks to achieve other overarching goals reflective of both substantive and procedural values, such as fairness, accuracy, and rationality. Administrative law aims to achieve these goals without unduly impeding agencies from carrying out their specific instrumental responsibilities.

The very idea central to administrative law that a set of established rules and procedures should be followed by government—that is, the notion of government under a rule of law—is an essential component of fairness to administration (Lind & Arndt, 2017; Tyler, 2003). The rule of law helps ensure that each individual and organization in society is treated with equal dignity and respect. Administrative law can ensure there are meaningful opportunities for those affected by government to be heard as well as provide a process by which agency decisions can be reviewed and decision-makers can be held accountable for their actions (OECD, 2012a). If administrative decision-making were left entirely up to the unreviewable discretion of the administrators, with no established and enforced procedures, it would almost surely be more prone to biases and corruption. Ensuring that governmental authorities lack rampant corruption may be one of the most important factors affecting economic growth and development in a country (Rose-Ackerman, 1997).

Fairness is not unrelated to the goal of accuracy in decision-making. When decision-makers are biased, or when decision-making procedures do not afford an opportunity for those affected to be heard, administrative decisions are less likely to be accurate. Accuracy entails

making sound factual and legal judgments. Administrators need to make accurate decisions about past events when they enforce rules. They need to know whether present applicants for licenses, permits, or governmental assistance currently meet the requisite qualifications. They also need to make forecasts about the future when setting new rules and predicting how well they will solve the problems they are hoping to address. One goal of administrative law thus is to promote the generation of evidence needed to make accurate determinations and forecasts (Stephenson, 2011).

Administrative law ultimately seeks to foster governmental decision-making that leads to substantively rational outcomes—that is, outcomes that deliver public value because they are effective, cost-effective, or economically efficient. Other values related to substantive outcomes matter too, such as distributional equity. Overall, a major goal of administrative law is to help guide executive officials toward generating decisions that advance rational goals in ways that deliver public value consistent with each agency’s instrumental purposes. Often, administrative law seeks to foster decision-making that balances competing substantive goals for society, such as by obtaining benefits from administrative actions that justify their costs (Sunstein, 2002).

One concern with administrative rules generally lies with the costs and burdens that the law imposes on those entities to which it applies (Herd & Moynihan, 2018). When it comes to the way that administrative law constrains agencies, a related concern centers on the law’s impact on the amount of time and effort that it takes to perform governance tasks (McGarity, 1992). By imposing decision-making costs and burdens on agencies, administrative law necessarily presents the concern that it might unduly constrain government officials in carrying out their responsibilities, thereby undermining administrative efficiency in the performance of each agency’s specific instrumental goals. Yet the burdens and constraints of administrative law may simply be the necessary price to achieve fair, accurate, and substantively rational outcomes for society. Taking extra steps to promote fairness by requiring transparency and the elicitation of public participation, for example, may slow down the work of administrative officials to some degree, but it can also generate increased support for their decisions and greater voluntary compliance with them (Malesky & Taussig, 2018).

As in other domains of law, the challenge in administrative law often involves making tradeoffs between competing goals. Administrative law struggles to find a balance between what is needed to promote fairness, accuracy, and rationality, while also still allowing administrative agencies to pursue the instrumental goals that they have been established to achieve. It is a search for what might be considered the *optimal* level of protection from governing pathologies of capture as well as expediency, shortsightedness, and incompetence (Vermeule, 2015).

## **2. The Structure of Administrative Agencies**

An overarching tension that often arises in administrative law centers on the extent to which legal rules and structures should promote the technocratic expertise needed to achieve an agency’s instrumental goals versus ensuring a degree of democratic responsiveness within public administration. Independent, expert decision-making is important, but complete independence

and governance by expert guardianship could make government aloof and divorced from what members of the public legitimately expect by way of performance and service by their government.

A common way of reconciling decision-making by unelected, expert administrators with democratic principles has been to consider administrators as mere implementers of decisions made through a democratic legislative process. Basically, the notion is what might be considered a division of governing labor, with more democratic institutions of government making key value choices while administrative agencies carry out those values in the day-to-day work that they do. This view that administrators serve as mere instruments for implementing the values contained in statutes, though, almost surely underestimates the amount of discretion still possessed by administrative officials (McCubbins, Noll & Weingast, 1987). Statutes, after all, are seldom self-executing and do not always speak clearly to the varied circumstances that confront administrators.

Administrative agencies thus find themselves in a principal-agent relationship with democratically elected legislatures and with the public overall. The basic problems with so-called agency relationships generally—such as shirking, where the agent acts in ways inconsistent with the principal’s interests or goals—also exist within the public administration context. Administrative law can thus be seen as responding to the principal-agent problem inherent in public administration. One major way that it responds to this problem is through the rules governing the design of administrative agencies and addressing who leads them.

Agency designs and structures vary from country to country, and they even vary considerably within countries across different policy domains. But in varying ways, the administrative law of agency design relies on four general solutions to the principal-agent problem: namely, delineation, sharing, monitoring, and reversibility (Coglianese & Nicolaidis, 2001). Each of these solutions—and how they are combined—make up basic features in the design of an administrative agency and they have implications for the degree of discretion afforded to these agencies.

Delineation refers to the terms of the delegated authority that legislation gives to administrative agencies. Generally speaking, the narrower and more precise the delegation, the less discretion afforded an agency and the less serious the principal-agent problem will be (Coglianese, 2019a). Statutes can grant agencies broad authority over many problems and large swathes of the economy, or such delegations can be narrowly confined to specific problems or a discrete facet of the economy. The delineation of a statutory delegation of authority can offer little, or only imprecise, direction for how agencies are to exercise the authority they have been granted, or, alternatively, the law may provide very specific direction to agencies, sometimes even containing concrete deadlines for agency actions (Gersen & O’Connell, 2008).

