

Book Reviews

Is Administrative Law Unlawful? by Phillip Hamburger, 646 pp, hardback, \$25.14, e-text, \$17.88, ISBN-10: 022632463X, Chicago, Ill., University of Chicago Press, 2014.

The Administrative Threat, by Phillip Hamburger, 72 pp, paperback, \$4.79, Kindle, \$3.60, ISBN: 9781594039492, New York, N.Y., Encounter Books, 2017.

Today the administrative state, through a special counsel and federal intelligence and law enforcement agencies, is apparently trying to execute a coup to overturn a presidential election.

While this dominates the news, we are also aware of continued overreach and misconduct by many administrative agencies, such as IRS, EPA, DOJ, DEA, Interior, FCC, and SEC, that have transformed our government, which was originally designed as limited, with separation of powers of legislative, executive, and judicial branches.

Angelo Codevilla rang the alarm about the excesses of statism in a 2009 essay¹ about the growth of the Bismarckian (think Prussian) administrative state. This warned of an army of state-appointed and supported experts recruited to entrench the statist government and expand administrative state tyranny. A follow-up essay in 2010, "The Ruling Class and the Perils of Revolution,"² expanded on the dangers of a non-elected and totalitarian ruling class, whose members' influence and power are derived from their self-proclaimed expertise, which they think justifies their actions to suppress dissent and intimidate the citizenry.

Phillip Hamburger, Friedman Professor of Constitutional Law at Columbia University, reminds us of the problem of administrative law growth in America with his 2017 70-page book, *The Administrative Threat*, which summarizes the points of his magisterial and erudite 650-page 2014 book, *Is Administrative Law Unlawful?*

In the longer book, Hamburger explains in depth what motivated the American Founders to write a Constitution that intentionally hobbled the power of the executive and created separation of powers. He explains the history of royal tyranny in England that was well known to the Framers of the Constitution: abuses such as government by crown

edict; crown-initiated Star Chamber prosecutions; and the excessive and oppressive nature of the reigns of James I and Charles I, from 1603 to 1649, when Charles was beheaded after a civil war.

Administrative elements were present at our founding to a limited degree, but the administrative state proliferated rapidly in 20th-century America, promoted by progressive presidents including Theodore Roosevelt and Woodrow Wilson, and especially Franklin Roosevelt.

Hamburger's damning indictment of the administrative state is carefully documented. He shows convincingly why executive agencies cannot constitutionally create laws and regulations, and lack the authority to determine whether citizens have violated the law. Yet Executive Branch agencies now make law and regulations, determine compliance, and assess punishment for noncompliance.

Hamburger in his public statements makes the following points, which are well developed and reasoned in both books:

- Administrative law and power are extra-legal.
- The use of executive power to legislate and judge is the nature of tyranny that the Founders intended to prevent through the Constitution.
- The appearance of the benign and beneficent nature of administrative power, born of claimed expertise and authority, supposedly exercised for the general benefit, is deceptive.
- That Congress has abdicated its legislative and rule-making powers does not make administrative exercise of power legal. It only means that the Congress has neglected its constitutional duties.
- Judicial "deference" to executive agency extra-legal rule and regulation-making is abdication of the judiciary's duty to enforce the Constitution.

In an interview for *Columbia Law School News*³ about the importance of Supreme Court repair of agency power imbalance, Hamburger states: "The conundrum is all the more serious because administrative power is a profound threat to civil liberties and an evisceration of equal voting rights. If the [Supreme] Court rigidly adheres to precedents that have gutted people's constitutional rights, it will

end up undermining its own legitimacy." The Supreme Court has a long way to go before it will have a salutary impact on the growth of this cancer of a federal agency-driven administrative state, created to a great degree by the Court's own opinions. Agency overreach into the constitutional authority of the legislative and judicial branches needs legal ablation therapy.

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1. Codevilla AM. Scientific pretense vs. democracy. *Amer Spectator*, Apr 14, 2009. Available at: https://spectator.org/41862_scientific-pretense-vs-democracy/. Accessed Aug 24, 2018.
2. Codevilla AM. America's ruling class—and the perils of revolution. *Amer Spectator*, Jul 16, 2010. Available at: https://spectator.org/39326_americas-ruling-class-and-perils-revolution/. Accessed Aug 24, 2018.
3. Columbia Law. Professor Philip Hamburger's indictment of the administrative state. *News. Columbia Law School*, Jul 7, 2017. Available at: <https://www.law.columbia.edu/news/2017/07/administrative-law-philip-hamburger>. Accessed Aug 24, 2018.

A Short History of Nearly Everything, by Bill Bryson, softcover, 544 pp, \$16.99, ISBN 978-0-7679-0818-4, New York, N.Y., Broadway Books, 2003.

In these days in which "The Science" is accepted as the infallible, sole source of knowledge and authority on virtually everything, this book gives a perspective on how science is done. It is a bestseller, written by a nonscientist for the layman.

The book is by no means a history of nearly everything, but a compendium of stories about some of the key scientific advances and the scientists who made them. It has some science, but a lot of historical and biographical background, including gossip, much about the human foibles of scientists and indeed some skulduggery in stealing credit for important work.

Topics include the Big Bang theory, plate tectonics, measuring the size of the earth, the taxonomic scheme for plants and animals, the discovery of the elements, and much, much more. The underlying messages that I perceived are how little we know, how wrong scientists have been about fundamental issues, and how fortuitous circumstances and coincidences led to important discoveries.

