Written by **Becky Akers** on August 26, 2011

Administrative Law: The Second Set of Books

"I saw a man standing on fire," one eyewitness told WMUR-Channel 9. "He walked around a little bit, walked on to the grass, collapsed on all fours and literally sat there and burned."

"Several men said their attempts to help Ball proved ineffective," WMUR continued, "partly because it appeared he did not want to be helped. 'He just looked like he was just chilling there, doing yoga or something. It was weird. We were all stunned,' said witness Sean Desio."

By air-time that evening, "Investigators [had] not released any possible motive" for this very public, agonizing, and dramatic suicide. But Ball himself solved the mystery the next day, when his last words — all 15 carefully investigated, cogently argued pages of them — reached Keene's *Sentinel*.

At 58, this loving father of three children immolated himself because the state had systematically and mercilessly destroyed his family. "My story starts with the infamous slapping incident of April 2001," he recalls in his manifesto. "While putting my four year old daughter to bed, she began licking my hand. After giving her three verbal warnings I slapped her [still a legal punishment, he explains later]. She got a cut lip. My wife asked me to leave to calm things down. When I returned hours later, my wife said the police were by and said I could not stay there that night. The next day the police came by my work and arrested me, booked me, and then returned me to work."

The couple divorced about six months later. That gave the State even more power than it already boasted to ration this "domestic abuser's" time with his children.

For the next decade, Ball would suffer a series of court dates, mandatory counseling, and officious meddling, always with the threat that if he didn't cooperate, bureaucrats would strip him of his natural rights as a parent. He saw — and chronicles for us — the corruption, ineptitude, and unconstitutionality of "child protective services" up close. He also substantiates his observations with fascinating and original research.

Ball's horrific suicide condemns this satanic scam; indeed, he symbolically chose his deathbed based on his family's persecution: "I only managed to get the main door of the Cheshire County Courthouse…. I would appreciate it if some of you boys would finish the job for me. They harmed my children. The place is evil. So take it out." He has become both a legend and a martyr for "fathers' rights," a movement he joined and eventually led.

The Second Set of Books

But Ball's protest against the State and its war on his family has far wider implications, and not just for

other parents enduring the same atrocities. It damns the entire regime of administrative law — or, in Ball's words, "The Second Set of Books."

"You never cover the Second Set of Books your junior year in high school," he writes. "That [is] because we are not suppose to have a Second Set of Books. This is America — we have the rule of law," he adds with fine sarcasm. "The people within the law enforcement community no longer seem to know the difference between the law, with its checks and balances, and the policies, procedure and protocols that constitute The Second Set of Books."

Like Ball before the State eviscerated his family, you've probably never heard of the Second Set of Books. You may naively believe that the politicians in the judicial, legislative, and executive branches govern according to the Constitution — or at least are supposed to.

You would be wrong. Since the late 19th century, administrative law has ruled most of American life. And that Second Set of Books is openly, consciously inimical to the Constitution.

Administrative law "allows for the creation of public regulatory agencies" — that's "bureaucracies" to you and me — "and contains all the statutes, judicial decisions, and regulations that govern them. It is the body of law created by administrative agencies to implement their powers and duties in the form of rules, regulations, orders, and decisions," says *West's Encyclopedia of American Law*. And yes, you read that circular reasoning right. Agencies draft the laws that empower them to draft laws: They write the rules of the game they play against us.

Starting from premises diametrically opposed to those of the Constitution, the administrative dynasty lauds government as mankind's benefactor. Indeed, Charles H. Koch, widely viewed by friend and foe alike as a libertarian, is an apologist for administrative law who laments that "failures of the administrative process in important areas of government have been translated into increased rejection of government efforts to humanize modern society." Rather than reject "the administrative process as a tool for solving societal problems," he urges better training for bureaucrats so they can continue to "civilize and rationalize our complex society."

Administrative law supplies the weapons government needs for said "civilizing," among them its versions of efficiency and justice. It protects and advances government, not liberty. It pretends the State's "interests" trump our inalienable rights. And it puts "society" and its good — as bureaucrats define it — ahead of the individual.

The Progressives who founded the administrative regime bragged that they did so specifically to defy and overturn the Constitution. And that fact is candidly, casually acknowledged to this day. Georgetown Law Library offers an online tutorial on administrative law. One "review question" at the conclusion of its first section asked, "Federal agencies get their authority to make regulations from the U.S. Constitution. True or False?" When I checked "False," the software applauded me and an answer popped up: "Great! Agencies actually get their authority to issue regulations from statutes."

Administrative law invaded America from Germany. Philosophers there considered government a benevolent deity, not the vicious enemy America's Founders had feared. That reverence for the State would eventually result in the Nazis' murderous rampage; in the 1870s, it attracted Americans interested in economics to German universities for advanced study. As Prof. Tim Leonard of Princeton University notes, "Bismarkian Germany gave the young Americans exposure to the ideas of the German Historical School, with its positive view of state economic intervention, and its hostility to the idea of natural economic laws, what it disparaged as 'English' economics. Their German university professors

… were, moreover, accorded respect and authority and they were consulted on important matters of national economic policy. Th[is] example … permitted the young American graduate students to imagine careers as yet non-existent in the United States — academic advocates with expert influence upon economic policy."