Sharing refers to mechanisms that ensure continued involvement by elected principals in decisions by administrative agencies. Sharing can take the form of requirements that the heads of agencies be approved by the legislature or an elected executive, or even that agency heads be members of the legislature, as often occurs in parliamentary systems of government. It can also take the form of rules that require formal legislative or elected executive approval of

administrative decisions. This may take the form, for example, of an authorized process for legislative veto of actions undertaken by administrative agencies (Brough, 2020).

Irrespective of any formal sharing in decision-making, administrative law can provide for mechanisms for monitoring the actions of administrative agencies by legislative or elected executive principals, such as through transparency and reporting requirements. For example, in the United States, Congress exerts oversight through its subcommittees and agencies, such as the Congressional Budget Office and the Government Accountability Office, and the President monitors agencies through a required White House regulatory review process (West, 2005; McCubbin, Noll & Weingast, 1987). In other countries, some administrative agencies have separate boards of directors that are specifically charged with monitoring and overseeing the work of the agencies. Administrative law scholars also recognize the important role played by interest groups, the media, and other civil society organizations in monitoring the actions of agencies and creating a network of accountability (Bignami, 2011).

Ultimately, just as administrative agencies are created by legislation, any endowment of authority to an administrative agency can be withdrawn or reversed legislatively too. Sometimes this reversibility is built into the delegation of authority to administrative agencies through so-called sunset clauses. The power to reverse a principal-agent relationship is also reflected in the rules concerning the removal of the heads of administrative agencies. Some agencies are directly accountable to a democratically elected overseer, such as in the United States when they can be removed for any reason by a President. On the other hand, sometimes administrative law imposes for-cause limitations on removal of an agency head, meaning a statute creating an agency limits removal of its head only to a specified set of justifiable causes, such as in cases of “inefficiency, neglect of duty, or malfeasance in office” (Datla & Revesz, 2013). These for-cause protections are usually combined with specified terms for the service of appointed heads of agencies, creating more of an “arms-length” relationship between the agency and the elected parts of government.

The way in which these four features—delineation, sharing, monitoring, and reversibility—are structured by the administrative law governing each agency will combine to define that agency’s degree of legal independence in terms of its discretion and power.

In addition to the degree of legal independence, administrative law also affects the degree of operational independence of agencies by how an agency’s budget is determined. The more financially dependent that an agency is on the legislature or rest of government for its finance, the less independent it will presumably be. Some agencies have formal financial independence by having legally guaranteed streams of funding, such as from private transaction fees or other fixed funding arrangements.

As a result of these multiple funding and design mechanisms, agencies differ in their level of formal and financial independence from elected bodies of government. In general, it is thought that structuring an agency to be more independent of political control will allow governments to credibly commit to a more stable set of administrative rules and routines that will not change with electoral whims. This commitment is thought to be especially important for certain types of agencies with major economic impacts, such as central banking agencies or for regulators of

major utilities. When industries need to make high initial sunk costs for long-term investments, they are thought to be more likely to make these when they can be assured of some greater degree of stability to the policies adopted and carried out by administrative agencies.

It remains a matter for further inquiry as to the economic impacts of agency independence. In general, empirical research has revealed that “it is very difficult to pinpoint the effect of independence itself” on a variety of economic outcomes (OECD, 2016). Some research does suggest that the independence of regulatory agencies is associated with an increase in investments made by regulated firms (Carrigan & Poole, 2015). But overall, it is not possible to guarantee that formal structures of independence will always lead to the actual autonomy of agencies in practice—or vice versa (Coglianese, 2019b; OECD, 2016). It seems apparent, though, that the ways in which administrative law affects the financial and legal structures of an agency may be important even if these structures are not entirely determinative of actual agency independence in practice.

### **3. Administrative Procedures**

Administrative law can constrain and shape the actions of agencies by more than just the way these agencies are structured. It also defines the processes by which agencies undertake specific actions. These procedural rules can also vary greatly across as well as within countries. But in general, just as with the rules of agency structures, procedural administrative law seeks to constrain agency discretion in ways that promote good governance and that legitimate the exercise of administrative power, such as through requirements for openness and participation (Rose-Ackerman, 2021).

Administrative procedures address two broad categories of agency actions: (a) the establishment of rules or regulations, and (b) the issuance of adjudicatory orders, such as licenses, permit approvals, and sanctions. It is possible to generalize about the features and generally accepted principles of administrative procedure for these two types of agency action.

#### ***A. Rulemaking***

As the name itself implies, rulemaking refers to administrative actions that make rules or regulations. Rules or regulations are statements of some generality—that is, they apply to any individual or entity who falls within the rule’s factual predicate. They also have future binding effect. In other words, they are binding law that can impose legal obligations on businesses, other organizations, and individuals to refrain from certain behaviors, undertake mandated actions, or achieve or avoid specified outcomes. Rules can also be binding on administrative agencies themselves. For example, some rules articulate additional procedures that an agency wishes to impose on itself.

Of course, administrative agencies also issue many rule-like statements that are not binding, such as advisory opinions or guidance documents. Sometimes these materials help explain an agency’s binding rules even though the materials are not themselves binding. In day-to-day practice, of course, such guidance can play a role in influencing the behavior of regulated individuals or organizations. As a result, although procedures for the development of agency

guidance may not need to be as involved as with binding rules, administrative law may also provide procedures for transparency and public disclosure of guidance (Coglianese, 2020).

