

Administrative law and democratic legitimacy: confronting Executive Power and the contracting State *

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Administrative law is deeply intertwined with government policymaking and politics. Yet scholars of administrative law tend to float above the political and administrative landscape, concentrating on the formal character of law as it structures the state/society relationship. Comparative administrative law scholarship sometimes seems detached from contemporary political and economic reality and from the day-to-day problems of public administration. My current project bridges these gaps, and looks for common themes where the perspectives of political science, public administration, economics, and public law can be in conversation.

That is a large agenda so today I will consider only one topic of particular concern to this audience -the relationship between public policymaking and administrative law. Public agencies do more than implement the law in particular cases; they also make policy through general rules and guidelines. The agenda for state reform in consolidating democracies needs to include administrative law reform as one way to further democratic legitimacy and government accountability.

There is some urgency to this task given three global trends that seem to be pulling in different directions. The first is increasing executive assertions of power, the second is the increased use of private and quasi-private entities to achieve public purposes, and the third, is the growing use of independent agencies both for substantive regulation of private firms and to monitor public agencies. All three undermine the central role of the professional civil service in implementing statutory goals. Assertions of executive power may undermine both legislative prerogatives and the democratic accountability of government policymaking. Devolution to private and quasi-private entities needs to be structured carefully to avoid undermining the public accountability of government funded programs. The use of independent agencies can also put certain regulatory and oversight activities beyond the reach of the central bureaucracy and the cabinet.

In democracies, government accountability is an important aspect of popular sovereignty. It is a source of political legitimacy in three distinct senses-all of which involve administrative law (Rose-Ackerman 2005). Call these performance accountability, policymaking accountability, and rights-based accountability.

The first sense of “accountability” requires the state to carry out public programs competently by using expert professionals as needed and assuring a high level of efficiency and integrity in the public service. The goals set by political actors should be carried out in a cost-effective way using whatever specialized knowledge is needed to accomplish the task. The key word here is “competence”. It implies both the use of experts and the existence of a hard-working, well-trained body of civil servants who do not take advantage of corrupt offers, embezzle funds, or create conflicts of interest (Rose-Ackerman 1999). Call this “performance accountability.” This requires both transparency -so outsiders can see what public officials and their agents are doing- and a means of holding officials to account if they perform poorly or operate outside the law.

Second, moving back one step, the policymaking process itself should be responsive to democratic values. There are two ways to achieve such accountability. One route is through laws passed by representative assemblies and referenda where elections provide the link to public opinion. My interest, however, is in policymaking that occurs inside the government/executive or its surrogates without the direct involvement of the legislature or use of referenda. Call this “policymaking

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accountability”, that is, delegated policymaking operating through rules with the force of law and similar instruments, such as guidelines and decrees.

Policymaking accountability goes beyond issues of competence and honesty to include the exercise of substantive policy discretion. It recognizes the value of delegating policymaking authority to experts and bureaucrats and to executive branch politicians, but it also acknowledges the ongoing need to assure the democratic exercise of power. Statutes are frequently vague and unclear and leave many difficult policy issues to the implementation stage (Rose-Ackerman 1995; Rothstein 2004). In addition, in some systems, heads of state and government can make policy without prior legislative authorization. Their decrees have immediate legal force, although they may require subsequent legislative ratification (Carey and Shugart 1998). Both exercises of executive authority are open to abuse, and administrative law is one way to provide a check.

Administrative law also helps assure a third crucial type of legitimacy, labeled “rights-based” accountability, that is not conditional on popular sovereignty. Rather, it concentrates on the state as a powerful actor that can violate the rights of individuals. One task of administrative law is to limit such violations either by enforcing a written, constitutional list of rights or by applying judicial concepts of “natural justice” or *principles généraux du droit* (Nicholas 1970). In the United States the Bill of Rights plays this role, and in Europe, over and above national constitutions, the European Convention on Human Rights (ECHR) is beginning to have real bite, especially in the United Kingdom, which lacks a written constitution. The protection of rights is, of course, a very important role for the courts to play in constraining the overarching powers of governments and their agents. However, by over-emphasizing this aspect of administrative law, some commentators have downplayed the other ways that administrative law can aid public legitimacy. A more realistic understanding of political imperatives, bureaucratic incentives, and the operation of the private sector suggests the merits of having the courts also police the boundaries and aid in the democracy-building project.

