



Rule by Regulation is Unconstitutional, Dangerous...and Somewhat Avoidable

By Neal McCluskey
October 8, 2014

Early this morning, before I headed out the door for work, I was reading an [excellent commentary](#) on administrative law – basically, rule by bureaucrats – by Columbia University professor Philip Hamburger. As I read, I found myself becoming increasingly distraught over the huge sway regulators have over our lives, and lamenting that accepting it is one of many ways we have become inured to government that is far more arbitrary and powerful than the Framers intended. When I got to work, I [read this](#), about a federal judge striking down a rule prohibiting for-profit colleges from rewarding recruiters based on the graduation rates of students they enrolled. It illustrated just how arbitrary regulation is.

Basically, whether or not a bureaucratic rule is considered too arbitrary can come down to a half-sentence preamble offering the purpose for the rule. After a court had previously struck down the ban on completion-based rewards, saying that it was insufficiently justified in writing, the Department of Education added to the rule's preamble that "enrollment is a necessary precursor to completion." Or maybe a half-sentence isn't enough: The most recent ruling was that the explanation still wasn't sufficient.

By the way, isn't completion what we're supposedly shooting for? Indeed, hasn't the Obama administration proposed [rewarding schools](#) for exactly that?

Anyway, this is just a single turn in a mystifying [labyrinth of rules and regulations](#) that colleges and universities must navigate, at least if they want access to federal money. And almost every college wants federal funds. Indeed, they need them to compete with all the other institutions that take them.

Of course, regulations can be imposed on people who don't take federal funds, as lots of folks with [land they'd like to develop](#) would surely attest. But a school or industry brings the administrative state on itself when it grabs for federal funds, which is, unfortunately, exactly what academia has done.

Neal McCluskey is the associate director of Cato's [Center for Educational Freedom](#).