Some of the core procedures for making rules have been identified by the OECD as best practices in administrative law—or what the OECD refers to as “regulatory policy” (OECD, 2005; OECD, 2009; OECD, 2012b; OECD, 2014a; OECD, 2017; OECD, 2021). The regulatory policy or administrative law of rulemaking adopted by various governments have featured the following eight common set of elements, which are also reflected throughout the syntheses developed by the OECD:

1. *Open-minded decision-maker.* Rulemaking can require difficult choices and tradeoffs between the values, interests, and views of different segments of society. To help ensure rules are legitimate and perceived as such, administrative law often requires a neutral decision-maker who is open to hearing all relevant views and weighing the evidence dispassionately. Procedures that call for neutral decision-makers—such as government officials, as opposed to industry organizations—aim to provide needed decision-making autonomy from both political overseers as well as from regulated interests (Coglianese, 2019b; OECD, 2014b).

2. *Open process.* To provide meaningful opportunities for interested members of the public to be heard, the rulemaking process needs to be open and transparent (Kwoka, 2021; Fenster, 2018; Coglianese, Kilmartin & Mendelson, 2009). Often administrative law requires agencies to provide public notice of regulatory proposals, such as by posting announcements online in a centralized repository of regulatory information. The public is then afforded an opportunity to comment on the proposal. The amount of detail in the proposal may vary according to each country’s procedures. Sometimes regulatory authorities are not only required to provide a general notice of the rough contours of a proposal but also to make accessible a full draft of the proposed regulatory language. Doing the latter may benefit the regulatory agency by ensuring public comments are fully responsive to the agency’s intended plans.

3. *Public comment.* Good information is key to making good regulatory decisions. But government officials have no monopoly on good information. In fact, those outside government will almost inherently have better, or at least other, information than does government about the industry or practices that the government proposes to regulate (Coglianese, Zeckhauser & Parson, 2004). By allowing opportunities for public comment—and actively seeking out input from others—regulatory officials can improve the information on which their decisions are based. Along the way, they may also promote public support for and compliance with the rules they develop (Malesky & Taussig, 2017, 2018). The use of modern digital technologies easily facilitates public commenting on proposed regulations. Indeed, in OECD countries, “[t]he most popular forms of stakeholder engagement [involve] use of the internet to actively seek feedback from the general public and of advisory groups or preparatory committees to benefit from the expertise of specific groups” (OECD, 2018b). Additional opportunities for online public hearings, chat rooms, or the use of social media have been explored (Sant’Ambrogio & Staszewski, 2021).

4. *Analysis.* To improve the rationality of rulemaking, procedures for adopting new rules will often include requirements for preparing regulatory impact analyses. These analyses identify the problems to be addressed by a regulation and then seek to assess in a systematic manner the expected outcomes of alternative regulatory solutions. Generally speaking, regulatory officials undertake this systematic assessment using benefit-cost analysis. This analysis has been said to “provide an exceptionally useful framework for consistently organizing disparate information, and in this way, it can greatly improve the process and, hence, the outcome of policy analysis” (Arrow et al., 1996). In practice, strict adherence to standards for monetizing both costs and benefits occurs in at most only a modest fraction of all regulatory actions taken by administrative agencies (Hahn & Dudley 2007). As a normative matter, the value of strictly adhering to a hard benefit-cost test for administrative action has faced significant objections (Ackerman & Heinzerling 2004; Shapiro & Glicksman 2003). Nevertheless, procedures that call for benefit-cost analysis or other types of regulatory impact analysis aim to encourage regulators to look before they leap by determining whether regulation is really needed and, if so, which of several ways of designing a regulation would work best (Perroud & Auby, 2013; Radaelli & de Francesco, 2010).

5. *Reason-giving.* When a rule is issued, administrative procedures in some jurisdictions require the regulatory agency to explain why it was issued, give reasons for key design choices made, and respond to the major comments submitted from members of the public. To provide an adequate explanation for a rule, a regulatory authority can be required to assemble a record of the evidence used in reaching its decision. Reasons are said to need to be based on that record and on an articulation of principles that extend beyond the particular context (that is, they should not merely be ad hoc) (Schauer, 1995). All in all, there are at least three main reasons for regulators to engage in reason-giving at the time that they issue a new or amended rule: enhance a rule’s communicative function; protect against expediency, bias, and rash judgment; and promote acceptance by the public and the regulated community (Coglianese, Mendelson & Kilmartin, 2009).

6. *Publication.* Rules need to be public if they are to inform others about how to conduct their affairs (Fuller, 1964). To ensure that regulatory authorities comply with basic publication requirements, enforcement of rules is sometimes made contingent on proper and timely publication of them, in accordance with stated procedural requirements (Coglianese, 2020).

7. *Review.* Rulemaking procedures often provide for some kind of accountability review. When rules are expected to result in substantial economic impacts, they can be subjected to an expert or technical review of the regulator’s analysis and reasoning before they are issued. Many countries’ RIA processes serve this role (Radaelli & de Francesco, 2010). In addition, after rules are issued, affected individuals or organizations outside of government are often given the opportunity to have the rules reviewed by a court for legal and procedural compliance. The existence of an ex-post review by a court tends to reinforce to agencies that they need to take seriously the procedural steps provided in administrative law.

8. *Continuous improvement.* No matter how thoroughly and carefully a rule is analyzed before it is issued, after it has been adopted it may not perform as intended. This could simply be due to the fact that the world itself may have changed, such that the rule no longer fits well with conditions on the ground. As a result, a rulemaking system must be dynamic, with regulatory authorities seeking continuous improvement (Coglianese, 2012). Accordingly, rulemaking procedures can sometimes require that agencies periodically conduct retrospective reviews of their existing stock of rules to determine which ones may no longer be needed and which ones are working well.

