

PHILIP HAMBURGER

Maurice and Hilda Friedman Professor of Law
Columbia Law School
435 West 116th Street, New York, NY 10027
hamburger@law.columbia.edu
(212) 280-3878

Publications

Books

- Purchasing Submission: Conditions, Power, and Freedom* (Harvard University Press 2021)
Liberal Suppression: Section 501(c)(3) and the Taxation of Speech (Chicago University Press 2018)
The Administrative Threat (Encounter Books 2017)
Is Administrative Law Unlawful? (Chicago University Press 2014)
Law and Judicial Duty (Harvard University Press 2008)
Separation of Church and State (Harvard University Press 2002)

Articles on Administrative Power

- “Administrative Discrimination,” *American Mind* (Sept. 11, 2020)
“Ambiguity about Ambiguity,” *Yale Journal on Regulation, Notice and Comment* (March 11, 2020)
“Delegation or Divesting?” 115 *Northwestern University Law Review Online* 88 (2020)
“The Administrative Threat to Civil Liberties,” *Cato Supreme Court Review* 15 (2018)
“The Administrative Evasion of Procedural Rights,” 11 *NYU Journal of Law and Liberty* 915 (2018)
“*Chevron* on Stilts: A Response to Jonathan Siegel,” 72 *Vanderbilt Law Review En Banc* 77 (2018)
“How Government Agencies Usurp Our Rights” *City Journal* (Winter 2017)
“Early Prerogative and Administrative Power: A Response to Paul Craig,” 81 *Missouri Law Review* 939 (2016)
“*Chevron* Bias,” 84 *George Washington Law Review* 1187 (2016)
“Vermeule Unbound,” *Texas Law Review: See Also* (2016)

Articles on Religious Liberty

- “Prejudice and the Blaine Amendments,” *First Things* (June 20, 2017)
“Exclusion and Equality: How Exclusion from the Political Process Renders Religious Liberty Unequal,” 90 *Notre Dame Law Review* 1919 (2015)
“Religious Liberty in Philadelphia,” 54 *Emory Law Journal* 1603 (2005)
“Against Separation,” 155 *Public Interest* 177 (2004)
“Equality and Diversity: The Eighteenth-Century Debate about Equal Protection and Equal Civil Rights,” *Supreme Court Review* 295 (1992)
“A Constitutional Right of Religious Exemption: An Historical Perspective,” 60 *George Washington Law Review* 915 (1992)

Articles on Freedom of Speech

- “The First Amendment Doesn’t Protect Big Tech’s Censorship,” *Wall Street Journal* (July 31, 2021) (with Clare Morrell)

- “The Constitution Can Crack Section 230,” Wall Street Journal (Jan. 29, 2021)
- “Education Is Speech: Why New York’s Attempts to Control Private Schools Are Unconstitutional,” The Federalist (Aug. 22, 2019)
- “Natural Rights, Natural Law, and American Constitutions,” 102 Yale Law Journal 907 (1993)
- “The Development of the Law of Seditious Libel and the Control of the Press,” 37 Stanford Law Review 661 (1985)

Articles on Censorship by Institutional Review Boards

- “HHS’s Contribution to Black Death Rates,” Liberty Law Blog (Jan. 8, 2015)
- “IRB Licensing,” in *Who’s Afraid of Academic Freedom* (New York: Columbia University Press, 2014)
- “The Censorship You’ve Never Heard Of,” Commentary (July 2013)
- “Getting Permission,” 101 Northwestern Law Review 405 (2007)
- “The New Censorship: Institutional Review Boards,” 2004 Supreme Court Review 271 (2005)

Article on the Nature of American Constitutional Law and Rights

- “Inversion of Rights and Power,” 63 Buffalo Law Review 731 (2015)
- “The Permanent Constitution,” *Sesquicentennial Essays of the Faculty of Columbia Law School*, 123-26 (New York: Columbia Law School, 2008)
- “More is Less,” 90 Virginia Law Review 835 (2004)
- “Trivial Rights,” 70 Notre Dame Law Review 1 (1994)
- “The Constitution’s Accommodation of Social Change,” 88 Michigan Law Review 239 (1989)

Articles on Judicial Duty

- “Judicial Office and the Liberty Protected by Law,” Liberty Law Forum (Dec. 12, 2011)
- “Judicial Office,” 6 Journal of Law, Philosophy and Culture 53 (2011)
- “A Tale of Two Paradigms: Judicial Review and Judicial Duty,” 78 George Washington Law Review 1162 (2010)
- “Revolution and Judicial Review: Chief Justice Holt’s Opinion in *City of London v. Wood*,” 94 Columbia Law Review 2091 (1994)

Articles on Other Constitutional Issues

- “The Second Commerce Clause,” SSRN (2014)
- “Unconstitutional Conditions: The Irrelevance of Consent,” 98 Virginia Law Review 479 (2012)
- “Privileges or Immunities,” 105 Northwestern Law Review 61 (2011)
- “Beyond Protection,” 109 Columbia Law Review 1823 (2009)

Articles on Liberalism

- “Illiberal Liberalism: Liberal Theology, Anti-Catholicism, & Church Property,” 12 Journal of Contemporary Legal Issues, 693-725 (2002)
- “Liberality,” 78 Texas Law Review 1215 (2000)

Articles on Conflicts of Interest

- Commentary on the AAUP Statement on Corporate Funding of Academic Research, Free to Teach, Free to Learn, 51 (ACTA, 2013)