The returning Bismarkians must have cheered in 1887 when Congress hatched the Interstate Commerce Commission (ICC). A couple bureaucracies had threatened American liberty before that, notably U.S. Customs and the Post Office, with the latter even enshrined in the Constitution, but the ICC launched the modern plague of regulation.

As usual, the ICC was government's "solution" to a problem it had caused. The commission was supposed to ride herd on the railroads, which consumers reviled as abusive and far too powerful. And they were right — but what else would we expect, given the transcontinental railroad's fascist birth? The Constitution never authorized government to grant any company taxpayers' money and millions of acres of land, but President Abraham Lincoln did just that for the Union Pacific and the Central Pacific Railroads as they laid track from Omaha, Nebraska, to Sacramento, California.

Tragically, customers didn't complain about the political influence and manipulation; they griped instead about legitimate practices like volume discounts. Congress obligingly ran to the rescue, though not by insisting the railroads repay Lincoln's largesse or acknowledging that the feds' continuing coziness with the industry was warping it. Instead, it exponentially increased that coziness with its creation of the ICC and its "delegating" to it power over transportation Congress didn't have.

Counter to the Constitution

The Constitution no more allows Congress to "delegate" authority to legislate — even if we rename that legislation "regulation" — than it allows the President to hand his cronies land. Regardless, the ICC set the pattern: Congress assigns power the Constitution never gives it to agencies, which get away with pretty much anything so long as they claim, however implausibly, that their outrage helps them fulfill Congress' unconstitutional "delegation."

No wonder *West's Encyclopedia of American Law* records that there was "early resistance" to the new regime; nonetheless, "the delegation of legislative authority was gradually accepted by the U.S. Supreme Court so long as Congress set clear standards for the administration of the duties in order to limit the scope of agency discretion." As if "clear standards" grant politicians a pass for violating the Constitution. On this flimsy and exasperatingly illogical hook hangs the entire bureaucratic kingdom.

Meanwhile, judge the ICC's success at curbing the railroads from historian Page Smith's pungent conclusion in *A New Age Now Begins: The Rise of Industrial America:* "In the first decade of [the ICC's] existence the freight rates on the transportation of wheat … virtually doubled while the price of wheat fell."

Unfortunately, such ironies didn't slow the bureaucracies' explosive growth. As they spawned agency after agency, the Progressives loudly proclaimed their disdain for the outmoded Constitution; in fact, their arguments still din at us today. The new inventions popping up all over the early 20th century — telephones, electric light bulbs and lamps, automobiles — hadn't existed during the days of the fuddy-duddy Founders: Only extra-constitutional agencies could protect the consumers so eagerly buying these products from their dangers.

Progressives despised the Constitution's brakes on government, its ponderous procedures that retarded the foisting of new laws on Americans; government should be efficient, they proclaimed. It's difficult for

contemporary Americans, who use "bureaucracy" as a synonym for "inefficiency" and "waste," to believe that anyone ever saw them as paragons of prowess, but that is exactly how the Progressives sold them to our grandparents. *West's Encyclopedia* advises, "Administrative agencies were established to do the government's work in a simpler and more direct manner than if the legislature did the job by enacting a law and the courts applied that law in various cases." This alone annihilates freedom since it guarantees thousands of rules strangling every aspect of life.

Bureaucracy intertwines the three branches of government that the Constitution divides and pits against one another. So an agency not only writes laws à la Congress, it enforces them as does the executive, and — the coup de grâce — adjudicates like a court any challenges to those laws. Or, as *West's* puts it, "Administrative law … contrasts with traditional notions that the three branches of the U.S. government must be kept separate, that they must not delegate their responsibilities to bureaucrats, and that the formalities of due process must be observed…. Combining the three functions of government allows an agency to tackle a problem and get the job done most efficiently." But who wants such jobs done at all, let alone efficiently?

Unappealing

Meanwhile, victims stripped of due process must go hat-in-hand to the bureaucracy and beg it to reconsider. Very occasionally, it may. When it doesn't, supplicants must exhaust "every available remedy," i.e., they jump through the agency's procedural hoops for months or years before they may appeal to the courts for relief.

Progressives base their faith in bureaucracy on the belief that government's "experts" can produce utopia if they, rather than we, lead our lives. But taxpayers failed to appreciate their rulers' wisdom, as bureaucrats with their fines and ineptitude went where no government had gone before. *West's* reports that "antagonism toward bureaucracy increased as existing dissatisfactions were multiplied by the number of new bureaucrats." And in an article for the *Yale Law Journal*, Martin Shapiro acknowledges "the fundamental antipathy of Anglo-American jurisprudence to administrative law: Allegiance to the 'rule of law' demanded that government officers be subject not to special rules invented for their benefit but to the same common law rules that governed private persons."

