

THE LIBERAL ADMINISTRATIVE STYLE

Duncan Kennedy*

This paper is addressed to the liberal administrative style. I don't mean nineteenth century liberalism; I don't mean classical liberalism; I don't mean liberalism as the overarching ideology of American political life. I mean liberalism as the much more specific set of views and attitudes, assumptions, goals, and values characteristic of the minority political tendency in the United States. I would say that this tendency dominates the administration of elite institutions and is strong among middle and upper middle class professionals in the United States. My rough image of it is that liberalism is very powerful in law schools; it's powerful in medical schools; it's very powerful in elite law firms. Even if it isn't the dominant tendency in a particular institution, it is still likely to be central to administrative practice as something to react against.

I feel strong sympathy with liberalism as well as antagonism to it. My parents were Stevenson enthusiasts in the 1950s, and were crushed by his two defeats. I was a liberal throughout my youth, and a Cold War liberal in college and for a while after my college career. It's still the case that liberalism has got most of what I care about in it somewhere. But I am also a disillusioned or ex-liberal. A lot of my life as an activist, as a law professor, as a colleague, as a community person in Cambridge, which is where I live and where I grew up, is pushing and pulling against liberalism, at the same time that it is dependent upon it and a part of it. My point is not to trash it, but to get at its dark side as it manifests itself in our political life.

This will be an intensely white male ruling class version. It will also be a forty-seven-year-old's version, that of a person a little bit old for the '60s, a bit young for the '50s, at sea in the '80s.

Here are three sound bites about the dark side. First, it is an ideology of totalitarian moderation. Second, it's an ideology of au-

* Professor of Law, Harvard Law School. This is a lightly edited transcript of a talk delivered at the Duke Law Journal's conference on "Frontiers of Legal Thought," on January 25, 1990. The general approach was influenced by Frug, *Argument as Character*, 40 STAN. L. REV. 869 (1988) and by Peller, *Race Consciousness*, forthcoming in 1990 DUKE L. J. — (1990).

thoritarian neutrality. Third, it is the ideology of a failed class compromise.

The totalitarian moderation idea. On the dark side, to deal with a liberal with some power in an institutional setting is often to experience the norm of "being moderate and reasonable" gone just out of control, run with over the horizon and into the blue. The powerful liberal person interprets the situation, whatever it is, as another one in which he or she is in the middle, pushed and pulled by irrational extremist forces. The liberal's goal, whatever the situation, is to adjust all the forces. If you are not the person in power, you are instantly cast in the role of an interest group vector. All that will be done with you, *no matter what the circumstance*, is that you will be *balanced*. You will be balanced against another crazy interest group vector from the other side.

You might be a child dealing with a parent. You might be a student activist dealing with a Dean. You might be a Dean dealing with the University President. You might be the President dealing with Congress. At whatever level you are at, what makes it totalitarian is that there's no way out of the role of irrational "passionate" interest group. Whatever you say, whatever you do, you are cast as a pusher, pushing from the margin against the gyroscopic center. All that you can expect is that if you're really lucky, it will move just a little in the direction that you are pushing it in.

The totalitarian quality of moderation comes from the fact that there's nothing else they will let you be. It's a mindset that gets applied to all political activism. You're an irrational pusher even if all you are arguing for is a fifteen cent-an-hour increase in the minimum wage. But within the dark side there's also a paradox. Although you will be interpreted this way, no matter what, you are also being told that you, like everyone else, will be heard. Totalitarian flattening combines with totalitarian openness. Toleration, embracingness, and attentiveness are all actually integral to totalitarian moderation.

An important moment in the liberal assimilation of all activist passion to the single model of crazed extremism was the creation of Hitler-Stalin. He is just one person: the archetypical *true believer*. Hitler and Stalin did have a lot in common, including that they were both responsible for mass murder on a scale of millions and millions. But in totalitarian moderate consciousness, the primary thing in common, the thing responsible for the murders, is that they were both *ideologically* extreme people. One of them was a communist; the other was a fascist. But basically it's the same thing.

This is the second trait of totalitarian moderation; it's ideologically anti-ideological. All ideologies are basically the same. They all lead to extremism and violence. And liberalism is *not* an ideology. When you put the two traits together, you have the basic liberal administrator's self-image. He or she is doing the best possible job of balancing the irrational extreme demands of ideological, closed-minded, potentially fanatical interest groups.

I would describe myself as a kind of anarcho-Marxist modernist. I am often treated as though I were Hitler-Stalin. I find this offensive and enraging. A significant part of my anti-liberal animus comes from my sensing that whatever I say, if I'm not a moderate I must be a version of Hitler-Stalin, a true believer. I must be a person who is so obsessed with being right that I will subordinate every kind of human decency to impose my view on others. I must be willing to use any means to achieve my ends.

