



Is Administrative Law Unlawful?

By Philip Hamburger

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Is administrative law unlawful? This provocative question has become all the more significant with the expansion of the modern administrative state. While the federal government traditionally could constrain liberty only through acts of Congress and the courts, the executive branch has increasingly come to control Americans through its own administrative rules and adjudication, thus raising disturbing questions about the effect of this sort of state power on American government and society.

With *Is Administrative Law Unlawful?*, Philip Hamburger answers this question in the affirmative, offering a revisionist account of administrative law. Rather than accepting it as a novel power necessitated by modern society, he locates its origins in the medieval and early modern English tradition of royal prerogative. Then he traces resistance to administrative law from the Middle Ages to the present. Medieval parliaments periodically tried to confine the Crown to governing through regular law, but the most effective response was the seventeenth-century development of English constitutional law, which concluded that the government could rule only through the law of the land and the courts, not through administrative edicts. Although the US Constitution pursued this conclusion even more vigorously, administrative power reemerged in the Progressive and New Deal Eras. Since then, Hamburger argues, administrative law has returned American government and society to precisely the sort of consolidated or absolute power that the US Constitution—and constitutions in general—were designed to prevent.

With a clear yet many-layered argument that draws on history, law, and legal thought, *Is Administrative Law Unlawful?* reveals administrative law to be not a benign, natural outgrowth of contemporary government but a pernicious—and profoundly unlawful—return to dangerous pre-constitutional absolutism.

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Editorial Review

Review

"Is Administrative Law Unlawful?" is a work of the very highest quality, a learned scholarly exegesis setting out the intellectual foundations—in medieval and early modern English constitutional thought—for the proposition that the contemporary American administrative state is profoundly unconstitutional and unlawful. Philip Hamburger's argument is intricately wrought and forcefully expressed. Its indictment of modern administration in America doubles as a major statement on the virtues of a genuinely constitutional government."

(Ken I. Kersch, Boston College)

"With characteristic erudition, Philip Hamburger shows how virtually every aspect of the modern administrative state undermines the Anglo-American legal tradition—or at least that part of the tradition that most informed the American founding. It is a provocative thesis, but one that is amply supported by extensive scholarly argument and fascinating historical study. Hamburger makes an impressive case that modern administrative law owes its lineage to claims of monarchical prerogative and civil law absolutism that were precisely the ideas that the American revolution was trying to reject. This is a tremendously important book."

(Gary S. Lawson, Boston University School of Law)

"An important new book that is very much worth reading."

(*National Review*, *Bench Memos* 2014-05-29)

"The most important book I have read in a long time."

(Scott Johnson *Power Line*)

"The administrative state is a modern invention. It was, and remains, a necessity in our complex modern age. Or so goes the argument. . . . Hamburger meticulously (and sometimes laboriously) demonstrates how the modern administrative state revives all the attributes of the royal prerogative and absolute power."

(Ilan Wurman *Weekly Standard* 2014-07-21)

"A serious work of legal scholarship. . . . This is a book that rewards the reader with a deepened understanding of the Constitution and the challenges that confront us in the task of restoration. . . . The news of the day repeatedly buttresses the powerful case Hamburger makes against the legitimacy of the vast administrative apparatus that does so much to dictate the way we live now. It is a book not only of this season but of many seasons to come."

(*National Review*)

"An interesting new work by Philip Hamburger dispenses with the tiresome back and forth between Republicans and Democrats. Instead, it focuses on Washington's permanent administration—the ever-expanding federal bureaucracies that have come to play a central role in health care, finance, housing and work, and large roles in education, energy and whatever else constitutes the American system. . . . Hamburger's book is filled with details of how the centralisation of power divorced from a popular or court mandate leads to insularity and even insurrection as hopes of efficiency and expertise give way to bureaucratic inertia."

(*Economist* 2014-08-09)

“*[Is Administrative Law Unlawful?]* is the author’s most ambitious, even daring, work, for not only does it question important features of administrative law; it challenges (as the title suggests) their very legality. . . . Deeply researched and well written, the book is a veritable cornucopia of fresh and significant insights that will greatly enrich the existing literature. It is a work of encyclopedic breadth and erudition, confirming that its author is equally comfortable with grand themes and matters of granular detail.”

(Claremont Review of Books 2014-11-20)

“Hamburger argues persuasively that America has overlaid its constitutional system with a form of governance that is both alien and dangerous. . . . Some readers undoubtedly will find daunting this book’s length. . . . But it is lucidly written and carefully organized, and certainly it is no small task to analyze just how deeply the administrative state threatens liberty and constitutionalism. Scholars will return to Hamburger’s exhaustive explication of these issues for a long time to come.”

(Law and Politics Book Review 2015-04-06)

“Immensely important. . . . Hamburger indicts the entire structure of executive-agency rulemaking as illegitimate. . . . An argument of deep passion, learning, intelligence, and consequence that deserves to reach the widest possible audience.”

(City Journal 2015-04-21)

“A masterful look at the origins and legitimacy of American administrative law. . . . Anyone interested in the rise of the American administrative state will benefit from this original, erudite, and thought-provoking book.”

(Law and History Review 2015-10-22)

About the Author

Philip Hamburger is the Maurice and Hilda Friedman Professor of Law at Columbia Law School.

Users Review

From reader reviews:

Quentin Ryan:

Here thing why this specific *Is Administrative Law Unlawful?* are different and reliable to be yours. First of all reading a book is good but it really depends in the content than it which is the content is as yummy as food or not. *Is Administrative Law Unlawful?* giving you information deeper and different ways, you can find any book out there but there is no book that similar with *Is Administrative Law Unlawful?*. It gives you thrill examining journey, its open up your own personal eyes about the thing which happened in the world which is might be can be happened around you. You can bring everywhere like in area, café, or even in your method home by train. If you are having difficulties in bringing the published book maybe the form of *Is Administrative Law Unlawful?* in e-book can be your option.

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