

If you don't regularly receive my reports, request a free subscription at steve_bakke@comcast.net !
Follow me on Twitter at <http://twitter.com/@BakkeSteve> and receive links to my posts and more!
Visit my website at <http://www.myslantonthings.com> !

Rebalancing Government

Steve Bakke  July 23, 2024



The Government of our Founders has been in a struggle for political dominance with the modern “progressive movement.” Progressivism was originally popularized by democrat president Woodrow Wilson. His progressivism was a reform movement made up largely of leading intellectuals and social reformers.

Wilson and followers felt the Constitution hadn’t “kept up with our changes of conditions.” They believed the idea of limited government and separation of powers were barriers to progress and should be removed. Their progressive philosophy was to create overwhelming government power, as long as it was for the “greater good,” rather than focusing on maximum individual liberty.

A young Woodrow Wilson wrote, in 1887, that “...all idea of a limitation of public authority by individual right be put out of view, and that the state consider itself bound to stop only at what is unwise or futile...” These early progressives declared that their concept of government would require the best educated experts to accomplish their ambitious goals.

Early progressives envisioned this “expert class” would be the administrative arm of government, leaving for Congress the official duty of passing progressive legislation. This “expert class” of administrators was to be totally independent and objective. It would be insulated from, and unsullied by, the “seamy underbelly” of day-to-day politics.

Rather than assigning the president the job of organizing and leading these “experts,” it seems the ideal progressive presidential job description was essentially as the “chief legislator.” The reasoning for this was that the president is broadly selected by the entire electorate via the electoral college. They asked: Who else is closer to the “people”? Who else could better lead our legislators?

That describes the mood of progressive leaders in the early 20th century. These early progressives didn’t accomplish their ideals, but their fingerprints are all over the “modern administrative state.”

In 1984, the Supreme court issued what is commonly referred to as the “Chevron Deference” opinion. One tenet of that decision was that the Court should give “deference” to the administrative experts. That is to say, “if the statute is silent or ambiguous” regarding an issue, the courts should give deference to reasonable decisions made by the rule makers.

Another result of Chevron was that administrative agencies not only established the rules and regulations for legislation, they also were the enforcers, and in a dispute, it was adjudicated by “tribunals” made up of employees of those agencies.

Obviously influenced by Chevron, modern legislation has often been passed by presenting general legislative intent, without much detail. They leave it up to the administrative state to “fill in the blanks” and “flesh out the details.”

The often-heavy-handed rules and regulations resulted in a recent case argued before the Supreme Court which claimed Chevron Deference had led to these agencies exceeding their constitutional authority. The Supreme Court agreed and reversed the 1984 opinion.

It’s important to acknowledge this decision doesn’t reject the need for legislative rules properly applied and enforced. It’s important for us to remain faithful to having committed and talented agency administrators and regulators, but Congress must get closer to the process of establishing the details of their legislation.



Simply stated, Congress relinquished too much authority to governmental agencies. Congress is now more accountable for voting on unambiguously crafted legislation. Hopefully, new legislation will be less ambiguous than has been the case since Chevron.

The reversal of Chevron doesn’t increase the power of the judiciary, as some critics claim. By delivering this decision the Court admits to originally making a mistake and simply returns responsibility and accountability to Congress. But the Court acknowledges that the judicial system does regain its original responsibility of reviewing the constitutionality, application, and enforcement of laws of our land.

Likewise, this ruling doesn’t diminish presidential power by giving congress more responsibility. It’s no secret that, as a practical matter, the Office of the President no longer dominates the operation of the several hundred federal agencies in our government.

American governance is being rebalanced and brought back to the basics. The impact of this decision will be far-reaching, but it’ll be a long time before we find out what all the implications will be.