**5. Researching public law and the administrative state**

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**I. INTRODUCTION**

The modern administrative state is vast and complex. A public law researcher approaching it for the first time could be forgiven for thinking it is a random, amorphous mass of statutes, regulations, policies, officials, and redress systems. Public lawyers who seek to make sense of it face a difficult challenge and, over time, different ways of confronting the administrative state have emerged. Broadly speaking, it could be said that academic studies relating to the administrative state by public lawyers have adopted one of two broad perspectives: the external and the internal.[[3]](#footnote-3)

External public law studies of the administrative state analyse the external controls on the decisions and actions of administrative officials. In practice, these studies tend to focus on three subjects. First, judicial review of administrative action, conducted in the common law tradition by the ordinary courts. Second, political oversight of administrative decision-making by the executive or legislative branch. Third, other accountability and redress mechanisms, ranging from market forces to ombudsmen. The different forms of the external perspective are typically associated with different methodological approaches. Whereas judicial review of administrative action has principally been studied doctrinally, interpretively, or theoretically, the other forms of accountability and redress have been more closely associated with approaches typically deployed in other academic disciplines, such as political science and sociology.

Internal studies of the administrative state focus on the internal structures of government and how policy is implemented, locating the role of law within this architecture. As with the external perspective, the internal perspective has certain preoccupations in terms of subject matter. First, how decisions are taken on the frontlines of public administration, for instance in welfare services or immigration administration. Second, how frontline decisions are subject to internal review and appeal via mechanisms, which may be located within the same decision-making structure or elsewhere. Third, how authority is distributed within administrative decision-making processes, as between hierarchical superiors and their nominal subordinates. Again, different methodological approaches have been prominent in work from the internal perspective, depending on the form it takes. Socio-legal scholarship has been especially prominent, as have theoretical approaches drawing on literature in public policy and governance, but legal-doctrinal work is often necessary to provide structure for empirical or theoretical inquiry.

While the distinction we draw between the internal and external perspectives and methodology still hold true in general, recent years have seen a greater willingness on the part of public law scholars to cross traditional methodological boundaries. This development has not been without controversy, but it suggests a future of public research which takes a more methodologically diverse approach to understanding the relationship between public law and the administrative state in the common law world.

In this chapter, we explore public law research on the administrative state from internal and external perspectives. First, we show how this distinction has deep historical roots across jurisdictions, with particular reference to Bruce Wyman’s seminal work in the early Twentieth Century. We then set out the general landscape in relation to work from the internal and external perspectives. Finally, we show how the methodological attachments associated with these approaches are increasingly falling away, paving the way for a more methodologically diverse phase of public law scholarship concerned with the administrative state.

**II. INTERNAL AND EXTERNAL PERSPECTIVES**

Drawing a distinction between internal and external public law approaches to the administrative state, as we do here, is not new. It is a distinction which has proven to possess relevance over time and across jurisdictional boundaries. In 1903, U.S. scholar Bruce Wyman published *The Principles of the Administrative Law Governing the Relations of Public Officers*.[[4]](#footnote-4) At a time when many of his contemporaries were reckoning with (and deeply concerned about) the growth of collectivist interventions by the state, Wyman thought—much like the functionalist scholars in the UK—that this new direction in government must be accepted and assimilated into public law thought.[[5]](#footnote-5) As part of that effort, his text presents the first developed expression of the idea that administrative legality rests of two forms of law: the internal practices and procedures that administrative bodies adopt (‘internal administrative law’) and the standards of judicial review (‘external administrative law’). In view of this distinction, Wyman’s core purpose in *The Principles of the Administrative Law* was to argue for the recognition of an internal law of administration—that which he claimed was the ‘real subject.’

