



**THE CONSTITUTIONAL CONTEXT OF PUBLIC ADMINISTRATION AND
EXECUTIVE ORDERS**

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For a long time, both executive orders and the administrative state have been controversial topics since for many they seem antithetical to the constitutional principles that are at the center of American governance. Here I examine the relationship between executive orders and public administration in the context of four constitutional principles: representative democracy, separation of powers, federalism, and individual liberties, with special considerations of the use and abuses of executive orders within this relationship. I consider this relationship in the context of current instances of executive orders that affect the administrative state. For this analysis, I employ a framework based on a constitutionally-grounded theory of public administration developed by John Rohr that I refer to as the “administrative constitutionalism theory.” Additionally, I present two different views on executive orders: one framed by the unitary theory of the executive, and the other by the three zones framework developed by Justice Robert Jackson in *Youngstown Sheet & Tube Co. v. Sawyer* 343 US 579 (1952). Using that framework, I offer a critique of the unitary theory of the executive as an unacceptable rationale for executive orders in a governmental system built upon constitutional principles. I then present evidence and analysis that the three zones framework offers the proper guidance for the use of executive orders in a way that aligns with these principles, and which is compatible with Rohr’s administrative constitutionalism framework. I argue for the use of executive orders in accordance

with the three zones framework and administrative constitutionalism as a way of structuring and limiting the use of executive orders to constitutionally appropriate criteria.