In the rest of this talk I will concentrate on policymaking accountability. A key feature of modern democracies is delegation of policymaking authority from the legislature to the executive and sometimes even further to independent agencies, specialized tribunals, quasi-governmental bodies, and entirely private entities. For states with authoritarian periods in their past, such as many in Latin America, such delegation seems at first glance a risky practice that may foster the rise of an imperial presidency. That risk may seem less troublesome in purely parliamentary systems, but constraining delegation is a issue of constitutional significance in all democracies.

But sometimes the problem is not too much centralized authority but too little. A federal system may have too little coordination at the top, and even unitary states create independent bodies, such as central banks and regulatory boards, and delegate tasks to private bodies that only problematically represent the public interest. Whatever the risks, legislatures worldwide believe that the benefits of delegation outweigh the costs, and some constitutions require a degree of devolution and delegation through federalism and specified oversight and regulatory agencies.

Political scientists suggest a number of reasons why decisions to delegate may clash with democratic values. Thus, some argue that legislative delegation represents self-serving efforts to shift tough choices out of the hands of lawmakers and onto bureaucrats and the president (Wilson 1980; Fiorina 1982).¹ Others claim that delegation to agencies, especially independent agencies, is a way for powerful legislators to favor particular narrow interest groups in a less transparent way than by passing an overtly biased statute (Stigler 1971; Posner 1974; Peltzman 1976). These critics claim that single-purpose agencies risk capture by the very industries they are designed to regulate or even that such

¹ This argument was picked up by US Supreme Court Justice William Rehnquist in his concurrence in *Industrial Union Dept., AFL-CIO v. American Petroleum Inst (the Benzene Case)* 448 U.S. 607, (Industrial Union Dept. 1980).

capture was the intended effect of the law.² These arguments suggest that courts, insofar as they accept a role in preserving democracy, should look skeptically at broad delegations.

However, these critical views are not the whole story. Many contemporary policies cannot be responsibly spelled out in detail by a large, generalist legislative body with limited time and many issues on its agenda. This means that there are many functional reasons to shift responsibility for detailed policymaking to bodies with the expertise and time to come to considered judgments and to adapt flexibly to changed circumstances. If one accepts this logic, then the issue of institutional design comes down to efforts to minimize the very real problems of burden shifting and capture and to maximize the efficacy of policymaking outside the legislature.

How can administrative law constrain authoritarian tendencies without killing off the valid exercise of discretion? Many statutes, of course, accomplish this with detailed language specifying policy outcomes and procedural requirements, but this will not always be possible or desirable. Hence, administrative law needs to operate so that judicial oversight strengthen democracy, rather than restricting it through rigid, formalistic requirements.

Some, however, argue that legislative decisions to delegate are purely political choices that ought to be beyond the reach of courts. Under this view, when the government makes policy, either under a statute or as an independent matter, courts have no role to play. A constitutional tribunal may rule on constitutional questions, but otherwise the courts step back. Just as they do not second guess the wisdom of legislative enactments that satisfy constitutional requirements, so too, they defer to other policymaking bodies, wherever they are located in the institutional structure.

This position seems to me to be fundamentally flawed. It ignores the dangers of delegation outlined above, treating them either as problems of secondary importance or as ones best resolved by the legislature. If these problems are, instead, essential features of delegation, then one could view the courts, especially those with constitutional and administrative competence, as having a special responsibility to police the exercise of policymaking authority outside the legislature, whether in executive departments, independent agencies, or private bodies. In other words, they would recognize the inevitability and worth of delegation, but, nevertheless, seek to constrain its exercise. This implies, of course, that the courts are both competent and have limited jurisdiction so that such oversight is limited to assuring democratic control, not enacting the judges' policy preferences. Striking this balance will be difficult, but one option is to limit rulemaking with the force of law to areas of explicit or implied statutory delegation and then to require procedural requirements that assure public input.

The US Administrative Procedure Act (APA) §553 and the subsequent case law is the clearest example of this kind of oversight, but it is not the only possible response. Passed in 1946 in reaction against the New Deal expansion of the regulatory state, it has, nevertheless, achieved broad acceptance as a means of guaranteeing public input into executive-branch rulemaking. The executive departments and the independent agencies can issue many kinds of documents, from guidelines to interpretive rules to policy statements, but if they want the document to have the force of law, they must comply with certain procedures. Otherwise the policy can be open to challenge in subsequent enforcement proceedings.