While some English public law scholars were still doubting the very existence of administrative law,[[6]](#footnote-6) Wyman was articulating a conceptual framework for what he saw as the two domains of public law: constitutional law that ‘prescribes the broad outlines of government’ and administrative law that is its ‘complement.’[[7]](#footnote-7) This ‘complement,’ according to Wyman, is made up of ‘that body of rules which defines the authority and the responsibility of that department of government which is charged with the enforcement of the law.’[[8]](#footnote-8) It is by splitting this broad definition in two—between the internal and external—the Wyman’s lays the foundation for his work’s key significance: ‘[t]ogether, the external law and the internal law make up the law of administration.’[[9]](#footnote-9) By external law, Wyman effectively means judicial review. This law is important for Wyman, but he sees it as peripheral to the ‘real subject’ insofar as it merely defines the outer boundaries of the internal law.

Internal law, according to Wyman, concerns the constraints, practices, and procedures developed by administrative bodies to structure how officials exercise administrative powers. In this sense, Wyman conceives the internal law of administration ‘as a law of collective action for bureaucracies.’[[10]](#footnote-10) Wyman defines this internal law as concerning ‘the relations of officers with each other, or with the administration.’[[11]](#footnote-11) It is premised on the ‘the fact that many officers are bound together in action’ and the internal law can define ‘the position of the officer in his organization and his function in its action.’[[12]](#footnote-12) Ultimately, this internal law was about the functional allocation of authority within administrative bodies. As part of the internal law, Wyman identifies ‘three processes of administration:’ ‘administration by execution,’ ‘administration by legislation,’ and ‘administration by adjudication.’[[13]](#footnote-13) These three processes, Wyman suggests, are in turn structured by their own internal law.

 Wyman’s distinction between the internal and external law of administration echoes throughout many subsequent attempts to conceptualise the relationship between public law and the administrative state in a range of jurisdictions. For instance, the famous ‘red light’ and ‘green light’ approaches to UK administrative law articulated by Harlow and Rawlings reflect this distinction; with the ‘red light’ approach placing emphasis on administrative law as an external control on administration and the ‘green light’ approach emphasising the role of law in structuring the efficient delivery of public policy through the machinery of public administration.[[14]](#footnote-14) Similarly, in 1935 the Canadian scholar John Willis set out three approaches to administrative law—the ‘judicial,’ the ‘conceptual,’ and the ‘functional’—which reflect, in a different way, the distinction between the external and the internal.[[15]](#footnote-15) In recent years, there has been a new wave of U.S. public law scholarship urging more attention on internal administrative law and government functioning, while critiquing the impact of as scholarly focus on external law and particularly courts.[[16]](#footnote-16)

The division between internal and external perspectives is, therefore, a distinction that has maintained traction for well over a century and is an important aspect of understanding how public lawyers in common law systems have grappled with the administrative state. In the next part of this chapter, we unpack these two broad perspectives further and elaborate how they have been traditionally associated with certain research methodologies.

**III. THE EXTERNAL PERSPECTIVE**

We begin with the external perspective: the view of public administration from the judiciary. In the common law tradition, the so-called ‘ordinary’ courts exercise a supervisory jurisdiction over the actions of actors in the administrative state. This jurisdiction was used initially in the form of the so-called ‘prerogative writs’ by the London-based common law courts—King’s Bench, Common Pleas, and Exchequer—to control inferior tribunals and evolved historically and incrementally as a means of ensuring the legality, rationality, and procedural propriety of public administration.[[17]](#footnote-17) Commonwealth legal systems inherited this jurisdiction when they received the common law. For the most part, the supervisory jurisdiction has now been placed on a statutory footing without losing its essential character.[[18]](#footnote-18) In contemporary parlance, issues relating to the exercise of the supervisory jurisdiction are grouped under the broad heading of ‘judicial review of administrative action.’ The perspective here is external to the administrative state in the sense that actions taken by officials—anyone from a front-line immigration officer to a senior judge sitting as a member of an administrative tribunal—are treated as artefacts to be reviewed by the ordinary courts. The legal principles of legality, rationality, and procedural propriety and the associated procedures by which these principles are enforced are the subject matter of judicial review of administrative action.