When creating rulemaking procedures, it is not uncommon for governments to subject different types of agency-created rules to procedures of differing degrees of stringency. They may, for example, distinguish between agency rules based on their characteristics. Some rules that are issued to address an emergency or other urgent problem might be exempted from some or all the ordinary procedures. Other rules that are deemed more significant than others, such as those that may pose more costs to the economy, might be required to go through additional procedural steps, such as regulatory impact analysis. And when still other rules raise distinctive policy concerns because of the substantive subject matter they address, irrespective of their economic impacts, they may also be subjected to additional or different procedures as well. In the United States, for example, rules that are deemed economically significant or that raise distinctive policy issues must be accompanied by a process of economic analysis of their costs and benefits and undergo a review of that analysis by the White House Office of Information and Regulatory Affairs (Sunstein, 2013; Graham, 2008; McGarity, 1991).

## ***B. Adjudication***

Although rulemaking involves the exercise of administrative authority in a general manner, other administrative actions, commonly known as orders or “single case” judgments, concern whether particular individuals or entities fit within the confines of a relevant set of rules or conditions. The process that leads to the issuance of an order is called adjudication. Administrative orders can range from the banal to the significant. An administrative order, for example, can include a directive, delivered orally by a government airport security official, that a specific passenger remove a shampoo bottle from a suitcase. Or it can include the much more complex and significant decision to license the construction of a nuclear power plant.

In describing the range of disputes that can arise over administrative adjudication, Asimow (2015) has noted that:

A list of the types of administrative adjudicatory disputes would be nearly endless. Just to mention a few: Is an applicant for benefits disabled? Would a non-citizen be endangered if deported to her home country? Did a teacher sexually harass a student? Did a licensee commit environmental violations? Did a stockbroker defraud consumers? If an agency denies a benefit or imposes a sanction or other regulatory order, then what? If wrongdoing is found, what are the consequences?

As suggested by these questions and examples, the particularized decisions at the heart of administrative adjudication can lead to an agency granting an affirmative benefit or privilege, such as the granting of a new building's occupancy permit, the awarding of a pilot's license, or the payment of an individual's disability benefits. Administrative adjudication can also lead to a negative consequence such as the revocation of a license or the imposition of a fine. Both types of decisions—granting benefits and imposing sanctions—can be highly consequential. Indeed, as Asimow (2015) notes, although “[t]he outcome of most administrative disputes is not very important to the government, ... every one of them is vitally important to the private party who challenges the government.”

As a result, adjudicatory procedures have become an important component of administrative law. Adjudicatory procedures are often designed to foster fairness, respectful treatment, and procedural justice (Mashaw, 1985; White, 1990). In addition, much emphasis in recent years has focused on administrative efficiency in adjudicatory processes, particularly with respect to those processes related to business licenses and permits. Since 2002, for example, the World Bank has applied a “doing business” index purportedly measuring the steps new businesses need to take to obtain a license or secure a permit (World Bank, 2019). The focus on administrative efficiency stems from a concern that administrative procedures could erect excessive barriers to business start-ups by reducing market innovation, and that excessive complexity in adjudicatory procedures may also expand opportunities for corruption from regulatory officials (OECD, 2007).

Accordingly, procedures for adjudication often seek to strike a balance between the desire for streamlined efficiency and the need to ensure applicants meeting the legitimate government qualifications. Procedures also include opportunities for applicants who are adversely affected by administrative decisions to seek review.

Different countries have organized their administrative processes in different ways. Comparative research on administrative adjudication indicates that “[m]ost administrative adjudicatory systems have three phases”: (1) the initial decision during which a party can present its case and challenge the agency's initial determination; (2) the administrative reconsideration in which higher-level agency personnel can reassess the initial decision; and (3) the judicial review in which a court reconsiders the agency decision (Asimow, 2015). To avoid excessive administrative burdens, system designers sometimes structure these multiple phases so that they provide opportunities for input that are simple, low-cost, and quick for individuals and businesses.

Although no fixed recipe is followed with respect to procedures for administrative adjudication, systems of administrative adjudication around the world typically feature seven concrete elements, which bear a close affinity with common characteristics of rulemaking procedures:

1. *Neutral decision-maker.* Administrative adjudicators are expected to treat each party respectfully and operate without evident conflicts of interest. Employees serving in a decision-making role during the internal review or formal hearing are

required to possess appropriate autonomy from governmental officials directly involved in the initial stages of the matter.

2. *Meaningful notice.* Clear instructions are required to be provided for the application of licenses and permits, and prior notice needs to be given to anyone selected for hearing or being negatively affected by the government action.

3. *Opportunity to be heard.* Although written submissions often suffice for administrative adjudications, for especially serious matters or where affected individuals are unlikely to be able to provide relevant information via writing, some form of in-person testimony may be needed.

4. *Assistance and representation.* In some contexts, adjudicatory procedures may allow affected individuals or organizations the opportunity to be represented or assisted by others, especially when expert testimony is required.

5. *Opportunity for rebuttal.* When an administrative agency collects its own evidence or hears input from others, the ability to rebut the government's evidence by the affected parties is expected. In this way, affected individuals and organizations are provided a meaningful opportunity to be heard and the analytic and evidentiary basis of adjudicatory decision can be strengthened.

6. *Reason-giving.* Affected parties are expected to be able to read or hear the basis of any decision made. Not only is reason-giving intrinsically valued by those affected by an adjudicatory decision, but it also provides a basis for a review of a decision by a review panel or court.

7. *Review.* Those who are adversely affected by an order issued by a governmental authority are usually provided an opportunity to seek review of the order and the process by which it came to be issued. The OECD has specifically recommended that, with respect to adjudications involving the enforcement of regulations, governments provide “for the review of the legality and procedural fairness of regulations and of decisions made by bodies empowered to issue regulatory sanctions” and “ensure that citizens and businesses have access to these systems of review at reasonable cost and receive decisions in a timely manner” (OECD, 2014a).