Under the APA, the agency must provide public notice, an open-ended hearing process, and a statement of reasons when the rule is issued. This three-fold set of conditions echoes those required in many legal systems whenever the state takes action through an "administrative act" that affects an individual by, for example, issuing a license, taking private property, or firing a civil servant. However, this conventional structure means something quite different in the rulemaking context. True, participants in the process are more likely to be individuals and businesses directly benefited or harmed by the rule, just as in the case of an individual administrative act (Yackee and Yackee 2006).

² For a wider literature on the reasons why legislature delegate policymaking authority see the articles reprinted in part I.A of (Rose-Ackerman 2007)

Nevertheless, the broader significance of the APA is the placement of procedural constraints on policymaking in order to make the process relatively transparent and open to anyone who wants to participate and to leave a record of reasoned choice. Judicial review then checks that the process was sufficient, that the outcome is consistent with the statute, and that the substantive choice is not “arbitrary and capricious.”³ A legally binding rule cannot be promulgated without statutory authorization, but the legislature is free to grant very broad discretion to the agency.⁴ Review of substance is permissive, and review of process centers on its democratic legitimacy in terms of both the administrative process and consistency with the democratically enacted statute. This structure strikes a balance between judicial deference to the political choices of the legislature-including its choice of how much to delegate-and more searching oversight of the procedures that inform and involve the public. Crucially, it leaves the ultimate policy choice in the hands of the public authority.

No other industrialized country has this level of judicial review of rules with the force of law, but some have developed alternative routes to review of policymaking inside the executive.

In France, until 1946, decree-laws could be issued by the prime minister in areas not governed by a statute. Constitutional development since World War II has limited the President’s and the Prime Minister’s ability to issue such ordinances. When the government promulgates a binding regulation, no public consultation is required, but the draft rule must be sent to the Conseil d’Etat for review. It issues reports on their efficacy and legality but has no legal authority to prevent the promulgation of rules (Nicholas 1970; Massot 2001).⁵ Review by the judicial division of the Conseil d’Etat is limited although it may be growing in importance.⁶ However, because no statute requires APA-like procedures, there is no review of process. Furthermore, the Conseil d’Etat’s report on a proposed rule is only made public if the government agrees. However, an increasing number are now available so that keeping a report secret may send a negative message to the public. The Constitutional Council may be

³ In some cases the standard is “substantial evidence”, an ostensibly stricter standard although the case law has blurred the distinction.

⁴ The current permissive delegation doctrine was reaffirmed in *Whitman v. American Trucking Assns., Inc.* 532 U.S. 457 (2001).

⁵ For the Government, the relevant portions of the French Constitution begin with article 34 with a long list of topics that must be governed by statutes that contain rules and by statutes that need only set out “fundamental principles” The latter includes many regulatory areas such as environment, education and labor. Article 37 then states that: “Matters other than those that fall within the ambit of statute shall be matters for regulation.” This would seem to include issues not on the list in article 34 as well as regulations that implement statutes that lack specificity. The second paragraph of article 37 states: “Acts of Parliament passed concerning these matters may be amended by decree issued after consultation with the Conseil d’Etat. Any such Acts which are passed after this Constitution has entered into force shall be amended by decree only if the Constitutional Council has declared that they are matters for regulation as defined in the preceding paragraph.” The word “amended” seems very strong to American ears (It is the translation of “modifié”), but consultation with the Conseil d’Etat implies some check on this power. Article 38 allows the Government to “ask Parliament for authorization, for a limited period, to take measures by ordinance that are normally a matter for statute.” These ordinances “shall be issued in the Council of Ministers, after consultation with the Conseil d’État. They shall come into force upon publication, but shall lapse if the bill to ratify them is not laid before Parliament before the date set by the enabling Act.” The President only has decree power during a state of emergency when he or she can take the “measures required” (article 16) (France 2007). Constitutional changes enacted on 21 July 2008 further limit the President’s decree power. See <http://www.assemblee-nationale.fr/13/ta/ta0-14.asp>.

