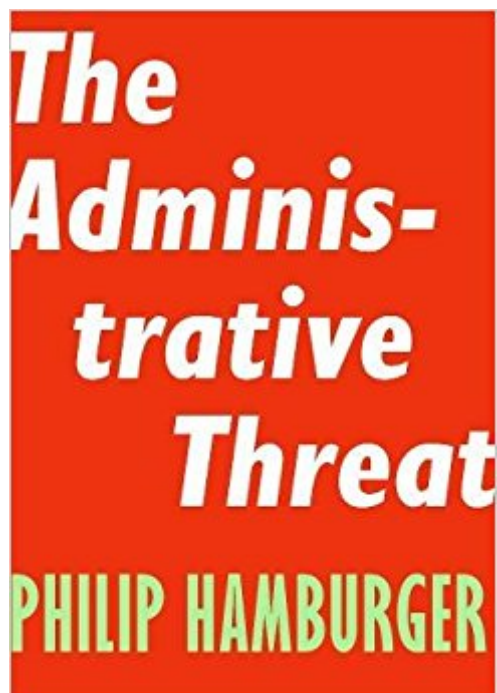


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# The Administrative Threat (Encounter Intelligence)



## Synopsis

Government agencies regulate Americans in the full range of their lives, including their political participation, their economic endeavors, and their personal conduct. Administrative power has thus become pervasively intrusive. But is this power constitutional? A similar sort of power was once used by English kings, and this book shows that the similarity is not a coincidence. In fact, administrative power revives absolutism. On this foundation, the book explains how administrative power denies Americans their basic constitutional freedoms, such as jury rights and due process. No other feature of American government violates as many constitutional provisions or is more profoundly threatening. As a result, administrative power is the key civil liberties issue of our era.

## Book Information

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## Customer Reviews

Philip Hamburger is the Maurice and Hilda Friedman Professor of Law at Columbia Law School. He writes on constitutional law, including religious liberty, freedom of speech and the press, administrative power, and unconstitutional conditions. His previous books are *Separation of Church and State* (Harvard 2002), *Law and Judicial Duty* (Harvard 2008), and *Is Administrative Law Unlawful?* (Chicago 2014). He received a BA from Princeton and JD from Yale. He is a member of the American Academy of Arts and Sciences, and has been awarded the Sutherland Prize twice, the Henry Paolucci/Walter Bagehot Book Award, the Hayek Book Prize, and the Bradley Prize.

A quick read. He argues from a constitutional basis that none of the 3 branches of the federal government can delegate it's authority to some other agency. The agencies can carry out duties outlined in the law, but cannot make up laws on their own, according to his reading of the constitution. Intriguing reading, but not sure if it's altogether correctable, but it sure gives one something to think about.

This should be required reading for all Americans who are old enough to read. It lays bare the grave threat to the Republic represented by what today is popularly called the "Deep State." The unelected and unaccountable bureaucrats who increasingly control the federal government, ignore our laws, reinterpret laws in regulations according to their own agendas and whose administrative interpretations are the given great deference in our federal courts. The administrative state has turned our institutions inside out and upside down. It is a "through the looking glass" nightmare that even Lewis Carroll would not recognize.

He is very hard to read. I read a lot, newspapers as well as books, and this was tough reading! Awkward sentencings/complex sentences. I'm glad I didn't need to diagram any of his sentences!

This is an important book, which will, hopefully, have a positive effect on the way the Federal Government treats the citizens of the USA.

Very interesting book.

Booklet is most disturbing. A required read for anyone concerned about "Constitution-erosion"

The current climate in American politics seems to be a clash between populists and globalists; nationalists vs. the deep state. The passionate emotions from the populist/nationalist front stem largely from the economic hardships experienced by the nation. As this book clarifies, however, the economic downturn is a side effect of a much deeper problem known as the administrative state. In the span of a few pages, this Columbia University law professor attempts to explain the true reasons behind the ineffective, even dangerous state, the American government and economy have devolved into. Thoroughly explaining the historical implications behind the Constitution, the author defines absolutism as practiced by monarchs like James I as extralegal power, meaning that any