The specific ways in which adjudication procedures are designed to address these seven elements necessarily vary across countries, especially depending on differences in the organization of administrative agencies and the structure of each country's court systems. One comparative scholar has even concluded that “[t]here is no single clearly superior design for administrative adjudication” (Asimow, 2015). Overall, though, adjudication procedures tend to address the seven elements in ways that seek to advance principles of procedural justice and balance the various goals of administrative law, taking into account the interests of the individuals or organizations affected by an adjudication.

### ***C. Digital Developments and Administrative Procedure***

Procedures for both administrative adjudication and rulemaking apply to a world that has come to be dominated by digital technology. Although technology offers new possibilities for agencies to improve administrative governance (UN DESA, 2018), the digital world also holds new implications for administrative procedure. Public expectations about transparency and participation are increasingly affected by expectations about access to information and communications channels in other facets of daily life (Herz, 2013). Moreover, the design of online systems, such as search functions and user interfaces, appears increasingly to be a new facet of administrative justice. As not all designs are equally accessible and inclusive, new technologies are also presenting new questions about fairness, transparency, and reason-giving in the administrative state (Noveck, 2004; Coglianese, 2011).

It is increasingly clear that, in a world with great promise for improvements obtained through the use of digital technology and big data analytics, processes for the design and development of digital systems and algorithmic tools will benefit from, if not be expected to comply with, the same kinds of participatory and transparent procedures that apply to other administrative actions (Coglianese, 2021). Existing administrative law in some countries does appear capable of accommodating governmental use of machine-learning innovations to improve innovations (Coglianese & Lehr, 2017, 2019). Indeed, it is possible that machine learning may not only enhance administrative efficiency but could also improve the fairness and accuracy of decision-making relative to existing human-based administrative processes (Coglianese, 2021).

## **4. Judicial Review**

Under widely accepted legal principles, courts are responsible for enforcing the implementation of laws that bind government officials. The administrative law of judicial review itself refers to those doctrines governing courts' examination of, and efforts to ensure, agencies' compliance with the various procedural and substantive rules of administrative law, whether those rules derive from constitutional text, statutory provisions, or administrative procedures

In the United States, for example, courts are authorized to review whether agencies have provided constitutionally required due process—that is, basic notice and opportunity to be heard—whenever adversely affecting protected liberty and property rights. Courts also review agency actions for compliance with substantive statutes too, as agencies may only act within the scope of their authority as delegated in legislation. Similarly, courts examine an agency's compliance with procedural requirements outlined in the Administrative Procedure Act and other statutes that set standards for agency procedure. Courts can also set aside agency action that is deemed to be arbitrary, capricious, or an abuse of discretion.

A key administrative law debate over the role of the courts in many countries centers on how much judges should defer to agency decisions. On the one hand, credible independent oversight by the courts can bolster agencies' incentives to comply with administrative law and may also improve their overall performance. On the other hand, given that courts often lack the same level of expertise and information as administrative agencies (Sunstein, 2016), judges may have good reasons to pay more deference to administrative decisions involving technical and policy

expertise. Administrative agencies are, after all, like the courts in that they are organs of government, and thus they are often presumed to merit some degree of respect for that fact alone. Courts may also give more deference to agencies with respect to factual determinations or substantive policy judgments, conducting only a more limited review to ensure that agencies have followed appropriate procedures in making their decisions.

Still, some courts do take a careful look at policy decisions to see that they are based on a thorough analysis of all relevant issues. This approach is referred to as “hard look” review in the United States. Whatever it may be called, courts often approach their inquiry largely in procedural terms, seeking to assess whether and how agencies justified their actions, what other avenues they explored, and what costs and benefits they balanced. Although one might suspect courts would give less deference to agencies’ legal interpretations than to their factual judgments, especially when agencies must interpret their own governing legislation, one of the most widely cited—and debated—U.S. Supreme Court decisions has called upon courts to defer to agency interpretations of ambiguous provisions within the statutes they implement (*Chevron v. Natural Resources Defense Council*, 1984).

Many empirical studies concerning the impact of judicial review on administrative behaviors build on the premise that judicial review, if deployed properly, can improve governance (Edley, 1990). The effects often attributed to judicial review include making agencies more observant of legislative mandates, increasing the analytic quality of agency decision making, and promoting agency responsiveness to a wide range of interests.

Notwithstanding these purported beneficial effects from judicial review, scholars have also emphasized the possibility of more debilitating effects on agencies from judicial review, with some worries that the response to litigation risks creates significant delays for agencies seeking to develop regulations (McGarity, 1992). In some cases, agencies have been said to have retreated altogether from efforts to establish regulations. As a primary example of this so-called ossification effect, the U.S. National Highway Traffic Safety Administration (NHTSA) has shifted away from developing new auto safety standards in order to avoid judicial reversal (Mashaw & Harfst, 1990).

Other research, however, indicates that the threat of judicial interference in agency decision-making has been significantly overestimated due to the limited frequency of judicial reversals of agency action (Coglianese, 1997) and the agencies’ ability to respond to seemingly adverse judicial decisions in ways that still achieve their policy objectives (Jordan, 2000). Although case studies of particularly controversial and complex rules document how long they can take to develop (Pierce, 2012), large-sample studies have failed to yield systematic evidence supportive of the view that judicial review overall significantly obstructs the rulemaking process in the United States (O’Connell, 2008; Yackee & Yackee, 2010).