That led to "a game of procedural catch-up," Shapiro continues. "Courts and legislatures attempted to control agencies' autonomy only after agencies came to wield substantive authority." Nor has anyone yet succeeded in re-bottling the evil genie. The hostility to administrative law "finally crumbled under the weight of the New Deal's administrative activity. A decade after the New Deal had endowed the agencies with vast substantive power, Congress provided procedural rules for the exercise of that power in the Administrative Procedure Act of 1946 (APA)."

The APA was alleged to make agencies "fairer"; in reality, it restrained courts from reviewing and rejecting their despotism. Contrast that with the Constitution's ironclad defense of our rights. The latter absolutely forbids government from encroaching almost everywhere, whereas the bureaucratic regime can't conceive of any area immune to its meddling; the Constitution keeps us from having anything to complain about since government "shall not," while bureaucracy haughtily dismisses our objections.

The APA also decreed that "before adopting a rule, an agency generally must publish advance notice in the *Federal Register*, the government's daily publication for federal agencies," says *West's*. "This gives persons who have an interest in, or are affected by, a proposed rule the opportunity to participate in the decision making." In actuality, it prescribes government via lobbyists and special interests: Only they

have the time and resources to monitor the onslaught of new regulations.

Then, too, bureaucracies exploit their natural camouflage. Most of them directly dictate to a small number of citizens; the Food and Drug Administration ultimately affects everyone, yes, but its regulations bear disproportionately on manufacturers of food and drugs. Only folks working in or enthused about those fields are likely to spend the time, money, and effort protesting policies. Indeed, most agencies escape general scrutiny when they saddle an industry with new burdens; regulations are so esoteric that the industry's newsletters alone report them. Amendments to the Second Set of Books seldom attract much attention, let alone the opposition necessary to stop them.

Thomas Ball is not the Books' only suicide. Last year, Andrew Joseph Stack III crashed his small plane into one of the IRS's offices after it looted him: "I knew Joe had a hang-up with the I.R.S. on account of them breaking him, taking his savings away," Jack Cook, his step-father-in-law, told the *New York Times*. "And that's undoubtedly the reason he flew the airplane against that building. Not to kill people, but just to damage the I.R.S." Like Ball, Stack wrote a detailed indictment of the agency that bullied him into a kamikazi's death.

Take a Look at TSA

I pray you have less experience with Child Protective Services or the IRS than poor Ball and Stack. But anyone who's been to an airport lately has seen administrative law in practice at the Transportation Security Administration's (TSA) checkpoints. Congress chartered this bureaucracy in 2001 with "responsib[ility] for day-to-day Federal security screening operations for passenger air transportation and intrastate air transportation" — an exceedingly unconstitutional leap since "security screening operations for passenger air transportation" appears nowhere among the federal government's enumerated powers, any more than does "empowering a bureaucracy to sexually assault passengers."

No matter: TSA takes it from there — and expands it, too. It arbitrarily dictates what passengers may carry with them as well as how ("3-1-1 for carry-ons = 3.4 ounce (100ml) bottle or less (by volume)," orders the TSA's website; "1 quart-sized, clear, plastic, zip-top bag; 1 bag per passenger placed in screening bin"); their demeanor and conversation, ("Security is Serious. Belligerence, inappropriate jokes and threats are not tolerated"); even their dress ("avoid wearing clothing with metal.… Passengers are required to remove footwear for X-ray screening"). It just as arbitrarily rules on how it will molest us — currently, via sexual assault and carcinogenic scanners that photograph our naked bodies.

No one outside the TSA reviews this nonsense after the agency invents it. Ditto for its execution: Rather than less biased employees from another of Leviathan's branches, the TSA's own agents enforce these regulations — and their allegiance to the agency's whims determines their salaries and promotions.

The TSA also demonstrates what happens when someone challenges a bureaucracy in court. The Electronic Privacy Information Center (EPIC) filed a lawsuit to stop the TSA's irradiating of passengers with its porno-scanners — but the bench found that forcing passengers to submit to naked examination is indeed constitutional.

If you don't know about the Second Set of Books, that ruling is so absurd you can only assume the three justices deciding the case had savored the marijuana that barred one of them, Douglas Ginsburg, from the Supreme Court. But if you realize that virtually anything bureaucracies declare necessary to carry out their mandate from Congress is "constitutional," you'll understand how adults literate in English can possibly wring permission for government's goons to ogle us from the Fourth Amendment's clear

prohibition of warrantless searches.

Meanwhile, Ginsburg did chide the TSA — not for its jaw-dropping violations of the Constitution but for flouting the APA: Agencies must submit any proposal that will "substantially" affect their serfs (i.e., farmers for the USDA, broadcasters for the FCC, passengers for the TSA) to a period of "public comment." Sometimes agencies abandon their intentions if the comments are overwhelmingly opposed — but nothing says they must. The TSA has already received millions of public comments on its savageries (though not as formally as the APA demands), and it has proved over and over its utter contempt for our opinion. However desperate our cries, it will continue sexually molesting us.

How's that for "efficient" government? hjh