1. Record Nr. UNINA9910813204303321

Autore	Fisher Elizabeth (Elizabeth Charlotte)
Titolo	Risk regulation and administrative constitutionalism / / Elizabeth Fisher
Pubbl/distr/stampa	Oxford ; Portland, Oregon, : Hart Publishing, 2007
ISBN	1-4725-6011-6 1-281-25862-8 9786611258627 1-84731-372-8
Edizione	[1st ed.]
Descrizione fisica	1 online resource (319 p.)
Disciplina	342
Soggetti	Administrative law Environmental risk assessment - Law and legislation Environmental risk assessment - Government policy Health risk assessment - Government policy Risk management - Government policy Risk assessment - Government policy
Lingua di pubblicazione	Inglese
Formato	Materiale a stampa
Livello bibliografico	Monografia
Note generali	Description based upon print version of record.
Nota di bibliografia	Includes bibliographical references (pages [259]-282) and index
Nota di contenuto	Introduction -- 1: Risk Evaluation Through the Lens of Administrative Constitutionalism -- I THE SCIENCE -- DEMOCRACY DICHOTOMY IN REGULATING TECHNOLOGICAL RISK -- A Technological Risks -- B The Science -- Democracy Dichotomy -- C The Role of Law -- D Problems with the Science -- Democracy Dichotomy -- II TECHNOLOGICAL RISK, PUBLIC ADMINISTRATION, AND ADMINISTRATIVE CONSTITUTIONALISM -- A The Necessary Role of Public Administration -- B The Contentious Role of Public Administration, Law and Administrative Constitutionalism -- III TWO PARADIGMS OF ADMINISTRATIVE CONSTITUTIONALISM IN THE RISK REGULATION CONTEXT -- A The Rational-Instrumental Paradigm -- B The Deliberative Constitutive Paradigm -- C The Paradigms Compared -- IV ADMINISTRATIVE CONSTITUTIONALISM AS A FORM OF LEGAL CULTURE -- V AN EXAMPLE: THE PRECAUTIONARY PRINCIPLE AND ADMINISTRATIVE CONSTITUTIONALISM -- A The Precautionary Principle -- B The Precautionary Principle and the DC and