Judicial review of administrative action can be studied in a variety of ways which, broadly speaking, run from the descriptive to the normative. Most often, it is the subject of doctrinal inquiry. Textbook writers, for example, gather the relevant cases and synthesise them to produce a (relatively) coherent pattern. De Smith’s *Judicial Review of Administrative Action* is the landmark text in the Commonwealth tradition and is in this mode.[[19]](#footnote-19) Most textbooks on ‘administrative law’ devote substantial space to doctrinal study of judicial review of administrative action[[20]](#footnote-20) and some textbooks are dedicated to the subject.[[21]](#footnote-21) Doctrinal inquiry is sometimes supplemented by historical analysis; indeed, to some extent, the contemporary legal principles and procedures of judicial review of administrative action cannot be understood without an appreciation of the historical evolution of the supervisory jurisdiction.[[22]](#footnote-22) On occasion, this history is an object of study in its own right, drawing upon legal-historical methodology.[[23]](#footnote-23) More ambitious variants of doctrinal analysis are analytical approaches aiming to use conceptual analysis to enhance understanding of the subject[[24]](#footnote-24) and interpretive approaches, which seek to present judicial review of administrative action, in whole or in part, in a coherent framework held together by unifying principles or values.[[25]](#footnote-25) Lastly, theoretical approaches to judicial review of administrative action seek to measure the subject by reference to a normative benchmark developed from some free-standing theory, which may be institutional,[[26]](#footnote-26) moral[[27]](#footnote-27) or political.[[28]](#footnote-28)

Another external perspective views public administration in its relation to politics, principally in the institutional forms of the executive (Presidents, Prime Ministers and their cabinets) and legislatures. In this context, work can be descriptive, for example recounting how in Westminster-style systems centralised controls over public administration have grown in number in recent decades with a tendency for them to concentrate in prime ministerial offices,[[29]](#footnote-29) or demonstrating how legislators—especially when grouped in committees—influence public administration.[[30]](#footnote-30) In describing public administration from the outside in this way, however, it is necessary at the very least to have a keen sense of what political science literature teaches about the way in which executive and legislative branches operate, just as an intrepid lawyer looking to update J.A.G. Griffith’s study of amendments to legislation[[31]](#footnote-31) would have to take account of recent scholarship by political scientists.[[32]](#footnote-32)

Research of this kind does not have to be descriptive. It can be normative. Insisting, for instance, on the primacy of cost-benefit analysis in centralised executive oversight of public administration involves taking a position on the appropriateness of cost-benefit analysis as a tool for making and influencing policy; and, of course, even those who agree that cost-benefit analysis is a valuable tool might have different normative views on how precisely cost-benefit analysis should operate.[[33]](#footnote-33) At this point, the researcher is invariably pulled towards disciplines such as economics, and certainly further from the comfortable realm of descriptive or doctrinal analysis of legal concepts which characterises the study of judicial review of administrative action.

As discussed in the preceding subsections, judicial review of administrative action and political oversight are two external perspectives a researcher can take on the administrative state. They are also ways in which decision-makers can be held to account, with judges or political actors judging the appropriateness of administrative action. There are, of course, other accountability mechanisms. Although accountability can be said to be ‘a central value of modern constitutions,’[[34]](#footnote-34) the term has an elusive, ‘catch-all’ quality.[[35]](#footnote-35) The administrative state can be held to account by a variety of different means: at one extreme, a choice can be made to subject regulated entities to the ‘free hand’ of the market;[[36]](#footnote-36) at the other extreme, a legislature can create a detailed oversight scheme run by an independent watchdog or ombuds;[[37]](#footnote-37) and, in between, a mixture of statutory constraints and performance indicators derived from the private sector can be employed.[[38]](#footnote-38) Research on these other accountability mechanisms again runs from the descriptive to the normative. At the descriptive end of the spectrum the public law researcher can proceed safely and confidently with the usual tools of the lawyerly trade, relying as and when necessary on textbook knowledge of disciplines such as economics and organisational theory. Indeed, most administrative law textbook writers cover this ground comfortably. But when moving onto more normative territory, the researcher often needs to be surer of their interdisciplinary footing. Arguing for a particular type of market structure in a regulated area such as telecommunications will generally require extensive knowledge of economic theory as it relates to natural monopolies or oligopolies as well as the policy context, whilst the strength of a case in favour of a watchdog to oversee a given area might depend in large part on concepts drawn from political science.[[39]](#footnote-39)

