

# ADMINISTRATIVE LAW- I

## UNIVERSITY OF LISBON

### FACULTY OF LAW

Francisco Paes Marques

## CONTENTS

1. The origins of Public Law
  - 1.1. Rule of Law, État de Droit, Rechtstaat
  - 1.2. Rule of Law compared with French *Droit Administratif*
  - 1.3. UK Administrative Law: foundations
  - 1.4. USA Administrative Law: foundations (Is Administrative Law unlawful?-  
Hamburger *versus* Vermeule)
  
2. The Administrative Law of the New Millenium
  - 2.1. The enabling State
  - 2.2. European Union Administrative Law
  - 2.3. Global Administrative Law
  
3. Nature and purpose of Administrative Law
  - 3.1. Problems thought to call for administrative regulation
  - 3.2. Rights, legality and abuse of power
  - 3.3. Regulatory tools
  
4. Legal principles
  - 4.1 Separation of powers
  - 4.1. Impartiality and independence
  - 4.2. Proportionality

- 4.3. Non discrimination
  - 4.4. Legitimate expectations
  - 4.5. Participation and transparency
5. Discretion
- 5.1. Some reasons for rules
  - 5.2. Rules, principles and discretion
  - 5.3. Errors of law and control of fact finding
6. The Executive, Agencies and other public bodies
- 6.1. Evolution and legal framework
  - 6.2. The executive and the agencies
  - 6.3. Non departmental public bodies
  - 6.4. Privatisation and regulatory control

## TEXTS

1. The origins of Public Law
- LOUGHLIN, Martin, Foundations of Public Law, Oxford University Press, 2010, p. 312-341.
  - VENN DICEY, Albert, Introduction to the Study of the Law of the Constitution, Liberty Classics, Indianapolis, 1915 (printed in 1982), p. 208-239.
  - RIVERO, Jean, “L’Huron at Palais Royal or innocent remarks on judicial review”, Montesquieu Law Review, nr 1, 2015, p. 1-6.
  - CRAIG, Paul, UK, EU and Global Administrative Law- Foundations and Challenges, Cambridge University Press, 2015, p. 11-155.
  - MASHAW, Jerry, Creating the Administrative Constitution- The lost Hundred Years of American Administrative Law, Yale University Press, 2013.
  - HAMBURGER, Philip, Is Administrative Law Unlawfull?, The University of Chicago Press, 2014, 1-19.
  - VERMEULE, Adrian, Review of Philip Hamburger- Is Administrative Law Unlawfull?, in dash.harvard.edu, p. 1- 24.
  - HAMBURGER, Philip, Response-Vermeule Unbound, Texas Law Review, 2016, p. 205-230.

## 2. The Administrative Law of the New Millenium

- STEWART, Richard B., “Administrative Law in the Twenty-First Century”, *New York University Law Review*, n.º2, 2003, p. 437-460.
- CORREIA, Sérvulo, “Administrative Due or Fair Process: Different Paths in the Evolutionary Formation of a Global Principle and of a Global Right”. In *Values in Global Administrative Law*. Oxford/Portland, Hart Publishing: 313-361.
- GONÇALVES, Pedro, “The enabling State and the Market”, *Faculdade de Direito da Universidade de Coimbra*, 2008, p. 1-26.
- CRAIG, Paul, UK, *EU and Global Administrative Law- Foundations and Challenges*, Cambridge University Press, 2015, p. 313-418.
- DELLA CANANEA, Giacinto, “Administrative Law in Europe: an historical and critical perspective”, in *papers.ssrn.com*, 2009, p. 162-211.
- VERKUIL, Paul, *Outsourcing Sovereignty*, Cambridge University Press, 2007, p. 57-77.

## 3. Nature and purpose of Administrative Law

- BREYER, Stephen G./STEWART, Richard B./SUNSTEIN, Cass R./VERMEULE, Adrian/HERZ, Michael E., *Administrative Law and Regulatory Police-Problems, Text and Cases*, 7<sup>th</sup> edition, Wolters Kluwer, Nova Iorque, 2011.
- STEWART, Richard B., “The Reformation of American Administrative Law”, *Harvard Law Review*, Vol. 88, 1975, p. 1669-1813.
- MASHAW, Jerry L., “Structuring a dense complexity: accountability and the project of administrative law”, *Issues in Legal Scholarship*, Vol. 1, 2005, p. 1-38.
- CRAIG, Paul, *Administrative Law*, 6th edition, Sweet and Maxwell, Londres, 2008.
- HARLOW, Carol/RAWLING, Richard, *Law and Administration*, 3<sup>rd</sup> edition, Cambridge University Press, 2009, p. 1-48.

## 4. Legal Principles

- VERMEULE, Law's Abnegation, Harvard University Press, 2016, p. 56-86.
- CRAIG, Paul, *Administrative Law*, 6th edition, Sweet and Maxwell, Londres, 2008.
- ENDICOTT, Timothy, *Administrative Law*, 2<sup>nd</sup> edition, Oxford University Press, 2011, p. 152-185; 267-306.
- LEYLAND, Peter/ANTHONY, Gordon, *Textbook on Administrative Law*, 7<sup>th</sup> edition, Oxford University Press, 2013, p. 315-372.

## 5. Discretion

- HARLOW, Carol/RAWLING, Richard, *Law and Administration*, 3<sup>rd</sup> edition, Cambridge University Press, 2009, p. 190-232.
- ENDICOTT, Timothy, *Administrative Law*, 2<sup>nd</sup> edition, Oxford University Press, 2011, p. 307-349.
- BREYER, Stephen G./STEWART, Richard B./SUNSTEIN, Cass R./VERMEULE, Adrian/HERZ, Michael E., *Administrative Law and Regulatory Police-Problems, Text and Cases*, 7<sup>th</sup> edition, Wolters Kluwer, Nova Iorque, 2011.
- CRAIG, Paul, *Administrative Law*, 6th edition, Sweet and Maxwell, Londres, 2008.

## 7. The Executive, Agencies and other public bodies

- LEYLAND, Peter/ANTHONY, Gordon, *Textbook on Administrative Law*, 7<sup>th</sup> edition, Oxford University Press, 2013, p. 90-122.
- BREYER, Stephen G./STEWART, Richard B./SUNSTEIN, Cass R./VERMEULE, Adrian/HERZ, Michael E., *Administrative Law and Regulatory Police-Problems, Text and Cases*, 7<sup>th</sup> edition, Wolters Kluwer, Nova Iorque, 2011.
- CRAIG, Paul, *Administrative Law*, 6th edition, Sweet and Maxwell, Londres, 2008.