

Hang Together

"We must indeed all hang together, or most assuredly we shall all hang separately." Benjamin Franklin

The Duty To Restate The Obvious

Posted on **February 5, 2013** by **Daniel Kelly**



A common refrain among those who pay little attention to politics is that it just doesn't matter because there's no meaningful distinction between the contending parties. Sometimes that's just an excuse for the lazy abdication of civic responsibility. But sometimes it reflects a justified frustration with what appears to be Washington's Tweedle-Dee/Tweedle-Dum show.

To the extent the refrain is true, why are policy prescriptions cascading from the corridors of power just different shades of oatmeal? Our latest billion-dollar political contest, for instance, was between the authors of ObamaCare and RomneyCare. I'd be hard put to describe the operational differences between the two (there are some), but I couldn't identify a philosophical difference between the two to save my life. Or how about finding some meaningful distinction between raising tax rates as opposed to limiting deductions, the subject of saturation-coverage brinksmanship last month? Let's see, if tax rates go up, I send more of my money to Washington, whereas if my deductions are limited I'll . . . hmm.

There are, of course, notable exceptions to this degree-of-beige phenomenon. For example, one side fears an armed citizenry while the other embraces it, one champions unborn life while the other does its best to ignore it. But these few stark differences don't often intrude on politicians' daily business of telling us how we must conduct our affairs.

There are two possible explanations for the not unreasonable observation that serious, substantive divisions are not driving our political debate. First, it may be that the two parties have been moving towards a certain set of central truths from different directions, and the passage of hundreds of years has brought them so near the destination that proximity has left little more than cosmetic differences between them. Or second, it may be that one side has simply folded.

We can find the answer, I believe, in silence. The type of silence, that is, that Sherlock Holmes found so instructive, the kind that evidences something amiss because there is quiet when there ought not to be. The “curious incident in the night” – of a dog not barking – told Sherlock everything he needed to know to solve his mystery.

When considering proposed legislation, there are two questions a responsible lawmaker must ask (and answer). First, does the government have the authority to do the thing proposed by the bill? And second, in light of all the circumstances, is the proposal prudent (that is, will it promote human flourishing)?

Our political debates offer up loads of statistic-packed analyses describing why we need the legislation, and the dire consequences of not adopting it. Pathos being a powerful incentive to action, debates often feature individuals who would benefit from the legislation (or, conversely, be harmed by it). We will likely never again have a State of the Union address without a human demonstrative exhibit sitting next to the Presidential spouse. Studies and counter-studies, data supporting one side and then another (depending on the manner of presentation), an abundance of experts advocating each position – these are the stuff of our debates. And then the bill either passes or doesn't.

In all of this, however, the careful observer might notice that in the madcap swirl of the argument there is something missing. If you were to screen out all of the conversation except for the part that addressed whether the legislature has the authority to adopt the proposed legislation, almost without exception you would be immersed in a deep and abiding silence. It is the curious incident in the legislature: The failure to ask the foundational question.

This is not a formality, or a perfunctory task to note in the record of our proceedings. The consistent and habitual asking of this question is, indeed, the key that separates a republic from a totalitarian government. Answering that question determines whether the government acts with authority or, instead, simple force. We've stopped asking, and we don't even remember why we asked in the first place.

George Orwell had a keen appreciation for our propensity to forget obvious and important things. In his time he noted:

[W]e have now sunk to a depth at which the restatement of the obvious is the first duty of intelligent men. It is not merely that at present the rule of naked force obtains almost everywhere. Probably that has always been the case. Where this age differs from those immediately preceding it is that a liberal intelligentsia is lacking. Bully-worship, under various disguises, has become a universal religion, and such truisms as that a machine-gun is still a

machine-gun even when a “good” man is squeezing the trigger . . . have turned into heresies which it is actually becoming dangerous to utter.

There is a great deal to unpack in that short paragraph. The “rule of naked force” is an apt description of a government that never asks if it has the authority to act. “Bully-worship” accurately depicts a press that fawns over governmental fatwas against Big Gulps, salt, trans-fats, uninsured-ness, obesity, politically-incorrect speech, and everything else deemed sub-optimal for our lives. That two-word depiction also covers our “progressive” academy, which is busily reaching back hundreds of years to revivify the intellectual underpinnings of unlimited government power. And, most painfully, it touches on us; like the composite woman dramatized in the president’s revealing campaign video – The Life of Julia – we increasingly look to the government for our sustenance and guidance throughout life.