The boundaries we have sketched here are inevitably blurry. Principles and values derived from judicial review of administrative action, political oversight, and other accountability mechanisms may, in turn, be internalised by actors in the administrative state: they are external in that they originate externally.[[40]](#footnote-40) The boundary between the internal and the external is clear but it is not impermeable. At the same time, scholarship adopting an external perspective on the administrative can run from descriptive at one end of the spectrum to normative at the other end of the spectrum. Public lawyers in descriptive territory are likely to be more sure-footed but will have to tread carefully as they move in a normative direction, perhaps adopting more suitable footwear as their journey progresses.

**IV. THE INTERNAL PERSPECTIVE**

For those public lawyers who adopt the internal perspective on the administrative state, the usual starting point is that, by any quantitative measure, it is administrative officials who are the primary actors in implementing public law. Most of what officials do is a combination of applying legislation and guidance of different types, usually within a context where they have degree of discretion. From this perspective, what the courts are ruling upon is relevant but only a small part of the picture; instead, ‘the reality of interpreting and applying law within the administrative context is that it is public authorities themselves who are the principal actors.’[[41]](#footnote-41) It is important to be clear that the scholarly value here is found not just in the development of a public law scholarship which is more aligned with what the administrative state actually does, but that this approach can be also be a basis for reconsidering the nature of public law itself.[[42]](#footnote-42)

 Richard Martin has charted two key approaches within the internal perspective.[[43]](#footnote-43) The first is that evident in Jerry Mashaw’s seminal work *Bureaucratic Justice*, the central approach of which is to step back and ‘evaluate the system of administrative justice as a product of millions of frontline decisions.‘[[44]](#footnote-44) Mashaw’s textuses extensive qualitative data relating to the American Disability Insurance scheme at its foundation, upon which he builds a conceptual analysis of ‘internal administrative law’ and three normative models of justice, which both co-exist within administration and compete. Since Mashaw’s work, many studies of internal administrative law have taken the same or similar approaches, exploring and developing the three models of justice that Mashaw identified.[[45]](#footnote-45) Similarly, typologies of how officials apply rules[[46]](#footnote-46) and different decision-making cultures have been developed through this scholarly perspective.[[47]](#footnote-47) A second approach Martin identifies involves drawing connections between macro-level social, political, and economic trends and their impact on the relationship between public law and the administrative state. For instance, work of this kind in recent decades in the UK has focused on the rise of New Public Management[[48]](#footnote-48) and automation within the public sector.[[49]](#footnote-49) The focus of such research tends to be legislation, policy changes, and changes in systems of decision-making and redress.

 While not all studies of from the internal perspective have empirical components, the nature of their focus is such that empirical work is common and, even where it is not undertaken, empirical research and data is often emphasised (so too is where such data is lacking or absent). Equally, the primary materials produced by state institutions—policies, reports, audits *etc.*—are often also given a central role in this type research, alongside more traditional legal sources such as cases and legislation. Another feature of the internal perspective is that it shares multiple obvious interfaces with other disciplines, such as public administration, social policy, and social science. Scholarship from this perspective tends to engage with studies from those other disciplines, even those such studies do not often foreground the role of law. A prominent example is Michael Lipsky’s *Street Level Bureaucracy,* which has given rise to a wide range of studies devoted to ‘street level’ bureaucrats—a literature that features contributions from those interested in public policy, public management, political theory, and administration, social policy, and a range of other fields.[[50]](#footnote-50) Such work naturally appeals to public law scholars adopting the internal perspective as they illustrate the gritty world of administration that they are so keen to integrate into their analysis of the role public law in the administrative.