## **5. Conclusion**

Administrative law is the body of law that governs the design and work of administrative agencies in implementing the laws and policies enacted by legislatures. But at base, administrative law serves an even greater purpose: it strives to promote good governance (Edley,

1990; Fisher & Shapiro, 2020). This means that administrative law aims to foster public-interested agency action by promoting democratic accountability, fairness, accuracy, and rational decision-making—in addition to the effective, efficient, and equitable achievement of the specific instrumental goals that make up each administrative agency’s mission. This means that administrative law can vary considerably—both from country to country, and from agency to agency.

Despite the variation, the domain of administrative law can be conceived as addressing three overarching issues: the structure of agencies; the procedures that constrain and guide their actions; and judicial oversight and review. These issues, in varying ways, define the law of any administrative governance system around the world. The variation, though, can make it difficult to conclude that there exists a single, best system of administrative *law*, in singular terms. Ultimately, what exists are plural systems of administrative *laws*. The challenge for both scholars and practitioners is to determine how the varied rules that govern administrative agencies work together, and whether they can be adjusted or combined in different ways to improve the quality and legitimacy of government in ways that enhance justice and deliver additional and more equitable gains to social and economic welfare.

## Further Reading

Coglianese, C. (2002). Empirical analysis and administrative law. *University of Illinois Law Review* 2002(4): 1111-1137.

Dunlop, C. A., & Radaelli, C. M., eds. (2016). *Handbook of regulatory impact assessment*. Edward Elgar Publishing.

Edley, C. (1992). *Administrative law: Rethinking judicial control of bureaucracy*. Yale University Press.

Kingsbury, B., Krisch, N., & Stewart, R. B. (2005). The emergence of global administrative law, *Law & Contemporary Problems* 68(3 & 4): 15-61.

Rose-Ackerman, S., Lindseth, P., & Emerson, B. (2019). *Comparative administrative law* (2nd ed.). Edward Elgar Publishing.

Stephenson, M. C. (2015). Corruption and democratic institutions: A review and synthesis, in Rose-Ackerman, S., & Lagunes, P., eds., *Greed, corruption, and the modern state*. Edward Elgar Publishing.

Viscusi, W. K. (1996). Regulating the regulators. *University of Chicago Law Review* 63(4) 1423-1461.

## References

Ackerman, F., & Heinzerling, L. (2004). *Priceless: On knowing the price of everything and the value of nothing*. New Press.

Arrow, et al. (1996). Is there a role for benefit-cost analysis in environmental, health, and safety regulation? *Science*, 272(5259), 221-222.  
<https://www.econ.umd.edu/sites/www.econ.umd.edu/files/pubs/jc33.pdf>

Asimow, M. (2015). Five models of administrative adjudication. *American Journal of Comparative Law*, 61(1), 3-31. <https://www.jstor.org/stable/26386647>

Bignami, F. (2011). From expert administration to accountability network: A new paradigm for comparative administrative law. *American Journal of Comparative Law*, 59:859-907. DOI: 10.5131/AJCL.2010.0031.

Brough, C. (2020). *Law: The continuing significance of the legislative veto*. *Presidential Studies Quarterly*, 50(2), 451-469. <https://doi.org/10.1111/psq.12643>

Carrigan, C., & Poole, E. (2015). *Structuring regulators: The effects of organizational design on regulatory behavior and performance* [Research paper]. Penn Program on Regulation, Best-in-

Class Regulator Initiative. <https://www.law.upenn.edu/live/files/4707-carriganpoole-ppr-researchpaper062015pdf>

Chevron v. Natural Resources Defense Council, 467 U.S. 837 (1984).

Coglianese, C. (2021). Administrative law in the automated state. *Daedalus*, 150(3), 104-120. [https://doi.org/10.1162/daed\\_a\\_01862](https://doi.org/10.1162/daed_a_01862)

Coglianese, C. (2020). Illuminating regulatory guidance. *Michigan Journal of Environmental & Administrative Law*, 9(2), 243-318. DOI:10.36640/mjeal.9.2.illuminating

Coglianese, C. (2019a). Dimensions of delegation. *University of Pennsylvania Law Review*, 167(7), 1849-1889. [https://scholarship.law.upenn.edu/faculty\\_scholarship/2114](https://scholarship.law.upenn.edu/faculty_scholarship/2114)

Coglianese, C. (2019b). The semi-autonomous administrative state. *Faculty Scholarship at Penn Law*, 2121. Based on remarks made in Showcase panel II: Balancing insulation and accountability of agency decisions. In *University of Dayton Law Review*, 44(3), 319-361. [https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3123&context=faculty\\_scholarship](https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3123&context=faculty_scholarship)

Coglianese, C. (2012). *Measuring regulatory performance: Evaluating the impact of regulation and regulatory policy* [Expert Paper no. 1]. OECD, Regulatory Policy Evaluation, Expert Paper Series. [https://www.oecd.org/gov/regulatory-policy/1\\_coglianese%20web.pdf](https://www.oecd.org/gov/regulatory-policy/1_coglianese%20web.pdf)

Coglianese, C. (2011). *Federal agency use of electronic media in the rulemaking process*. ACUS. <https://www.acus.gov/sites/default/files/documents/Coglianese-Report.pdf>

Coglianese, C. (1997). Assessing consensus: The promise and performance of negotiated rulemaking. *Duke Law Journal*, 46(6), 1255-1349. <https://scholarship.law.duke.edu/dlj/vol46/iss6/1>

Coglianese, C., Kilmartin, H., & Mendelson, E. (2009). Transparency and public participation in the rulemaking process: Recommendations for the new administration. *George Washington Law Review*, 77(4), 924-972. [https://scholarship.law.upenn.edu/faculty\\_scholarship/238](https://scholarship.law.upenn.edu/faculty_scholarship/238)