Two women are mentioned: Marie Curie and Rosalind Franklin. Franklin's X-ray crystallography, essential to the discovery of DNA, was ruthlessly appropriated by Watson and Crick, who demeaned her while depriving her of her rightful credit. But almost all of the seminal advances were made by men. Most of them were decidedly odd and did not play well with others. They tended to be obsessed with details that most people would consider trivial and boring.

For example, Charles Darwin spent 8 years of his life working on his magnum opus—on barnacles. Milutin Milankovitch, a Serbian mechanical engineer with no background in celestial mechanics, spent 20 years calculating, with pencil and slide rule, shifts in the earth's orbit that likely explain ice ages.

School psychologists would probably diagnose most of these men as mentally disturbed. What would science have been if their education had been controlled by mental and behavioral health experts? They probably would have been drugged.

Bryson's greatest interest appears to be in evolution, and he devotes several chapters to the discovery of fossils. "The whole of our understanding of human prehistory is based on the remains, often exceedingly fragmentary, of perhaps 5,000 individuals," he points out. He notes the problem with explaining the origin of life. Francis Crick, Bryson said, suggested that the earth was "deliberately seeded with life by intelligent aliens." Stephen Jay Gould stated that "Life, arising as soon as it could, was chemically destined to be." Bryson explains that turning monomers into polymers involves what is known to biology as dehydration linkages:

As one leading biology text puts it, with perhaps just a tiny hint of discomfort, "Researchers agree that such reactions would not have been energetically favorable in the primitive sea, where indeed in any aqueous medium, because of the mass action law." It is a little like putting sugar in a glass of water and having it become a cube. It shouldn't happen, but somehow in nature it does.... It is enough to know that if you make monomers wet, they don't turn into polymers—except when creating life on earth. How and why it happens then and not otherwise is one of biology's great unanswered questions.

I found this to be an entertaining read, a source for a lot of interesting quotations, and an antidote to the pretensions of highly credentialed authorities. Supposedly "settled science"

often got profoundly unsettled by one man tenaciously pursuing the truth about some detail that happened to captivate his interest.

To keep science alive, we need to nurture and protect the next generation of people like that, especially boys, from mental-health-obsessed schoolmarms.

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The Poverty of Nations: A Sustainable Solution, by Wayne Grudem and Barry Asmus, softcover, 98 pp, \$30, ISBN-13: 978-1-4335-3911-4, Heaton, Ill., Crossway, 2013.

The ideas in this book will not be new to students of free-market economics, but it's the first Biblical defense that I have seen of these concepts, written for students in colleges or seminaries who may never have heard of them. Wayne Grudem is a research professor of theology and biblical studies at Phoenix Seminary and a general editor of the *ESV Study Bible*. Barry Asmus is a senior economist at the National Center for Policy Analysis.

The book is particularly timely today, when the current pope seems to have forgotten his predecessors' warnings about the dangers and evils of socialism, and seems to be personally opposed to capitalism. Many Christians deplore poverty, and yet propose only solutions that have always made the problem even worse.

The basic idea, reiterated throughout this book, is that the only way to rise above poverty is to increase production of goods and services. Foreign aid, redistributing wealth, central planning—all of the socialist "progressive" nostrums—fail to solve the problem because they do not increase, and possibly impede, production of goods and services.

The book may be unique in having a four-page Scripture index that refers to passages in both the Old and New Testaments supporting its ideas. Of course, the commandment "Thou Shalt Not Steal" assumes that "there is something to steal—something that belongs to someone else and not to me." The Old Testament also contains stories about how governments wrongly used their immense power to disregard property rights.

Many Christian leaders seem to believe that the early Christian church practiced a form of communism because of the passage in the book of Acts: "All who believed worked together and had all things in common." But the authors point out that this situation was far different from communism because the giving was voluntary and people still apparently had personal possessions and owned property, as we see from the fact

that they continued to meet in "their homes." Although the authors do not mention this, it occurs to me that there were problems with this early sharing of property, possibly prompting St. Paul to write, "He who will not work shall not eat."

Even those who are well acquainted with free market economics can learn some interesting things from the book. For example, having too much wealth can be a real detriment. The Spaniards conquered the Aztec empire and then the Inca empire, finding fabulous amounts of gold, making Spain the wealthiest and most powerful nation on earth in the 16th century, but it soon became poor. The new wealth did not go to Spanish industry because the Spanish did not have to make things any more but could buy them. Nor did the treasure go to Spanish agriculture because Spain could buy food. By the time the great influx of bullion had ended, the Spanish crown was deep in debt and the country entered a long decline.

The authors refute the claims that the prosperity of the West was generated by taking from others. Certainly, some actions by the richer countries harmed people in poorer countries, but in general the economic interaction between rich and poor nations has been immensely beneficial to the poorer nations. It is the use of bribery to secure monopoly privileges, rather than the operation of free markets, that oppresses ordinary people.

The book has a good discussion of the importance of monetary policy and of relatively low tax rates. I was surprised to learn that it was the famous British economist John Maynard Keynes who said: "There is no surer means of overturning the existing bases of society than to debauch the currency. By a continuing process of inflation, governments can confiscate, secretly and unobserved, an important part of the wealth of their citizens."

Not all cultural values are equal, Grudem and Asmus maintain, if the goal is to bring about peace and prosperity. The society that values truthfulness, keeping promises, and protecting property, and that holds individuals responsible for the consequences of their own actions, will do well. The appendix contains a composite list of factors that will enable a nation to overcome poverty.

The book has an excellent bibliography, including Frédéric Bastiat and the giants of Austrian economics Ludwig von Mises and Friedrich Hayek. I recommend the book highly, especially for college students and professors, politicians, religious leaders, and mission teams.

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