 Scholars of the internal perspective may often appear to be focusing on the routine (or even the banal) parts of the administrative state, but it is often a key part of scholarship from the internal perspective to seek to address questions of general constitutional and legal significance armed with a richer understanding of how the administrative state operates day to day. This aspect of the internal perspective is captured by Griffith and Street, in one of the earliest UK textbooks on English administrative law, when they explained that any analysis based on a limited:

[V]iew of law or politics or public administration is obtained if any one of these social sciences is surveyed to the exclusion of the others. It is not so much that the study of one is incomplete without reference to the others, but rather that the landscape is single and entire. There are not different views to be seen, but only different viewers with variously adjusted blinkers.

In this sense, public law scholars of the internal perspective often seek to ‘adjust the blinkers’ on the major legal and constitutional questions of their time, reconnecting them with the workings of the administrative state.

One prominent example of the impact of this approach can be seen in shifting perceptions of discretion in the administrative state. Long viewed with scepticism and even as an opposing force to law by many legal scholars, public law scholars of the internal perspective have developed a more nuanced account of the virtues of bureaucratic discretion. This work provoked constitutional lawyers to reconsider their characterisation of this essential component of the modern state: discretion, when understood in practice, could be seen less as the ‘hole in the donut’ of law and more as the ‘sponge’ that makes modern public policy manageable in practice.[[51]](#footnote-51) Similarly, scholarship of the internal perspective has invited public lawyers to revisit their understanding of human rights through the prism of frontline policing operations.[[52]](#footnote-52)

**V. INSIDE OUT, OUSTIDE IN**

The distinction we have sketched in this chapter between internal and external perspectives adopted by public lawyers approaching the administrative state, while porous in various ways, is one which has maintained traction over time. However, one of the most notable features of public law scholarship in common law systems in recent years is the increasing number of authors engaging in sophisticated work which straddles the internal/external divide, as well as working beyond traditional methodological associations.[[53]](#footnote-53) These contributions can be broadly grouped into empirically informed studies of administrative law doctrine and doctrinally/theoretically informed studies of bureaucracy.

Consider, first, empirically informed studies of doctrine, as exemplified by Sarah Nason’s *Reconstructing Judicial Review*.[[54]](#footnote-54) Nason’s book is based on a review of a sample of first-instance decisions in the Administrative Court of England and Wales (part of the High Court), an analysis of court filings, and surveys of practitioners. Her analysis of this dataset allows her to demonstrate that first-instance judicial review decisions do not involve detailed discussions of the doctrinal niceties that one finds in the textbooks or traditional scholarly works on administrative law doctrine. Rather, they tend to turn on judicial judgement, informed by the judge’s experience and the arguments of the parties. In addition, it is concluded a majority of judicial review claims are brought to resolve individualised grievances, not to elucidate timeless constitutional principles. The practice of judicial review in the Administrative Court is, it turns out, nothing like the impression of judicial review that one finds in the textbooks or the classroom. Nason’s research is, in other words, not a classically doctrinal, theoretical or interpretive study of public administration from an external perspective. However, in constructing her empirical analysis Nason engages in a detailed interpretive inquiry to develop a set of values which can be said to unify the practice of judicial review of administrative action (from an internal perspective). As such, Nason employs a blend of methodological approaches.

