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2018 *University of Pennsylvania Law Review* Symposium

The History, Theory, and Practice of Administrative Constitutionalism

October 19-20, 2018
Philadelphia, PA

Organizing Faculty: Professor Sophia Z. Lee

The United States today faces contentious debates over the constitutionality of federal administrative action. These debates gained steam during the Obama presidency, as congressional gridlock led the President to rely heavily on administrative agencies to advance an ambitious and controversial policy agenda. Across the political spectrum lawyers and politicians charged these agencies with violating individual constitutional rights (such as religious freedom and procedural due process) and structural constitutional constraints (such as the President's constitutional obligation to faithfully execute the laws). The Trump White House has followed in its predecessor's footsteps, leading to similar challenges to his administration's changes to immigration, environmental, educational, and anti-discrimination policy.

Lurking behind these legal arguments is a bi-partisan anxiety about the constitutional status of the administrative state as a whole: the tangled web of agencies responsible for the vast majority of what the federal government does on a day-to-day basis. Despite their enormous power, federal agencies are barely mentioned in the Constitution's text. Yet they play a central role in the everyday interpretation and implementation of constitutional law. For instance, it was administrators who first struck the balance between the religious rights of employers and the statutory rights to access cost-free contraceptives of their female employees. It is administrators as well who are crafting the Trump administration's broad interpretations of religious liberty. As these examples suggest, it will often fall to administrative officials far from the public eye to resolve constitutional conflicts caused by a particular law, or to push the boundaries of the law in a constitutionally innovative direction.

In the last ten years, a field of scholarship has developed that sheds new historical and theoretical light on these interlocking issues of administration and constitutional law. Gathered under the moniker administrative constitutionalism, these scholars study the constitutional roots of the administrative state, the role that its agencies play in interpreting, implementing, and transforming constitutional law, and the tools that presidents, legislators, judges, and everyday citizens use to control the administrative state's constitutional creativity.

This symposium is the first to tackle the timely topic of administrative constitutionalism. Bringing together leading scholars to analyze and debate constitutionalism in and

of the administrative state, it will generate cutting edge work on the history, theory, and practice of administrative constitutionalism.

Please direct all questions to Jaelyn Castelar at castelar@pennlaw.upenn.edu.

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UNIVERSITY of PENNSYLVANIA

LAW REVIEW

SYMPOSIUM

THE HISTORY, THEORY, AND PRACTICE of

ADMINISTRATIVE CONSTITUTIONALISM

DAY ONE - FRIDAY, OCTOBER 19

1:00 PM – 2:00 PM ---- REGISTRATION

2:15 PM – 2:30 PM ---- WELCOME

2:30 PM – 4:00 PM

PANEL 1: THE ORIGINS OF ADMINISTRATIVE CONSTITUTIONALISM

PANELISTS: Gregory Ablavsky (Stanford), Sophia Lee (Penn),
Karen Tani (UC Berkeley)
COMMENTATOR: Kristin Collins (Boston U)
MODERATOR: Maggie McKinley (Penn)

4:15 PM – 5:45 PM

PANEL 2: ADMINISTRATIVE CONSTITUTIONALISM IN THE MODERN
ADMINISTRATIVE STATE

PANELISTS: William Novak (Michigan), Jeremy Kessler (Columbia),
Joanna Grisinger (Northwestern)
COMMENTATOR: Reuel Schiller (UC Hastings)
MODERATOR: Daniel Walters (Penn)

6:00 PM – 7:00 PM ---- RECEPTION

7:00 PM – 9:00 PM ---- DINNER and KEYNOTE: William Eskridge (Yale)

DAY TWO - SATURDAY, OCTOBER 20

8:00 AM – 9:00 AM ---- BREAKFAST

9:00 AM – 10:30 AM

PANEL 3: DEBATING ADMINISTRATIVE CONSTITUTIONALISM – THEORY

PANELISTS: Bertrall Ross (UC Berkeley), David Bernstein (Antonin Scalia)
COMMENTATORS: Olatunde Johnson (Columbia), Shirin Sinnar (Stanford)
MODERATOR: Sophia Lee (Penn)

10:45 AM – 12:15 PM

PANEL 4: DEBATING ADMINISTRATIVE CONSTITUTIONALISM – PRACTICE

PANELISTS: Lucas Guttentag (Yale), Alejandro Mayorkas (WilmerHale),
Peter Margulies (Roger Williams), Cristina Rodriguez (Yale), Josh Blackman (South Texas)
MODERATOR: Nicholas Parrillo (Yale)

12:30 PM to 1:30 PM ---- LUNCH

1:45 PM – 2:45 PM

PANEL 5: DEBATING THE NON-DELEGATION DOCTRINE

PANELISTS: Cary Coglianese (Penn), Ronald Cass (Center for the Rule of Law)
MODERATOR: Christopher Yoo (Penn)

3:00 PM – 4:45 PM

PANEL 6: DEBATING THE CONSTITUTIONALITY OF THE ADMINISTRATIVE
STATE

PANELISTS: Gillian Metzger (Columbia), Michael Rappaport (U San Diego),
Joseph Postell (U Colorado), Jon Michaels (UC Los Angeles)
MODERATOR: Mila Sohoni (U San Diego)

5:00 PM – 5:30 PM ---- CLOSING

Please direct all questions to Jaclyn Castelar at castelar@pennlaw.upenn.edu.[About the Law Review](#)[Masthead](#)[Print Edition](#)[Law Review Online](#)[Member Intranet](#)[Debates](#)[Responses](#)[Essays](#)[Case Notes](#)[Symposium](#)[Submissions](#)[Writing Competition](#)[Public Interest Essay Competition](#)[Twitter](#)[Facebook](#)[Subscribe](#)[Contact Us](#)© 2018 University of Pennsylvania Law Review · 3501 Sansom Street, Philadelphia, PA 19104 · (215) 898-7060 · [Version History](#) · [Design FAQs](#)