

OLLI At Duke Civil Discourse or Civil Discord

SESSION 3 SERVANTS OR RULERS

Dale Steinacker

1

Lincoln's Gettysburg Address

- November 19, 1863
- "... and that government of the people, by the people, for the people, shall not perish from the earth."

2

Charles Darwin

- Origin of the Species - 1859
 - Some are "fitter" than others
- Raises the questions
 - How do you define fit?
 - How far do you go to improve society by giving authority to the "Fittest"?

3

James Burke - Two PBS Series

- Connections
- The Day the Universe Changed
 - A TV episode (Chapter Eight in the book that goes with the series)
 - Chapter is called "Fit to Rule"
 - Discusses the impact of Darwin's thought on Political thought starting in the late 19th century

4

Another reader of Darwin

- Burke - Page 273
 - "... one last, major success ... When he read *Origin*, Marx wrote to Engels, '*Origin* is the history foundation for our views.' Dialectal Materialism ... paralleled Darwin's mechanism of evolution. Society, like nature, improved over time."

5

Burke on the World after Darwin Page 273

"... Darwin removed the supernatural, teleological meaning of existence, just as Marx did. Man was able to modify history once he had understood that history obeyed laws just as nature did. Progress was only possible through belief in these views. Change was at the root of human development.

Thanks to Darwin the modern view of the human condition today is essentially the same, on both sides of the ideological border. The disagreements are not about whether society can progress, but about the methods to be used. Both sides are equally materialist. On both sides man is alone with the problem of his future. Life is, in the literal sense, what we make it."

6

But then, who should rule?

- Determined by Race?
 - Aryans? - Nazis
- Determined by Class?
 - Proletarians? - Communists
- Determined by Merit?
 - Scientists and Specialists?
- Obviously Not by Equal Votes
 - Since we are evolving, some of us are better than others!

7

Theory and Reality of Government by Experts

- The ideal of Nonpolitical governmental by unbiased experts
- Problems with that idea in a pure world
- Problems when people other than the experts are not pure
- Problems when the “experts” are not pure

8

DeTocqueville on Human Nature

- Part II / Book Three #42 of Democracy in America
 ... For human institutions can be changed, but man cannot: whatever may be the general endeavor of a community to render its members equal and alike, **the personal pride of individuals will always seek to rise above the line, and to form somewhere an inequality to their own advantage.**

George Orwell – Animal Farm
 ALL ANIMALS ARE EQUAL
 BUT SOME ANIMALS ARE MORE EQUAL THAN OTHERS

C. S. Lewis – The Abolition of Man

9

Resources -1

- Hayek, Friedrich A.
 - The Road to Serfdom
- Sowell, Thomas
 - The Vision of the Anointed: Self-Congratulation as a Basis for Social Policy
 - A Conflict of Visions
- Codevilla, Angelo
 - The Ruling Class: How they Corrupted America and What We Can Do About it
- Postell, Joseph – Heritage Foundation
 - From Administrative State to Constitutional Government

10

Resources - 2

- Hillsdale College – 1844
 - Founded during the rise of the Republican Party as an Anti-slavery party
 - Avidly individual rights and Constitutionally originalist
- Constitution 101: The Meaning & History of the Constitution
 - Free Online Course
 - Accompanying Book via Donation (\$100) or Amazon (\$40)
 - The U. S. Constitution - A Reader
 (see more next slide)

11

Resources – 3

- Course Section 9 - The Administrative State Today, and Chapter 10 of the book (entitled The Progressive Rejection of the Founding) have writings of John Dewey, Woodrow Wilson, Theodore Roosevelt, FDR and others on the move away from individual rights to the Administrative State and government “without politics” and “by experts and scientists.”

12

The Idea (Ideal?) of the Virtuous Administrator

- A scientific over-class capable of guiding the rest of society
- Government agencies were simply clerical or functional
 - Post Office, Military, Customs
- Now they start to set policy under very broad guidelines.

13

Woodrow Wilson

- The Study of Administration (1884)
From The U. S. Constitution – A Reader
- The Problem with Public Opinion and Government
 - Page 672 – “Wherever regard for public opinion is the first principle of government, practical reform must be slow and all reform must be full of compromises. For **wherever public opinion exists it must rule.**”

14

Woodrow Wilson

- The Answer to the Problem -The Study of Administration - Page 673
 “Most important to be observed is the truth already so much and so fortunately insisted upon by our civil service reformers; namely, that **administration lies outside the proper sphere of politics.** Administrative questions are not political questions. Although politics sets the task for administration, **it should not be suffered to manipulate its offices.**”

15

Administration Without Politics? Simple Case

- Post Office
 - Generally not considered part of the “administrative state”
 - Simple job – Deliver the Mail!
 - Political Questions
 - Saturday Deliveries?
 - Cluster boxes or door-to-door delivery?