other constraints that are supposed to be provided to the citizen or subject are ignored and their rights effectively stripped. Outlining how the American government has used ambiguities in the Constitution to grant themselves powers they were never meant to have and are now outsourcing power to agencies that should have no judicial authority whatsoever, the author succinctly shows that the economic disruption in the US is part of a much larger problem. Americans must take civil action against the growing administrative state if they do not wish to find themselves ruled in the future. This is an extremely informative book that gives much needed legitimacy to the arguments the populists have against growing threats from the Deep State. The connections between 19th century American students in Germany bringing back absolutism to the US, the spread of voting rights to a larger public and Woodrow Wilson and the gentry class's reaction to this voter expansion are both fascinating and frightening. On a side note, the author mentions that German absolutism also influenced the writing of the new Chinese constitution in 1914. I would add that the Meiji government of Japan researched the different constitutions of the world before choosing one to adapt as their own. Those leaders also chose the German constitution specifically because they felt the others were too liberal for their liking. If absolutism was part and parcel of this constitution, this choice makes a horrible amount of sense given Japan's transition from a democracy to an imperial government. It's a short book, but it is well worth the time to read. This is a very real problem that threatens to disenfranchise millions of Americans for the sake of a gentrified elite class who feels they are more knowledgeable and worthy to make decisions than anyone else. If administrative power is not addressed soon, then we could find ourselves ruled by our "betters."

This short little book (64 pages) should be required reading for all first year law students. And by their second year they should have read Professor Hamburger's great work on this subject, *Is Administrative Law Unlawful?*. Professor Hamburger is so clear in his presentation and presents with such an economy of words that it is difficult to summarize why his work in administrative law is so important. However, put over-simply, our present system of administrative law subverts our entire system of government by illegally assuming powers that properly belong only to the legislature and to the judiciary and, I might add, to the people themselves. Rights guaranteed to every citizen are ignored and trampled upon without possibility of redress. I am receptive to his thesis because I began to worry about the same issues many years ago when confronted with an administrative law case at the state level. Because I moved across the country I was unable to pursue it as I intended. However, a recent case in Oregon presents the same issue. Owners of bakery in Oregon were condemned and assessed damages for refusing to bake a cake for a gay wedding. The charge,

adjudication, and damages were all handled within an administrative agency, one of the executive branches of government. The lawyers, to the extent that I looked at the case, appeared to do a competent, professional and proper job within the context of the administrative process. It was also a defense that was doomed to fail. There was no jury and there was no independent tribunal (judge) to hear the case. Everything was managed by employees of an agency that brought the charges and was predisposed to rule against the defendants. How is that just? Imagine that the chief executive of your state, typically the governor, decides you have violated some law or regulation and then decides that you owe the state or some other party \$100,000 and then sets about to collect it. When the core legal powers of the chief executive are examined it can be seen that the guy has no legal authority to do such a thing, and no administrative employee whose powers are derivative from the governor can do it either. When you derive some power from a superior you never get greater power than the superior has. Quite simply, if a law were violated in this case, it needed to be brought before a regular, independent judge who is not an employee of the complaining agency and it ought to be heard before a jury empowered to decide the facts and determine damages, if any. Indeed, the Oregon Constitution, in the State's so-called Bill of Rights states: "Article I: Section 17. Jury trial in civil cases. In all civil cases the right of Trial by Jury shall remain inviolate." The bakery dispute was a civil case. The entire administrative apparatus ignores centuries of law prescribing the nature and need for Due Process and it upsets the State's own Constitution and pretends to place what is clearly arbitrary and dangerous power into the hands of bureaucrats. Right or wrong, these bakers deserved something better than an edict from a legal system found in the Roman Empire or the Star Chamber of Seventeenth Century England. They legally deserved due process before a proper, independent judge and jury. What might their lawyers have done? Possibly nothing would have worked, but when I was confronted with a similar legal issue decades ago I was thinking of something along the lines of a Quo Warranto proceeding challenging the authority of the state agency to usurp the role of legislature and judiciary. For those unfamiliar with the term, this (or a related proceeding) would be similar to a Habeas Corpus proceeding in which an agency detaining someone is challenged to show by what legal authority they hold someone prisoner. Often in those proceedings, the sheriff (or whoever) can very easily legally justify holding a prisoner, but I am not at all sure that an over-reaching administrative agency can come up with a good legal justification for pushing aside the other two branches of government that clearly do have the authority to pass laws on the one hand and hold trials on the other. I know, for a fact, that none of these agencies can find explicit authority for their acts in the Constitution. Professor Hamburger has done a great service to the country and the legal community

by explaining exactly why the current administrative law system is illegal and dangerous. One only hopes he is not too late. Note: In my title for this post about the 'Tyranny' of administrative law I am not using the expression so common in the modern sense as in the usage of the original Greek, meaning an exercise or rule without legal authority. Tyrants in Greek city states were not always evil or harmful but they ruled extra-legally, that is to say without legal authority. That, I think, is what much of our administrative law does. It doesn't matter that agencies often do good and often are efficient (although being neither good nor efficient also too often applies). What matters is that they have no legal authority for what they do and ruling without authority they destroy a carefully created system of self government and right to due process.

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