Coglianese, C. & Lehr, D. (2019). Transparency and algorithmic governance. *Administrative Law Review*, 71(1), 1-56. [https://scholarship.law.upenn.edu/faculty\\_scholarship/2123](https://scholarship.law.upenn.edu/faculty_scholarship/2123)

Coglianese, C., & Lehr, D. (2017). Regulating by robot: Administrative decision-making in the machine learning era. *Georgetown Law Journal*, 105(5), 1147-1223. [https://scholarship.law.upenn.edu/faculty\\_scholarship/1734](https://scholarship.law.upenn.edu/faculty_scholarship/1734)

Coglianese, C., & Nicolaidis, K. (2001). Securing subsidiarity: The institutional design of federalism in the United States and Europe. In K. Nicolaidis & R. Howse (Eds.), *The federal*

*vision: Legitimacy and levels of governance in the United States and the European Union* (pp. 277-299). Oxford University Press. DOI:10.1093/0199245002.003.0011

Coglianese, C., Zeckhauser, R., & Parson, E. (2004). Seeking truth for power: Informational strategy and regulatory policymaking. *Minnesota Law Review*, 89(2), 277-341. DOI:10.2139/ssrn.545104

Croley, S. P. (2008). *Regulation and public interests: The possibility of good regulatory government*. Princeton University Press.

Datla, K., & Revesz, R. L. (2013). Deconstructing independent agencies (and executive agencies). *Cornell Law Review*, 98(4), 769-843. <http://dx.doi.org/10.2139/ssrn.2125194>

Edley, C. F., Jr. (1990). *Administrative law: Rethinking judicial control of bureaucracy*. Yale University Press.

Fenster, M. (2018). FOIA as an administrative law. In D. Pozen & M. Schudson (Eds), *Troubling transparency: The history and future of freedom of information* (pp. 52-70). Columbia University Press. <https://doi.org/10.7312/poze18498-005>

Fisher, E., & Shapiro, S. A. (2020). *Administrative competence: Reimagining administrative law*. Cambridge University Press.

Fuller, L. F. (1964). *The morality of law*. Yale University Press.

Gersen, J. E., & O'Connell, A. J. (2008). Deadlines in administrative law. *University of Pennsylvania Law Review*, 156(4), 923-990. <http://nrs.harvard.edu/urn-3:HUL.InstRepos:11339456>

Graham, J. D. (2008). Saving lives through administrative law and economics. *University of Pennsylvania Law Review*, 157(2), 395-540. [https://scholarship.law.upenn.edu/penn\\_law\\_review/vol157/iss2/2](https://scholarship.law.upenn.edu/penn_law_review/vol157/iss2/2)

Hahn, R. W., & Dudley, P. (2007). How well does the government do cost-benefit analysis? *Review of Environmental Economics and Policy* 1(2), 192-211.

Herd, P., & Moynihan, D. P. (2021). Administrative burden: Policymaking by other means. *Journal of Public Affairs Education*, 27(2), 254-256. <https://doi.org/10.1080/15236803.2020.1808917>

Herz, M. (2013). *Using social media in rulemaking: Possibilities and barriers*. ACUS. <https://www.acus.gov/sites/default/files/documents/Herz%20Social%20Media%20Final%20Report.pdf>

Jordan, W. S. (2000). Ossification revisited: Does arbitrary and capricious review significantly interfere with agency ability to achieve regulatory goals through informal rulemaking? *Northwestern University Law Review*, 94(2), 393-450.

Kwoka, M. B. (2021). *Saving the Freedom of Information Act*. Cambridge University Press. <https://doi.org/10.1017/9781108697637>

Lind, E. A., & Arndt, C. (2017). Regulations, fairness and trust. In OECD (Ed.), *Trust and Public Policy: How better governance can help rebuild trust* (pp. 67-85). OECD Publishing. <https://doi.org/10.1787/9789264268920-en>

Malesky, E., & Taussig, M. (2018). Participation, Government Legitimacy, and Regulatory Compliance in Emerging Economies: A Firm-Level Field Experiment in Vietnam. *American Political Science Review*, 113(2), 530-551. doi:10.1017/S0003055418000849

Malesky E., & Taussig, M. (2017). The danger of not listening to firms: Government responsiveness and the goal of regulatory compliance. *Academy of Management Journal*, 60(5), 1741–1770. <https://doi.org/10.5465/amj.2015.0722>

Mashaw, J. L. (1985). *Due process in the administrative state*. Yale University Press.

Mashaw, J. L., & Harfst, D. L. (1990). *The struggle for auto safety*. Harvard University Press.

McCubbins, M. D., Noll, R. G., & Weingast, B. R. (1987). Administrative procedures as instruments of political control. *Journal of Law, Economics, & Organization*, 3(2), 243-277. <http://www.jstor.org/stable/764829>

McGarity, T. O. (1992). Some thoughts on ‘deossifying’ the rulemaking process. *Duke Law Journal*, 41(6), 1385-1462. <https://doi.org/10.2307/1372818>

McGarity, T. O. (1991). *Reinventing rationality: The role of regulatory analysis in the federal bureaucracy*. Cambridge University Press. <https://doi.org/10.1017/CBO9780511528279>

Moore, M. H. (1995). *Creating public value: Strategic management in government*. Harvard University Press.

Noveck, B. S. (2004). The electronic revolution in rulemaking. *Emory Law Journal*, 53(2), 433-522.

O’Connell, A. J. (2008). Political cycles of rulemaking: An empirical portrait of the modern administrative state. *Virginia Law Review*, 94(4), 889-986.