Similar to Nason’s work, Joanna Bell’s *The Anatomy of Administrative Law* can be regarded as an attempt to ‘build in’ the nature of the administrative state and judging into a more convincing articulation of the general principles of administrative law.[[55]](#footnote-55) The book states its goal is to further our understanding of administrative law and adjudication by exploring the ‘anatomy’ of the subject, revealing it to be complex and diverse. Bell describes three key features of administrative law which lend it an inherent complexity: first, administrative law cases involve the interpretation of discrete statutory provisions, not the articulation of sweeping general principles; second, in administrative law cases, judges juggle a plurality of principles, purposes or values and cannot rely on one unifying meta-concept; and, third, the protagonists in administrative law cases find themselves in different relationships, sometimes tied together by general norms, sometimes by individualized decisions highly specific to the circumstances of the parties. This is the anatomy of administrative law and, she argues, we must appreciate it in order to understand the subject. The book achieves this through a combination of general discussion and detailed case studies, which consider procedural review, legitimate expectations, and standing. Bell’s perspective is neither internal, nor external. Her work is at once analytical, doctrinal, and empirical. Indeed, the major contribution of this book is that it proposes a ‘distinctive scholarly method in the study of administrative law adjudication.’[[56]](#footnote-56) That method is one which rejects quixotic quests to articulate grand theories of administrative law doctrine and, instead, acknowledges and embraces the inherent complexity and diversity that a set of judicial principles which seek to regulate contemporary public administration inevitably possesses.

Another notable recent contribution is Richard Martin’s endeavour to understand how police officers interpret and engage with human rights law.[[57]](#footnote-57) There is a vast doctrinal and theoretical literature that explores the Human Rights Act 1998 but Martin’s contribution, guided by sociology, to take these questions to the ‘frontline’ of implementation. Based on empirical fieldwork with the Police Service of Northern Ireland, including interviews and focus groups, the study shows how human rights law is encountered by police officers in their everyday work and, moreover, how they routinely interpret and apply that law.

These recent contributions are, then, as much inside-out as outside-in. They demonstrate that meaningful insights into public administration can be generated from a plurality of perspectives, using a variety of methodological tools. This proposition might not, however, win immediate universal acclaim. With interdisciplinary studies (especially when lawyers are involved), there is a risk that methodological tools from other disciplines will not be used appropriately. Accordingly, when disciplinary lines are being crossed, those going across conventional boundaries must pay very careful attention to the methodological demands of the disciplines in question. When done well interdisciplinary scholarship can generate profound insights.

**VI. CONCLUSION**

In this chapter we have provided an introduction to public law research concerning the administrative state, intended as a guide to those embarking on scholarly endeavours in vast territory, much of which remains uncharted. The basic distinction between internal and external perspectives remains a useful navigational device, capable of orienting scholarly activities in this context and aiding in the identification of the necessary methodological tools. We do not, however, wish to give the impression that the internal and external are hermetically sealed categories. They are navigational devices, not destinations in and of themselves. As we observed, recent scholarship has sought to straddle the internal/external divide and adopt more methodological diversity, demonstrating that useful insights can be generated by combining internal and external perspectives.