⁶ (D’Alberti 1992 (trans. 1995)), p. 27 states that under the classic French conception, “judicial inquiry into *excès de pouvoir* allows the courts to only review the ‘*légalité*’ of administrative decisions (respect of norms and principles of law), but not their ‘*opportunité*’ (expediency in the concrete case). The review of the latter would entail the substitution of the judge for the public administration. ... [Over time] some of the various forms of the judge’s control on *excès de pouvoir* gradually extended the scope of judicial review, largely included in it questions of fact, and led it very close to scrutiny of ‘*opportunité*’.”

asked to review statutes before (and now, after) passage and must review “institutional laws” that implement constitutional provisions, but the Constitutional Council does not review regulations.⁷

In Germany the constitution states that the executive can only issues rules under authority delegated by statutes, but few procedural requirements govern rulemaking. The consultation requirements that do exist in some statutes, such as the Air Pollution Act, are not legally enforceable. In general defects in the administrative process can be corrected before the court’s final decision, and courts will not require a new procedure if the agency can convincingly argue that the result would not have been affected. Even when the German Constitutional Court considers the constitutionality of rulemaking, it couches its opinion in terms of individual rights, not substantive policy (D’Alberti 1992 (trans. 1995); Rose-Ackerman 1995; Künnecke 2007).

The UK similarly lacks procedural constraints on rulemaking, and thus judicial review of that part of the administrative process can only be based on principles of “natural justice” and seldom occurs. At present, British courts are seeking to incorporate the European Code of Human Rights into UK law, a process that may have procedural implications for government departments at all levels (Poole 2007). However, the focus under the ECHR is on rights, not the democratic accountability of executive policymaking.(D’Alberti 1992 (trans. 1995); Künnecke 2007; Poole 2007)

Given the US’s outlier status, some conclude that it is the US that should reform, perhaps by limiting the time and trouble involved in rulemakings, which can take years to complete followed by court review. Many commentators point to the cumbersome nature of US rulemaking processes as they evolved in response to judicial opinions in the decades since the passage of the APA (Kagan 2007). There does seem to be a need both to streamline procedures and to be sure that less wealthy and organized interests participate effectively. These practical difficulties, however, do not undermine the basic principle that administrative law needs to be concerned with effective democratic control of the administration and that such accountability goes beyond subordination to a chief executive or to the Parliament. At the same time, court review needs to acknowledge the importance of expertise and of bureaucratic systems of public administration. Greater accountability will require investments of time and money and some change in the mindset of policymakers. Furthermore, the US process cannot be exported wholesale-both because internal reform is needed in the US and because the relationship between the administration and both political actors and the courts differs across countries.

Some of those who are skeptical of APA rulemaking processes accept the goal of more effective popular control, but they support an entirely different model. They argue for consensual, grass roots processes pointing to a number of real world examples from “participatory budgeting,” to “regulatory negotiation,” to “stakeholder empowerment” to “deliberative polls.” I shall not explore their nuances, but it is important to note that these processes are generally complements to, rather than substitutes for, standard legislative and bureaucratic processes. They often operate largely outside the system of administrative law and have not been well-integrated with the public law. Participatory processes, if well-organized, clearly can contribute to democratic accountability, but their reach is relatively limited. If a consensus process trumps a statutory provision, it is a challenge to ordinary representative structures and established bureaucracies. Research on participatory processes in France on local environmental issues showed that they were more effective as advisory councils than as fully empowered bodies because officials were only willing to work with them if their role was advisory.⁸ Furthermore, even without such opposition, they tend to impose substantial commitments in time and money on serious participants; hence, without other incentives, people may be unwilling to get involved. The experience of Porto Allegro in Brazil and other experiments worldwide suggest that

⁷ French Constitution, article 56-63 (France 2007). It has recently gained the power to review constitutional issues referred to it ex post by either the Conseil d’Etat or the Cours de Cassation. <http://www.assemblee-nationale.fr/13/ta/ta0-14.asp>

⁸ Personal communication from Laurent Mehmet, Professor of Environmental Management, French Institute for Environmental Engineering, Water and Forests, Chair of the Scientific Board, French National Research Board, French National Research Program, “Concertation, Decision-making and the Environment,” May 10, 2008.

participatory processes can be effective under some conditions, but they are not a substitute for the hard work of reconciling competent, expert bureaucratic operations with the democratic value of public participation in the formulation of policy (Rose-Ackerman 2009).⁹