Once you are interpreted as one of the ideologically-driven forces or vectors that is pushing or pulling, it follows that you will lie, cheat, kill, steal, in order to accomplish your objectives. You will go right over the edge into Hitler-Stalin. *But* remember there's the loving inclusiveness of the liberal center which says, "I'll hear you. I'll hear the fascist. I'll hear the true Marxist. I'll even hear the turncoat liberal who has stepped outside the inner ring of moderate adjusters."

On to authoritarian neutrality. Authoritarian neutrality is quite different from totalitarian moderation. It is the other move. The first interpretation of *any* situation is: "[t]he crazies are threatening to destroy our institutions by making *ideological* demands that can never work. The only thing that ever works is compromise. Thank God I'm here, because otherwise you people would tear the whole thing apart." "Pragmatism" is the highest virtue. But having finished with that, there's the other shoe. The other shoe is the exact opposite.

Authoritarian neutrality ends up solving the problem, which is always a conflict between crazies on opposite margins, by appealing to something outside the human situation, outside the demands, longings, passions, outside the screaming. "Look folks, you were threatening to tear everything apart, but here's something we can appeal to that will settle it. It's not you, and it's not me, this thing to which I am making an appeal. It's not a mushy compromise, it's not just a vector that solves the physics problem. It's something else."

Here are some things it might be. It might be professional expertise of some type. It might be law, courts, judges, rights, social sci-

ence research, economics, medical knowledge, sociological knowledge of the impact of something on something else.

I favor social science study, economic analysis of law, the careful use of data gathering, and thinking in terms of very abstract social science models. I believe in all those things. But on the dark side of liberalism, those things get a superhuman existence as against and in control of the warring passions that the totalitarian moderate has interpreted as the structure of the situation.

I think you're behaving terribly; you think I'm behaving terribly. I want to stop you from doing what you are doing; you want to stop me from doing what I am doing. The solution is to have a neutral person apply a technical discipline to determine who gets to do what. Let's figure out, for example, what the legal rights of the parties are. If the legal rights of the parties turn out to be that I can do what I want to do, and you can't do what you want to do, why that settles it.

Everyone should be happy. After all, it wasn't the liberal manager or administrator who did it. The outcome was dictated by this other being, that we all believe in, that required the particular outcome. No human ends up doing it because we have appealed to the way things are, to rationality against passion, to objective fact against passion.

I think I should be able to do this; you think you should be able to do that; you don't want me to do what I want to do; I don't want you to do what you want to do. Take abortion as a case. Or take the distribution of income between social classes, or workers' control, or the treatment of criminals by the police. The idea that one should abandon one's view of the way things ought to be and feel satisfied by an outcome, because of an appeal to law, strikes me as a logical mistake as well as a deep emotional mistake. It's authoritarian. It's authoritarian because it suggests you ought to accept an answer because of who gave it.

The answer doesn't come from the liberal administrator, who has been balancing all the forces in a pragmatic frenzy, an insane enthusiasm of moderation. He has dropped the other shoe; enough of that, now let's get the answer. They go to a judge; they go to a study; they go to a doctor. They go to the neutral appliers of the standards of academic excellence in the form of an outside ad hoc committee. None of the names are known and the selection criteria must remain secret in order to guarantee the neutrality of the process. (In secret the liberal administrator decides the issue by deciding who are appropriate judges).

It may seem a vicious, shocking thing to say that the appeal to law is authoritarian. Isn't the rule of law the only thing that saves us from the totalitarianism and authoritarianism that the crazy extremists would impose on us if we didn't have neutral objective standards available to deal with the problem? Well, it all depends on what judges do. If it were possible to understand the move to neutrality as a move to something that really is above us, outside us, more rational than us, and able to tell us what we really have to do, what compromise is built into the structure of our institutions or our way of life, that would be one thing.

But it just doesn't work anymore. In the recent history of the United States, say since World War II, moderate liberal administrators, in all areas of life, lots of Dads and Moms, but going right up to the federal government, have endlessly made the move to neutrality as a cardtrick with nothing there.

There is nothing there in the United States Supreme Court. There's nothing there. That the United States Supreme Court says there must be school desegregation or that Nixon has to release the Watergate tapes is *in itself no* good moral or intellectual reason for a person interested in the question as a citizen of the republic to believe that there should be school desegregation or that Nixon should have released the tapes. It all depends on their reasons. And when you look at their reasons, they had nothing to say through legal reasoning about either issue that was any more *rationally compelling* than what any member of the audience here would be likely to have to say. Their training as experts was useful as mystification in the process of desegregation or of releasing the tapes. That's about it.