16

Some Administrative Agencies

- Interstate Commerce Commission
 - Founded 1887 to regulate railroads and “Set fair rates”
 - Had discretion – what is “fair”
- SEC – Securities and Exchange Commission
- Federal Trade Commission
- Environmental Protection Agency
- CPFB – Consumer Protection Finance Board
 - Independently funded
 - Independence of its chairman being challenged in courts

17

Problems with Expertise

- Narrow Mindedness or Tunnel Vision
 - I know more and more about less and less until I know everything about nothing
 - My area is the only area that matters
 - Radar site near Pearl Harbor
 - Programmers optimized computer code and made users lives difficult

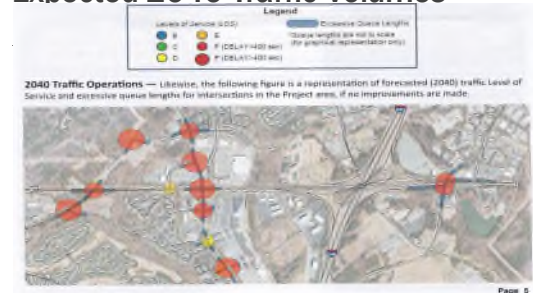
18

Here in Raleigh-Durham

- North Carolina Department of Transportation is working to upgrade the U.S. 70 area between I-540 and I-85
- Web site is <https://www.ncdot.gov/projects/US70BrierCreek/>
- There are safety and collision problems as well as forecasts about delays

19

Expected 2040 Traffic Volumes



20

How is this not a political question?

- The law requires an environmental impact statement
- How much impact is there on people waiting, accidents, cars emitting exhaust or electric cars using power?
- Given differences between highway traffic management “experts” and environmental “experts” – Who makes the call?

21

Rule Making

	2017	2016	Starting 2004	From:
Final Rules	938	3,853	49,352	Ten Thousand Commandments-Competitive Enterprise Institute – May 1, 2017
Proposed Rules	526	2,391	32,118	
All Signif., Proposed	56	158	4,015	
Federal Register Pages (adj. *)	20,204	96,994	1,042,548	
Executive Orders	34	45	482	
Executive Memoranda	20	36	368	
Notices	7,027	24,557	330,872	
Notices, sign under EO12866	2	8	264	

22

Administrative Agencies

- Massive laws and regulations
 - “phone book size” regulatory documents
 - A citizen can’t even read all that, let alone comprehend it.
 - Courts, lawyers and specialists spend careers debating what they mean.
 - Don’t worry – you’re guilty.

23

Burden of Interpretation

- [US Steel wants to accelerate investments, bring back jobs, CEO says](#)
- December 6, 2016
United States Steel CEO Mario Longhi
- "There was a point in time in the past couple years that I was having to hire **more lawyers** to try to interpret these new regulations **than** I was hiring **... engineers**. That doesn't make any sense."

24

Separation of Powers

•Founders

- Biblical – Humans are “Sinful”
- Lord Acton – “Power corrupts – Absolute Power corrupts absolutely”

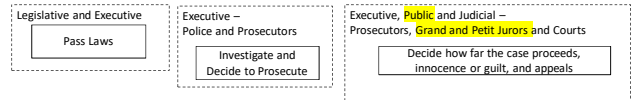
◦ Federalist 47

The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, selfappointed, or elective, may justly be pronounced the very definition of tyranny.

- Argues for the need for separation of powers
- We have to constrain government
- “That government governs best which governs least”

25

Separation of Powers



26

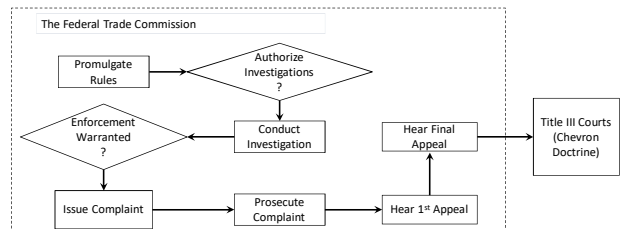
No Separation of Powers

•Administrative Agencies

- Set rules
- Enforce rules
- Decide which cases to bring
 - Note – Article III courts can't initiate cases in other types of law – executive branch prosecutors bring cases
- Adjudicate the cases
- Hear appeals
- See [The Problem of the Administrative State, in One Paragraph](#)

27

The Federal Trade Commission at Work



28

The Chevron Doctrine

•If you lose all your “appeals” inside an administrative agency, you can then go to the “regular” or “Article III” Courts.