This bully-worship is, truly, the universal religion of our day. A suggestion that government might not have the authority to act in a particular field is not met with a reasoned rejoinder, but instead a screed worthy of a Salem crowd on a Sunday afternoon witch-hunt. Put another way, in our enlightened age, opposing totalitarianism has become heretical. While we were defeating the Soviet Union in the Cold War, we were absorbing their foundational understanding that the government need never ask whether it has authority to act.

Orwell’s age lacked a liberal intelligentsia that could push back against this bully-worship. Ironically, the term “liberal” is Orwellian in its current usage. He meant “liberal” in the classical sense of protecting liberty by hemming the government inside proper boundaries. We have a liberal intelligentsia today, but it is finding little purchase in our political debates, and is not effectively resisting the bully-worshippers.

Consequently, we are not asking the first question, the foundational question. That much should be obvious, but apparently no longer is. Because we have fallen that far, Orwell says, the first duty of intelligent men is to restate the obvious. Fair enough, and I’ll do it in a syllogism. A government that acts without asking the first question is exercising “naked force,” not authority. Our government has ceased asking the first question before it acts. Therefore . . . , well, you can finish this just as well me, can’t you?

So, how do we determine whether the government has the authority to act? I’ll look forward to your thoughts on this question, and I’ll pick it up again in a future post. Here’s a hint: It’s more fundamental than just asking whether something is constitutional.

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Geoff Hemphill

on **February 5, 2013 at 3:12 pm** said:

I feel like I am in school again. This is great! Let me try, Prof. Kelly.

Question (50 points): How do we determine whether the government has the authority to act?

Geoff's Blue Book Answer: Does the act further secure the rights of the people from whom the authority of the government derives? If so, the government has the authority. If not, it does not.

Of course, then we get to nasty debates about what are our "rights," as opposed to privileges, but that is a Dan Kelly post for another day.

I applaud your resort to syllogistic logic, but I am afraid that is about as effective in Washington as using a buggy whip to start your car. Just like the buggy whip hasn't been used to initiate transportation in a century, nor has logic been employed in political/legislative debate, at least since the time when men took off their hats inside.

Do you recall this exchange when the "foundational question" was asked regarding PPACA?

Reporter: "Madam Speaker, where specifically does the Constitution grant Congress the authority to enact an individual health insurance mandate?"

Ms. Pelosi: "Are you serious? Are you serious?"

Reporter: "Yes, yes I am."

Ms. Pelosi declined to answer the question, but later, her Press Secretary, Nadееam Elshami, stated:

"You can put this on the record. That is not a serious question. That is not a serious question."

It does not bode well for a Constitutional Republic when the Speaker of the House gratuitously dismisses the foundational question as unserious. Hence your post.

I fear our huddle masses no longer care about the foundational question or the consequences of its removal from the legislative process. In fact, they probably don't even know they are supposed to ask such questions. They want their "rights" and will support

anyone who provides laws to that end. Of course, they define rights as “that which makes me happy.” Again, that is for another DK post.

So what I ask the good Professor is this: How do we get the people to even ask the fundamental question, let alone answer it correctly? And, do you grade on a curve?



Daniel Kelly

on **February 12, 2013 at 9:52 am** said:

Geoff – you go to the head of the class. And gold star for quoting the Pelosi exchange. That’s a perfect example of the problem we face.

Your question – how do we get people to ask the fundamental question – is something that has troubled me for a long time. Unfortunately, it is the type of inquiry one does not make when comfortable. Normally, it’s only when the government does something to that adversely affects one of your own interests that this question pops up.

For now, I think we have to work around the edges. There will always be some portion of the population who is at least somewhat curious about this. We need to feed that curiosity and get them connected with others of a similar mindset.

Thanks for your thoughts Geoff, well done.



Greg Forster

on **February 5, 2013 at 6:40 pm** said:

Not that this is central to your point, but I think Orwell probably meant by “liberal” an intelligentsia that was mentally *liberated* to think for itself. After all, it was from an intention to produce such people that we got the term “liberal arts” in education.



Tom Kamenick

on **February 6, 2013 at 11:11 am** said:

“And second, in light of all the circumstances, is the proposal prudent (that is, will it promote human flourishing)?”

This should be qualified – is the evidence showing the proposal will promote human flourishing so overwhelming that it justifies the infringement on liberty necessarily caused by the enactment of another law? I would love for the proponents of new laws to have to show conclusively that the law will have its intended effect, and I would love to have post-enactment review to see if it truly has.



Greg Forster

on **February 6, 2013 at 12:20 pm** said:

Well, be careful. Not all laws infringe on liberty; good laws expand it. For example, laws against murder (if well framed) don't infringe on the liberty of murderers, they protect the liberty of the innocent. To illustrate from the extreme case, anarchy would not be the state of maximum liberty, it would be almost (not quite) the state of minimum liberty.