



Independent Agencies in the United States: Law, Structure, and Politics

By Marshall J. Breger, Gary J. Edles

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It is essential for anyone involved in law, politics, and government to comprehend the workings of the federal independent regulatory agencies of the United States. Occasionally referred to as the "headless fourth branch of government," these agencies do not fit neatly within any of the three constitutional branches. Their members are appointed for terms that typically exceed those of the President, and cannot be removed from office in the absence of some sort of malfeasance or misconduct. They wield enormous power over the private sector.

Independent Agencies in the United States provides a full-length study of the structure and workings of federal independent regulatory agencies in the US, focusing on traditional multi-member agencies, such as the Securities and Exchange Commission, the Federal Communications Commission, the National Labor Relations Board, and the Federal Trade Commission. It recognizes that the changing kaleidoscope of modern life has led Congress to create innovative and idiosyncratic administrative structures including government corporations, government sponsored enterprises governance, public-private partnerships, systems for "contracting out," self-regulation and incorporation by reference of private standards.

In the process, Breger and Edles analyze the general conflict between political accountability and agency independence. They provide a unique comparative review of the internal operations of US agencies and offer contrasts between US, EU, and certain UK independent agencies. Included is a first-of-its-kind appendix describing the powers and procedures of the more than 35 independent US federal agencies, with each supplemented by a selective bibliography.

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Editorial Review

Review

"Independent Agencies in the United States: Law, Structure, and Politics fills a major gap in administrative law scholarship. Setting the stage with a historical pageant, sweeping from the 19th Century British origins of America's basic regulatory model through its metamorphosis into the multiple types of agencies that exist today, the book provides an intellectually vigorous analysis of the real-world influences on agency decision making. It ranges from such current issues as agency use of private contractors to long-standing issues such as Presidential and Congressional techniques for seeking to direct independent agency activities. The authors' unparalleled experience shines through this outstanding book!" - Betty Jo Christian, Partner, Steptoe & Johnson LLP Washington, D.C.

"Independent Agencies in the United States is truly a prodigious feat of scholarship that should be read by anyone with a serious interest in issues of governmental structure and function. Professors Breger and Edles examine not only the agencies generally referred to as 'independent,' like the SEC, but also innumerable other hybrid entities including government corporations and government sponsored enterprises, as well as the increasing trend to privatization of governmental functions. Their balanced treatment of issues that often provoke intense battles of theory and politics insures that this book will be one of the most highly regarded in recent administrative law scholarship." - William V. Luneburg, Professor Emeritus University of Pittsburgh School of Law, Former Chair, ABA Section of Administrative Law & Regulatory Practice

"Independent Agencies in the United States is an enormously ambitious effort that succeeds magnificently. It explains both the meaning of independence and the numerous reasons for seeking it, including both history and theory, and gets down to the nitty-gritty of how independence plays out in its many different ramifications in the real world of administrative law. On top of that, the book includes appendices that spell out for each independent entity those features of independence that it has and does not have, as well as numerous examples of how the many attributes of independence have different manifestations in different settings. In short, this is a book that scholars, practitioners, agency officials, congressional staff, and even students will find of great use." - Alan Morrison, Associate Dean, George Washington Law School, and long-time administrative law practitioner and teacher

"Breger and Edles enormously advance the understanding of the critical independent agency sector by treating the differences between executive and independent agencies as a continuum between executive controllability of agency decisions and the lack thereof. They rely on many legal, political, cultural, and historical factors, and supply fascinating data on how multi-member agencies function as well as comparative material on independent agencies in other legal systems. This rich and nuanced treatment of agency independence will be extremely helpful to scholars of government and to policymakers who are structuring new agencies to address the problems of the future." -Michael Asimow, Visiting Professor, Stanford Law School

"Marshall Breger and Gary Edles have done the unusual. As significant thinkers in the area of administrative law they have written a scholarly work that is also a practical tool for those who deal with the 'independent agencies' of the federal government. *Independent Agencies in the United States* reads well, is clear, is thoughtful, and a must for those who either study or interact with the federal government. The authors have made a real contribution to both the scholarship and the practical understanding of the federal legal system, and their extensive background in government enriches the text." -Senior Judge Loren A. Smith, United States Court of Federal Claims, and Distinguished Adjunct Professor, George Mason University School of Law

About the Author

Marshall J. Breger is a Professor of Law at the Columbus School of Law, The Catholic University of America. He was a Senior Fellow at the Heritage Foundation specializing in labor, regulatory and trade policy (including NAFTA). During the George H.W. Bush Administration, he served as Solicitor of Labor, the chief lawyer of the Labor Department, and Chair of the Tripartite Advisory Panel on International Labor Standards (TAPILS). During 1992, by Presidential designation, he served concurrently as Acting Assistant Secretary for Labor Management Standards. He was Chairman of the Administrative Conference of the United States, an independent federal agency charged with developing improvements in the administrative process. Professor Breger is a contributing columnist to *Moment* magazine. He has authored or edited five books, as well as written over 25 law review articles in publications including the *Stanford Law Review*, *Boston University Law Review*, *Duke Law Journal* and *North Carolina Law Review*. Among his recent books on administrative law are: *ADR in the Federal Government: A Practitioner's Deskbook*, with Gerald Schatz & Deborah Laufer (2000); *Developments in Administrative Law 2000-2001* (ed. Lubbers, 2001).

Gary J. Edles is a Fellow in Administrative Law and Adjunct Professor of Law at American University, Washington College of Law, where he teaches a course on the Federal Regulatory Process. He is also Visiting Professor at the University of Hull Law School, where he teaches American Public Law, and lectures on comparative British-American public law. He is licensed as a lawyer in the United States, and is a member of Gray's Inn (UK). He was General Counsel of the Administrative Conference of the United States (ACUS), the US government's expert advisory body on matters of administrative law and process, and served in senior positions at three independent, multi-member agencies. Professor Edles is co-author of two books: Edles & Nelson, *Federal Regulatory Process: Agency Practices and Procedures* (Second Edition, 1989), a book that has been cited by the US Supreme Court and the lower federal courts, and Berg, Klitzman & Edles, *An Interpretive Guide to the Government in the Sunshine Act* (Second Edition, 2005). He is also the author or co-author of more than a dozen articles. He is a past Chair of both the Administrative Law Section and General Counsels' Section of the Federal Bar Association, and a member of the Faculty Review Board of the *Administrative Law Review*.

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