Nevertheless, these experiments do highlight an important truth. Old models, including US APA requirements, fit awkwardly with the innovative institutional structures and models of public administration used today to carry out many public programs. The origins of modern US administrative law arose when independent regulatory agencies were set up to regulate such things as railroads, the securities market, airlines, labor unions, and broadcasting (D'Alberty 1992 (trans. 1995)). In the 1970s a backlash against the capture of some agencies by the groups they were supposed to regulate led to the creation of agencies inside the presidential administration, such as the Environmental Protection Agency and the Occupational Health and Safety Administration. In the US, most public utilities and transport firms are privately owned so there has been no wave of privatization; in fact, just the reverse for inter-city rail travel. Instead, there has been an increase in both quasi-government corporations with some measure of government ownership and control (e.g., the Postal Service, COMSTAT, the Corporation for Public Broadcasting) and a wave of contracting out of government tasks to private firms, sometimes giving a good deal of policy discretion to private contractors (prisons, charter schools, security). These developments raise important challenges going forward as the US and other countries consider both what aspects of public law apply to such bodies and which aspects of private law apply to public bodies.

A familiar stereotype holds that in the UK a single court system applies the same law to state as to private actors and that this is the essence of “the rule of law.” In contrast, continental European systems, such as France and Germany, make a sharp distinction between private and public law and have separate court systems dealing with each. As many have demonstrated, this contrast grossly oversimplifies both systems, and it has become increasingly inaccurate over time. The British have had specialized administrative tribunals since the early twentieth century, and even though appeal is to the regular courts, the judges look to the governing statutes for legal guidance. In France, some cases against public officials or agencies are heard in the ordinary courts if they involve private law topics such as contracts and torts.¹⁰ Furthermore, sovereign immunity is a much stronger constraint on suits in the UK and the US than it is in France, where damage actions against the state and its agents are more likely to be successful. This complex legal reality suggests the need for some systematic rethinking of the public/private law distinction that moves beyond formal legal categories to ask what purposes are served by placing a dispute under one heading rather than another.

The public or private ownership of defendant firms should not be of primary importance. Rather, its functional responsibilities are key. Further, the problem is not just that individual disputes receive different treatment depending upon whether a private or a public entity caused the harm. Instead, the law needs to find a way to accommodate the innovative use of private entities for service delivery without giving up the democratic accountability benefits of requiring public notice, input, and justification.

In any system a key question is whether reform must come through legislation or constitutional amendment, on the one hand, or whether the judiciary can itself take steps toward reform, on the other. Even in systems with common law traditions, statutes or amendments are likely to be necessary, but courts can both push political actors in desirable directions and fill in the gaps once laws are on the books. Central to US administrative law are Supreme Court and Court of Appeals opinions that build

⁹ (Rose-Ackerman 2009) at II.4; (Ackerman 2004) For contrasting views on the Porto Alegre case and other Brazilian experiences see (Abers 1998; Sousa Santos 1998; Avitser and Wampler 2005; Goldfrank and Schneider 2006; Wampler 2007)

¹⁰ (Brown and Bell 1998) compare French and British administrative tribunals. The original view of British law was most famously articulated by A.V. Dicey, Introduction to the Study of Law at the end of the nineteenth century. Critiques are in (Schwartz 1954; D'Alberty 1992 (trans. 1995); Künnecke 2007).

on the barebones language of the APA. This case law illustrates the key role of the courts, but it overlooks important contemporary developments such as the expansion of presidential power over regulation and the growing use of private and quasi-private entities for service delivery, regulation, and, at times, policymaking. Outside the United States the growing use of independent agencies styled on US models has added an unfamiliar set of bodies that serve important functions but fit awkwardly with established legal traditions.

In the US, presidential power has expanded beyond the review of major rules on cost-benefit grounds to include review of guidelines and to political control over the regulatory agenda. In addition, the White House uses the privileged nature of its consultations with outsiders, and in one litigated case it refused to make public the names of those consulted on White House energy policy. Its actions received Supreme Court approval, and a lower court opinion cut back on the prerogatives of the Congressional watchdog General Accountability Office.¹¹ At the same time, contracting out to private or quasi-private entities has been growing in the US and is occurring at all levels of government, but we know little about its effects on democratic values.