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3. There are, of course, other means of distinguishing different scholarly approaches in this field. [↑](#footnote-ref-3)
4. B. Wyman, *The Principles of the Administrative Law Governing the Relations of Public Officers* (Lawbook Exchange, 2014, first published 1903). [↑](#footnote-ref-4)
5. For the leading account of functionalism in public, see: M. Loughlin, 'Modernism in British public law; 1919-79' [2014] *Public Law* 56; M. Loughlin, 'The Functionalist Style in Public Law' (2005) 55 *University of Toronto Law Journal* 361. See further: M. Loughlin, *Public Law and Political Theory* (Oxford University Press, 1992). [↑](#footnote-ref-5)
6. A.V. Dicey, *Law of the Constitution* (Macmillan and Co., 1885), pp.215-216. [↑](#footnote-ref-6)
7. B. Wyman, *The Principles of the Administrative Law Governing the Relations of Public Officers* (Lawbook Exchange, 2014, first published 1903), p.23. [↑](#footnote-ref-7)
8. Ibid, p.1. [↑](#footnote-ref-8)
9. Ibid, p.4. [↑](#footnote-ref-9)
10. K. Stack, ‘Reclaiming “the Real Subject” of Administrative Law’ in B. Wyman, *The Principles of the Administrative Law Governing the Relations of Public Officers* (Lawbook Exchange, 2014, first published 1903), p. XV. [↑](#footnote-ref-10)
11. B. Wyman, *The Principles of the Administrative Law Governing the Relations of Public Officers* (1903), p.4, p.14. [↑](#footnote-ref-11)
12. Ibid, p.14. [↑](#footnote-ref-12)
13. Ibid, p.262. [↑](#footnote-ref-13)
14. C. Harlow and R. Rawlings, *Law and Administration* (3rd edn, Cambridge University Press, 2009), Ch.1. [↑](#footnote-ref-14)
15. J. Willis, ‘Three Approaches to Administrative Law: The Judicial, the Conceptual, and the Functional’ (1935) 1 *University of Toronto Law Journal* 53. [↑](#footnote-ref-15)
16. D.A. Farber and A. Joseph O'Connell, ‘The Lost World of Administrative Law’ (2014) 92 *Texas Law Review* 1137; G.E. Metzger and K.M. Stack, ‘Internal Administrative Law’ (2017) 115 *Michigan Law Review* 1239. [↑](#footnote-ref-16)
17. P. Craig, *UK, EU and Global Administrative Law: Foundations and Challenges* (Cambridge University Press, 2015). [↑](#footnote-ref-17)
18. However, in the United States, the Administrative Procedure Act looms so large as to largely eclipse the supervisory jurisdiction, see: K. E. Kovacs, ‘Superstatute Theory and Administrative Common Law’ (2015) 90 *Indiana Law Journal* 1207. [↑](#footnote-ref-18)
19. S.A. de Smith, *Judicial Review of Administrative Action* (Stevens & Sons, 1959). See generally: P. Daly, *‘De Smith’s Judicial Review of Administrative Action* (1959)’ in P. O’Brien and B. Yong (eds), *Landmark Texts in Public Law* (Edward Elgar 2022). [↑](#footnote-ref-19)
20. See *e.g.* G. Hogan, D.G. Morgan, and P. Daly, *Administrative Law in Ireland* (5th ed.,Roundhall, 2019); P. Craig, *Administrative Law* (8th ed., Sweet and Maxwell, 2016); P. Joseph, *Constitutional and Administrative Law of New Zealand* (4th ed., Thomson Reuters, 2014). [↑](#footnote-ref-20)
21. See *e.g.* M. Aronson, M. Groves, and G. Weeks, *Judicial Review of Administrative Action* (6th ed., Thomson Reuters 2018). [↑](#footnote-ref-21)
22. See *e.g.* E. Henderson, *Foundations of English Administrative Law: Certiorari and Mandamus in the Seventeenth Century* (Harvard University Press, 1963); A. Rubinstein, *Jurisdiction and Illegality: A Study in Public Law* (Clarendon Press, 1965). [↑](#footnote-ref-22)
23. See J. Allison in this volume. [↑](#footnote-ref-23)
24. See *e.g.* J. Grant, ‘Reason and Authority in Administrative Law’ (2017) 76 *Cambridge Law Journal* 507. [↑](#footnote-ref-24)