OECD (2021). *OECD regulatory policy outlook 2021*. OECD Publishing. <https://doi.org/10.1787/38b0fdb1-en>

OECD (2018a). *Draft policy framework on sound public governance*. OECD Publishing. <https://www.oecd.org/gov/draft-policy-framework-on-sound-public-governance.pdf>

OECD (2018b). *OECD Regulatory Policy Outlook 2018*. OECD Publishing. <https://doi.org/10.1787/9789264303072-en>

OECD (2017b). *Trust and public policy: How better governance can help rebuild public trust*. OECD Publishing. <https://doi.org/10.1787/9789264268920-en>

OECD (2016). *The Governance of Regulators: Being an Independent Regulator*. OECD Publishing. [https://read.oecd-ilibrary.org/governance/being-an-independent-regulator\\_9789264255401-en#page47](https://read.oecd-ilibrary.org/governance/being-an-independent-regulator_9789264255401-en#page47)

OECD (2014a). *Framework for regulatory policy evaluation*. OECD Publishing. <https://doi.org/10.1787/9789264214453-en>.

OECD (2014b). *OECD best practice principles for regulatory policy: The governance of regulators*. OECD Publishing. <https://doi.org/10.1787/9789264209015-en>.

OECD (2012a). *Procedural fairness and transparency*. OECD Publishing. <https://www.oecd.org/daf/competition/abuse/50235955.pdf>

OECD (2012b). *Recommendation of the council of the OECD on regulatory policy and governance*. OECD Publishing. <http://www.oecd.org/gov/regulatory-policy/49990817.pdf>

OECD (2009). *Regulatory impact analysis: A tool for policy coherence*. OECD Publishing. <http://www.oecd.org/gov/regulatory-policy/ria-tool-for-policy-coherence.htm>.

OECD (2007). *Cutting red tape: Comparing administrative burdens across countries*. OECD Publishing.

OECD (2005). *Guiding principles for regulatory quality and performance*. OECD Publishing. <http://www.oecd.org/fr/reformereg/34976533.pdf>

Perroud, T., & Auby, J.-B. (2013). *Regulatory impact assessment*. Global Law Press.

Pierce, R. J. (2012). Rulemaking ossification is real: A response to *Testing the Ossification Thesis*. *George Washington Law Review* 80(5),1493-1503.

Radaelli, C. M., & de Francesco, F. (2010). Regulatory impact assessment. In R. Baldwin, M. Cave, & M. Lodge (Eds.), *The Oxford handbook of regulation* (pp. 279-301). Oxford University Press.

Rose-Ackerman, S. (2021). *Democracy and executive power: Policymaking accountability in the US, the UK, Germany, and France*. Yale University Press.

- Rose-Ackerman, S. (1997). Corruption and development. In B. Pleskovic & J. E. Stiglitz (Eds.), *Annual World Bank Conference on Development Economics* (pp. 1-46). World Bank. <http://documents.worldbank.org/curated/en/719821468740214930/pdf/multi0page.pdf#page=39>.
- Sant' Ambrogio, M., & Staszewski, G. (2021). Democratizing rule development. *Washington University Law Review*, 98(3), 793-856.
- Schauer, F. (1995). Giving reasons. *Stanford Law Review*, 47(4), 663-659.
- Shapiro, S. A., & Glicksman, R. L. (2003). *Risk regulation at risk: Restoring a pragmatic approach*. Stanford University Press.
- Stephenson, M. C. (2011). Information acquisition and institutional design. *Harvard Law Review*, 124(6), 1422-1483. <http://nrs.harvard.edu/urn-3:HUL.InstRepos:10849729>
- Stewart, R. B. (1975). The reformation of American administrative state. *Harvard Law Review*, 88(8), 1669-1813.
- Stigler, G. J. (1971). The theory of economic regulation. *Bell Journal of Economics & Management Science*, 2(1), 3-21. <https://doi.org/10.2307/3003160>
- Sunstein, C. R. (2016). The most knowledgeable branch. *University of Pennsylvania Law Review*, 164(7), 1607-1648. <https://www.jstor.org/stable/i26600405>
- Sunstein, C. R. (2013). The Office of Information and Regulatory Affairs: Myths and realities. *Harvard Law Review*, 126(7), 1838-1878. <https://www.jstor.org/stable/23415059>
- Sunstein, C. R. (2002). *The cost-benefit state: The future of regulatory protection*. American Bar Association.
- Tyler, T. R. (2003). Procedural justice, legitimacy, and the effective rule of law, crime and justice. *Crime & Justice*, 30, 283-357. <https://www.jstor.org/stable/1147701>
- UN DESA (2018). *UN E-Government Survey 2018*. United Nations. <https://publicadministration.un.org/egovkb/en-us/Reports/UN-E-Government-Survey-2018>.
- Vermeule, A. (2015). Optimal abuse of power. *Northwestern University Law Review*, 109(3), 673-694. <https://scholarlycommons.law.northwestern.edu/nulr/vol109/iss3/4>
- West, W. F. (2005). The institutionalization of regulatory review: Organizational stability and responsive competence at OIRA. *Presidential Studies Quarterly*, 35(1). <https://www.jstor.org/stable/27552660>
- White, L. E. (1990). Subordination, rhetorical survival skills, and Sunday shoes: Notes on the hearing of Mrs. G. *Buffalo Law Review*, 38(1), 1-58.

Wilson, J. Q. (1980). *The politics of regulation*. Basic Books.

World Bank (2019). *Doing Business 2019: Training for Reform*. World Bank Group.  
[https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report\\_web-version.pdf](https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_web-version.pdf)

Yackee, J. W., & Yackee, S. W. (2010). Administrative procedures and bureaucratic performance: Is agency rulemaking “ossified”? *Journal of Public Administration Research and Theory*, 20(2), 261-282. <https://www.jstor.org/stable/40732511>