•Then you run into the “Chevron Doctrine.”

- the 1984 *Chevron v. NRDC* decision
- The court assumes the agency knows more than the court does and defers to the agency so, why did you bother to appeal?

◦ See [Judge Gorsuch and the Chevron Two-Step](#)

29

Other Players and the Administrative State

•The need to “protect yourself”

- The rise of lobbyists
 - Run interference at the agency and in the Congressional committees with oversight
- The rise of “special interests”
 - My “activist” is your special interest
 - Is Duke Energy a special interest or looking out for my needs?
- “Agency Capture”

30

And now about the experts ...

- Woodrow Wilson
 - It'll Always Work -The Study of Administration - Page 678
 - "The ideal for us as a civil service cultured and self-sufficient enough to act with sense and vigor, and yet so intimately connected with the popular thought, by means of elections and constant public counsel, as defined arbitrariness of class spirit quite out of the question."

Really?

31

Two views

FOUNDERS

- Human Beings
 - Limited Knowledge
 - Limited Virtue
 - Unchangeable Nature

POST-DARWINIANS

- Some people are more accomplished than others and can be pure enough and knowledgeable enough to be entrusted with power and control over the lives of others

Sowell, Thomas

A Conflict of Visions: Ideological Origins of Political Struggles

32

Question?

- Do agencies exist to:
 - Solve problems?
 - What if a solution is found?
 - Manage problems?
 - Grow their empires?
- This is a question for Congress, regulated companies and groups (Parks, EPA, etc.) and employees!

33

Agency Focus as Life Focus

- Career was and/or becomes specialty
- Other concerns are diminished
- Leads to lack of balance for other concerns and issues
 - Environment vs Cost and availability of Electricity
 - Mileage standards vs. Vehicle safety

34

Eisenhower's Warning Farewell Address

- "Akin to, and largely responsible for the sweeping changes in our industrial—military posture, has been the technological revolution during recent decade."
- ...
- The prospect of domination of the nation's scholars by Federal employment, project allocations, and the power of money is ever present – and is gravely to be regarded.
- Yet, in holding scientific research and discovery in respect, as we should, we must also be alert to the equal and opposite danger that public policy could itself become the captive of a scientific—technological elite.
- It is the task of statesmanship to mold, to balance, and to integrate these and other forces, new and old, within the principles of our democratic system ever aiming toward supreme goals of our free society."

35

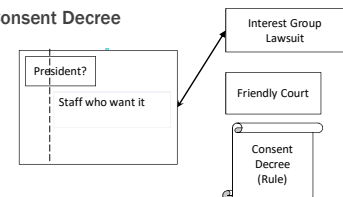
Bypassing Congress – Sue and Settle

CONGRESS SAYS NO

- Bill either not proposed, stopped in committee or rejected on the floor

HOW TO "MAKE A LAW"

- Consent Decree



36

Deep State - Civil Service as Rulers?

- **All Out War: The Plot to Destroy Trump** by Edward Klein

- Appendix B – FBI report

The Bureau has gotten actionable intelligence that **there is, within the federal government, a growing and organized movement to block or interfere with administration policy decisions.** There have been regular organized meetings of large numbers of government workers at a church in the Columbia Heights area of the District where plans have been discussed **to actively sabotage government programs they disagree with.**

(Kindle Locations 3548-3551)

43

In Summary Excellent, Balanced Article

- **The cult of the expert – and how it collapsed** by Sebastian Malloy

- **Quotes Christopher Lasch**

- "Elites, who define the issues, have lost touch with the people," he wrote. "There has always been a privileged class, even in America, but it has never been so dangerously isolated from its surroundings."

- These criticisms presciently anticipated ... the **rootless cosmopolitan elite, unburdened by any sense of obligation ... , its arrogance enhanced by the conviction that its privilege reflects brains and accomplishment, not luck and inheritance.**

44

Malloy's Warning - What is Needed

"To survive these inevitable resentments, **elites will have to understand that they are not beyond politics** – and they will have to demonstrate the skill to earn the public trust, and preserve it by deserving it. **Given the alternative,** we had better hope that they are up to it."

- And there are always alternatives (worse than Trump or Le Pen)

- Lenin, Hitler, the Guillotine ...

45