For students of public administration, worried that public bureaucracies have been too quickly downgraded and downsized, centralized political power in the office of the president and decentralized implementation are troubling. Independent regulatory agencies are, to some extent, a counter-weight to presidential assertions of power but only if they are structured to be able to resist presidential and ministerial pressure. These trends need to be studied not just to maintain the value of objective, apolitical advice and to preserve well-working bureaucratic routines, but also to be sure that routes for public participation and oversight are not lost by these seemingly disparate trends. The US can build on its baseline of participatory processes under APA rulemaking procedures that apply to both independent and executive branch agencies. If other countries are facing similar trends, they will confront more difficult challenges so long as the very principle of using the courts to enhance democratic legitimacy is controversial. Nevertheless, perhaps these developments will motivate scholars of public law, political economy and public administration to propose reforms of government policymaking processes that organize delegated lawmaking as a process that enhances, rather than undermines, democracy in the modern state.

Of course, simply identifying a positive role for administrative law and the courts does not mean that it can be carried out effectively. Judicial capacity is key. My proposals would be counter-productive in states with weak, under-funded, or corrupt courts (Rose-Ackerman 2007). Even in the best of cases, judges may need additional training in the social sciences and policy analysis, or they may need to be able to call on outside advisors to complement their legal training. Nevertheless, whatever the practical difficulties of implementation, the basic principle is clear enough: Because the delegation of policymaking authority is a practical necessity in modern states, public law can help assure the democratic accountability of this delegation, and the courts need to be reconfigured and judges retrained to accomplish this oversight task.

The potential weaknesses of judicial oversight are particularly salient in Latin America where surveys indicate widespread dissatisfaction with the courts and more objective evidence shows that long delays and corruption are a problem in many countries. (Rose-Ackerman 2009) Furthermore, legal education provides little training in social science, public administration, or public policy analysis. The model of the French Conseil d'Etat with its strong professional and meritocratic tradition does not appear to have been reproduced in Latin America, and the alternative US model of generalist judges reviewing the state's actions operates imperfectly in systems without precedent and where few judges have much background knowledge of the factual or practical problems facing the public administration.

Structural problems add another layer of difficulty. The region originally borrowed its administrative law from France by way of Spain and Portugal. However, most countries have

¹¹ Cheney v. U.S. District Court, 124 S. Ct. 2576 (2004); (Montgomery 2005-2006).

presidential systems that resemble the United State but with most legislatures elected through some type of proportional representation. Many Latin American presidents possess the power to issue decrees that far exceeds that of the US President.¹² Although this practice seems to have been borrowed from France, France largely abandoned the practice under Constitution of the Fifth Republic promulgated in 1958 (Brown and Bell 1998). In parallel with strong executives, however, many Latin American countries have privatized public utilities, creating independent regulatory agencies in the process. These agencies vary in their actual independent and fit awkwardly with other aspects of the law governing the public administration. They were set up to entrench contractual terms by insulating the newly private firms from political interference. Their creators often neglected the need for public accountability believing that it would undermine investor confidence. However, this lack created two linked problems. In some cases, insulation promoted capture by the politically powerful regulated firms. This, in turn undermined public support for privatization. (Levy and Spiller 1996; Prado 2008 (submitted))

To conclude, as democracy consolidates in Latin America, the state needs to create institutions of popular participation and oversight that go beyond elections and legislative monitoring of the executive. Administrative law needs to move away from a primary focus on the technical legality of state actions toward rules and principles to enhance policymaking accountability. A focus on the rights of individuals and businesses against an overarching state is a natural response to an authoritarian past, but is not sufficient to deal either with executive assertions of policymaking power or the control of private or quasi-public entities that carry out public functions. Greater transparency in the executive and in any organization with a policymaking role is necessary but not sufficient. It does not help to know that policy is being made if one has no way to influence the outcome beyond taking to the streets and banging pots and pans. Administrative law needs to create mediating institutions that give people, civil society groups, business and labor established channels for providing input and seeking justifications for public policies. The state or expert, independent regulatory agencies still retain the ultimate authority to make policy; the goal is not participatory budgeting writ large. However, the procedures established by a reformed administrative law assure that those with an interest in a policy are heard and taken into account. That is the way administrative law as a set of binding rules can interact productively with policymaking as political and knowledge-based process.

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¹² (Carey and Shugart 1998) include the cases of Argentina, Peru, Venezuela, and Brazil as of the mid-nineties.

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