25. See *e.g.* P. Daly, ‘Administrative Law: Characteristics, Legitimacy, Unity’ in M. Elliott, J. Varuhas and S. Wilson Stark (eds), *Unity of Public Law? Doctrinal, Theoretical and Comparative Perspectives* (Hart 2018); M. Elliott, ‘Judicial Review’s Scope, Foundations and Purposes: Joining the Dots’ [2012] *New Zealand Law Review* 75; T.R.S. Allan, *The Sovereignty of Law: Freedom, Constitution and Common Law* (Oxford University Press 2013). [↑](#footnote-ref-25)
26. See *e.g.* P. Cane, *Controlling Administrative Power: An Historical Comparison* (Cambridge University Press 2016); A. Vermeule, *Judging under Uncertainty: An Institutional Theory of Legal Interpretation* (Harvard University Press 2006). [↑](#footnote-ref-26)
27. See *e.g.* T. R. S. Allan, *Constitutional Justice: A Liberal Theory of the Rule of Law* (Oxford University Press 2001). [↑](#footnote-ref-27)
28. See *e.g.* M. Seidenfeld, “A Civic Republican Justification for the Administrative State” (1992) 105 *Harvard Law Review* 1511. [↑](#footnote-ref-28)
29. See *e.g.* M. Liston, ‘The Most Opaque Branch? The (Un)accountable Growth of Executive Power in Modern Canadian Government” in R. Albert, P. Daly and V. MacDonnell (eds), *The Canadian Constitution in Transition* (University of Toronto Press 2019). [↑](#footnote-ref-29)
30. See *e.g.* R. Douglas Arnold, *Congress and the Bureaucracy* (New Haven: Yale University Press, 1979); M. Russell and M. Benton, *Selective Influence: The Policy Impact of House of Commons Select Committee* (Constitution Unit 2011). [↑](#footnote-ref-30)
31. *Parliamentary Scrutiny of Government Bills* (Allen & Unwin 1974). [↑](#footnote-ref-31)
32. See especially M. Russell and D. Gover, *Legislation at Westminster: Parliamentary Actors and Influence in the Making of British Law* (Oxford University Press 2018). [↑](#footnote-ref-32)
33. See *e.g.* C.R. Sunstein, *The Cost-Benefit Revolution* (MIT Press 2018). [↑](#footnote-ref-33)
34. A. Davies, *The Public Law of Government Contracts* (Oxford University Press 2008), p.92. [↑](#footnote-ref-34)
35. C. Harlow, *Accountability in the European Union* (Oxford University Press 2002), p.23. [↑](#footnote-ref-35)
36. See generally A. Ogus, *Regulation: Legal Form and Economic Theory* (Hart Publishing, 2004). [↑](#footnote-ref-36)
37. See generally M. Hertogh and R. Kirkham, *Research Handbook on the Ombudsman* (Edward Elgar 2018). [↑](#footnote-ref-37)
38. See generally, J. Mashaw, ‘Accountability and Institutional Design: Some Thoughts on the Grammar of Governance’; E. Rubin, ‘The Myth of Non-Bureaucratic Accountability and the Anti-Administrative Impulse’; and C. Scott, ‘Spontaneous Accountability’ in M. Dowdle (ed), Public Accountability: Designs, Dilemmas and Experiences (Cambridge University Press 2006). [↑](#footnote-ref-38)
39. See further L. Thomson in this volume. [↑](#footnote-ref-39)
40. See *e.g.* Government Legal Department, *The Judge over your Shoulder: A Guide to Good Decision-Making* (5th ed., 2018). [↑](#footnote-ref-40)
41. T. Poole, ‘The reformation of English administrative law’ (2009) 68(1) *Cambridge Law Journal* 142, p.157. [↑](#footnote-ref-41)
42. M. Adler, ‘A Socio-Legal Approach to Administrative Justice’ (2003) 25(4) *Law & Policy* 323, p.336. [↑](#footnote-ref-42)
43. Martin identifies three broad approaches, but one approach accords with our “external perspective,” see: R. Martin, ‘Administrative Decision-Making on the Frontline’ in J. Tomlinson, M. Hertogh, R. Thomas, and R. Kirkham (eds), *Oxford Handbook of Administrative Justice* (Oxford University Press, 2022). [↑](#footnote-ref-43)
44. J.L. Mashaw, *Bureaucratic justice: Managing social security disability claims* (Yale University Press 1983). [↑](#footnote-ref-44)
45. See J.L. Mashaw, ‘Models of Administrative Justice’ in J. Tomlinson, M. Hertogh, R. Thomas, and R. Kirkham (eds), *Oxford Handbook of Administrative Justice* (Oxford University Press 2022). [↑](#footnote-ref-45)
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