Articles on Contract and Property Law

- “The Development of the Nineteenth-Century Consensus Theory of Contract,” 7 *Law and History Review* 241 (1989)
- “The Conveyancing Purposes of the Statute of Frauds,” 27 *American Journal of Legal History* 354 (1983)

Conference Papers & Occasional Pieces

- “Administrative Discrimination,” *Yale Journal on Regulation, Notice and Comment* (Sept. 13, 2020)
- “Delegation or Divesting?” *Yale Journal on Regulation, Notice and Comment* (March 5, 2020)
- “Chevron Bias, Illustrated by Statistics,” *Law & Liberty Blog* (April 12, 2018)
- “The Raid on AIG’s Equity Was Illegal,” *Wall Street Journal* (March 9, 2018)
- “PTAB, Patents, and the Constitution,” *Yale Journal on Regulation, Notice & Comment* (Nov. 26, 2017)
- “From Kelo to Starr: Not Merely an Unlawful Taking but an Illegal Exaction,” *Law Liberty Blog* (Oct. 25, 2017)
- “Gorsuch and the Administrative State,” *New York Times* (March 20, 2017)
- “The Unconstitutionality of the Exxon Subpoena,” *Liberty Law Blog* (Dec. 3, 2015)
- “Magna Carta, Due Process, and Administrative Power,” *American Enterprise Institute* (2015)
- “Chevron, Independent Judgment, and Systematic Bias,” *Liberty Law Blog* (Aug. 11, 2014)
- “Is Administrative Law Unlawful?” a series of blog posts on the *Liberty Law Blog* (Aug.-Sept. 2014)
- “Is Administrative Law Unlawful?” a series of blog posts on the *Volokh Conspiracy* (July 14-21, 2014)
- “Is Administrative Law Unlawful? A Word from the Author” *Power Line* (July 2, 2014)
- “Underlying *Hobby Lobby*,” *National Review On-Line* (March 11, 2014)
- “Afterword: Context, Justice, and Law,” 6 *Journal of Law, Philosophy and Culture* 195 (2011)
- Waivers—Part I: “Are Health-Care Waivers Unconstitutional?” *National Review On-Line* (Feb. 8, 2011)
- Waivers—Part II: “Can Health-Care Waiver be Justified?” *National Review On-Line* (Feb. 18, 2011)
- Waivers—Part III: “Health-Care Waivers and the Courts,” *National Review On-Line* (March 14, 2011)
- “Two-Dimensional Doctrine and Three-Dimensional Law: A Response to Professor Weinstein,” 101 *Northwestern Law Review Colloquium*, 563 (2007)
- “Ingenious Arguments or a Serious Constitutional Problem? A Comment on Professor Epstein’s Paper,” 102 *Northwestern Law Review Colloquium*, 102 (2007)
- “Law and Judicial Duty,” 72 *George Washington Law Review* 1 (2003)
- “Separation and Interpretation,” 18 *Journal of Law & Politics* 7 (2002) (replacing erroneously printed version published under same citation)
- “Natural Rights and Positive Law: A Comment on Professor McAfee’s Paper,” 16 *Southern Illinois University Law Journal* 307 (1992)
- “Marginalia,” 61 *Yale University Library Gazette* 66-67 (1986)

Education

Yale Law School, J.D., 1982
Colby Townsend Prize, 1982
for “best individual research done for academic credit by a member of the
second-year class”
Connecticut Attorneys’ Title Guaranty Fund Prize, 1982
for “best paper on the subject of real property”

Princeton University, B.A. summa cum laude (History), 1979
Hall History Prize, 1979
Phi Beta Kappa, 1979

Employment

Columbia Law School,
Maurice and Hilda Friedman Professor of Law, 2006-

University of Chicago Law School
John P. Wilson Professor, 2000-05
Visiting Professor, Winter Quarter 2000

Northwestern University School of Law
Jack N. Pritzker Distinguished Visiting Professor of Law, Fall 1999

George Washington University National Law Center
Oswald Symister Colclough Research Professor of Law, 1995-2000
Professor of Law and Legal History, 1992-95
Visiting Professor, 1991-92

University of Connecticut School of Law
Professor, 1988-92
Associate Professor, 1985-88

University of Virginia Law School
Visiting Associate Professor, Fall 1986

Schnader, Harrison, Segal and Lewis, Philadelphia
Associate, 1982-85

Academic Affiliations

American Bar Association, Section on Administrative Law and Regulatory Practice
Committee on the History of Administrative Law
Member, 2015-

American Academy of Arts and Sciences
Member, 2015-

American Society of Legal History

Advisory Committee on the Cromwell Prizes, 2007-09
Board of Directors, 2004-06
Nominating Committee Member, 1998-2001
Program Committee Chair, 1993-94
Member, 1992-94
Sutherland Prize Committee Member, 1992-94

Association of American Law Schools
Provisional Section on Scholarship, Chair, 1995

James Madison Society
Member, 2017-

Honors

Bradley Prize, 2017

Hayek Book Prize, 2016
for *Is Administrative Law Unlawful?*

Henry Paolucci/Walter Bagehot Book Award, 2009
for *Law and Judicial Duty*

Sutherland Prize, 1994 (awarded 1995)
for "Revolution and Judicial Review: Chief Justice Holt's Opinion in City of London v. Wood"

Prompter Honoris Respectum, 1994

Sutherland Prize, 1989 (awarded 1991)
for "The Development of the Nineteenth Century Consensus Theory of Contract"