RI Paradigms -- C The Precautionary Principle and the Burden of Proof -- VI CONCLUSION -- Part One: Administrative Constitutionalism in National Legal Cultures -- Introduction to Administrative Constitutionalism in National Legal Cultures -- I NATURE OF ADMINISTRATIVE CONSTITUTIONALISM -- II THE ROLE OF LAW -- III THE RELATIONSHIP BETWEEN LEGAL CONCEPTS AND THE REGULATORY REGIMES FOR TECHNOLOGICAL RISK REGULATION -- IV CONCLUSION -- 2: BSE, Expertise and Administrative Constitutionalism: Examining the Role of the Southwood Working Party -- I THINKING OF BSE IN TERMS OF ADMINISTRATIVE CONSTITUTIONALISM -- II TECHNOLOGICAL RISK REGULATION AND ADMINISTRATIVE CONSTITUTIONALISM IN THE UK: A BRIEF HISTORY -- III THE ADMINISTRATIVE CONSTITUTIONALISM CONTEXT OF THE BSE CRISIS -- IV THE SOUTHWOODWORKING PARTY -- V AFTER SOUTHWOOD -- VI CONCLUSIONS -- 3: Hard Looks and Substantial Evidence: Scope of Review of US Risk Regulation Rulemaking in the 1970s -- I SCOPE OF REVIEW AND ADMINISTRATIVE CONSTITUTIONALISM IN HISTORICAL PERSPECTIVE -- II ADMINISTRATIVE CONSTITUTIONALISM AND RISK REGULATION REGIMES IN THE EARLY 1970S -- III HARD LOOK REVIEW -- IV SUBSTANTIAL EVIDENCE AND THE OCCUPATIONAL SAFETY AND HEALTH ACT -- V SCOPE OF REVIEW UNDER THE RI PARADIGM -- VI REFLECTIONS -- VII CONCLUSION -- 4: The Precautionary Principle and Merits Review in Australia -- I AUSTRALIAN ENVIRONMENTAL LAW AND THE DC PARADIGM OF ADMINISTRATIVE CONSTITUTIONALISM -- II THE PRECAUTIONARY PRINCIPLE IN AUSTRALIAN ENVIRONMENTAL LAW -- III GENERALIST TRIBUNALS, ENVIRONMENTAL COURTS, AND MERITS REVIEW -- IV DC INTERPRETATIONS OF THE PRECAUTIONARY PRINCIPLE -- V RI INTERPRETATIONS OF THE PRECAUTIONARY PRINCIPLE -- VI THE SEARCH FOR A UNIFORM INTERPRETATION -- VII CONCLUSIONS -- Part Two: Administrative Constitutionalism and Risk Regulation Beyond the State -- Introduction to Administrative Constitutionalism and Risk Regulation Beyond the State -- I THE WTO AND EU: AN OVERVIEW -- II THE ROLE OF LAW -- III GOVERNANCE AND ADMINISTRATIVE CONSTITUTIONALISM -- IV CONCLUSION -- 5: Risk Assessment, The World Trade Organisation Sanitary and Phytosanitary Agreement and Administrative Constitutionalism -- I THE WTO SPS AGREEMENT -- II THE SPS AGREEMENT THROUGH THE LENS OF ADMINISTRATIVE CONSTITUTIONALISM -- III EC-HORMONES AND THE DEFINITION OF RISK ASSESSMENT -- IV DEFINING RISK ASSESSMENT IN DISPUTES SINCE EC-HORMONES: THE INADVERTENT PURSUIT OF THE RI PARADIGM -- V THE PROBLEM WITH THE WTO SPS JURISPRUDENCE ON ARTICLE 5.1 -- VI FUTURE LINES OF INQUIRY -- VII CONCLUSION -- 6. The Precautionary Principle and Administrative Constitutionalism in the European Union: Asking Some Difficult Questions -- I CONTEXTUALISING THE PRECAUTIONARY PRINCIPLE IN THE EUROPEAN UNION -- II OVERLAPS, INTERRELATIONSHIPS AND ADMINISTRATIVE INTEGRATION -- III THE CASE LAW BEFORE THE COMMISSION'S COMMUNICATION -- IV THE COMMISSION'S COMMUNICATION ON THE PRECAUTIONARY PRINCIPLE -- V CASE LAW AFTER THE COMMISSION'S COMMUNICATION -- VI REFLECTIONS -- VII CONCLUSION -- Conclusions -- Chapter Seven: Beyond the Science -- Democracy Dichotomy -- I A SUMMARY OF ANALYSIS -- II SOME PRELIMINARY FINDINGS -- III NEXT STEPS -- IV CONCLUSION -- Bibliography -- Index

Sommario/riassunto

Over the last decade the regulatory evaluation of environmental and public health risks has been one of the most legally controversial areas of contemporary government activity. Much of that debate has been understood as a conflict between those promoting 'scientific' approaches to risk evaluation and those promoting 'democratic'

approaches. This characterization of disputes has ignored the central roles of public administration and law in technological risk evaluation. This is problematic because, as shown in this book, legal disputes over risk evaluation are disputes over administrative constitutionalism in that they are disputes over what role law should play in constituting and limiting the power of administrative risk regulators. This is shown by five case studies taken from five different legal cultures: an analysis of the bifurcated role of the Southwood Working Party in the UK BSE crisis; the development of doctrines in relation to judicial review of risk evaluation in the US in the 1970s; the interpretation of the precautionary principle by environmental courts and generalist tribunals carrying out merits review in Australia; the interpretation of the WTO Sanitary and Phytosanitary Agreement as part of the WTO dispute settlement process; and the interpretation of the precautionary principle in the EU context. A strong argument is thus made for re-orienting the focus of scholarship in this area