With respect to abortion, what the Supreme Court thinks about it is just irrelevant, I would say, from the point of view of a person trying to make up his or her own mind. Deploying my own authority, I would trash their authority. I would say we should all be equally authoritative with respect to this question. As far as authority is concerned, the legal system has no answer. The federal and state constitutions and the legal system can produce almost any conceivable answer to the question of the validity of any particular anti-abortion statute. So whether there ought to be a right to life, or to choice, or whatever compromise ought to be worked out, the fact that it is endorsed by the United States Supreme Court doesn't give it one iota of authority.

That's why I'm calling the appeal to law authoritarian neutrality. It's authoritarian because the answer it gives in these crucial cases,

where we all care desperately about the outcome, rests on nothing but blind faith and the election returns. Our acceptance of the answer rests on nothing but an arational, emotional desire on the part of us objects of liberal moderate manipulation to believe that there's something beyond the compromise that's worthy of deep respect. The same is true of medical authority the minute it pushes even one small bit of distance beyond what you can understand yourself, even if in the end the smartest thing you can think of to do is to submit to the authority.

You may be thinking I am trashing the rule of law. I said I was an anarcho-Marxist, so it's no surprise that I've taken an unbelievably anti-law position.

What's he suggesting? Just chaos all over the place? We settle it by running wildly in the halls until we've smashed into each other so many times that we're exhausted, or maybe we settle it with death camps? Maybe we settle it with secret police. If he's attacking the rule of law, he must be saying "Hitler-Stalin, Hitler-Stalin, GO!" Pre-Gorbachev Eastern Europe is the solution, or Cambodia.

I'm just questioning authority. I'm *not* saying that the way of settling an argument or a fight, an emotional conflict, is to take up arms, to use physical force, even to scream, though I like screaming myself. I prefer that the argument have its moment of screaming as well as its moment of reasonableness and *true* moderation. And, I prefer that there should be moments of longing and striving for neutrality. And also (this is very '60s), that it should be, just sometimes, just a little bit mean. Not violent. Just a little rough around the edges. It's not true that that makes one Hitler-Stalin!

And it doesn't mean we shouldn't have courts. It doesn't mean we shouldn't allocate decisionmaking power in many, many areas to institutions organized more or less just the way our courts are organized. It doesn't mean judges shouldn't try to give the best explanation they can give of why they think what they are doing is the best interpretation of the legal materials that they're supposed to be working with. And it doesn't mean that one shouldn't obey a judicial decree. That depends on the circumstances. You can be resistant to it and still say, "better obey it, too many people will get hurt if we don't go along." You can say, "maybe next time we'll be able to get it to come out the other way; therefore we shouldn't smash it now."

As a matter of fact, I agree wholeheartedly with *Brown v. Board of Education* and the Watergate tapes case and *Roe v. Wade*. I think the Supreme Court "did the right thing" each time. I'm glad they

brought their anti-democratic mystifications to bear on the side of the angels. But authoritarian neutrality says that there were neutral principles that settled the case, or that there weren't, so the outcomes were wrong. If you don't like the "principled" outcome, you are supposed to lump it, repress your passionate, irrational emotions, go back to your work, let the big boys get on with the technical solution. Totalitarian moderation says that if you won't just lump it, if you resist, then you're Hitler-Stalin.

The scariest aspect of authoritarian neutrality is that it makes it seem that you can't just flatly reject these institutions as authorities. That's what I am doing. As an authority, the Supreme Court is bogus. There's no *it*. It's mainly just a bunch of white male drips deciding by majority vote and then producing long, long stories about how what they want is required by Reason, or required by God, or required by the Constitution. Sometimes they're inspired. And they can't *always* make it come out any way they want to, not every time, not on *every* question. But over and over again, when it is something that lots of people really care about, it's up for grabs according to the "neutral authority."

Inside the liberal mindset it seems as though the problem is that there are some people who aren't moderates, and they are threatening everything going off the wall. And there are some people who are either unable or unwilling to accept the *a priori* authority of the neutral experts. The only alternative to being just a moderate and accepting the authority is to be a crazy. That mindset *produces* lots of craziness at the margin. It's not the only thing that produces it. But some of our political culture of madness at the margins is people acting out the liberal fantasy, wearing the shoe because it is there to put on (as well as because it fits).

If the people in the middle, the people with the power, have enough ability to project this understanding of the world, they can make *me* crazy, even though I'm pretty secure, by any standards, both materially and socially. I look into the eye of the Dean, and my reflection comes back to me wreathed in an aureole of fire. Maybe we should lock me up for my own good.

This problem is a deep one because one never escapes the eye of the other. The liberal eye, that central, moderate, accepting, interest-balancing eye, with the authority of neutral something somewhere always in the background, turns you, if you're a rebel, against yourself. It generates inner fissures, and anxieties about who you really are. You don't know who you really are. To some significant degree, your

I is dependent on that eye. When you evoke the look that says, "you are an ideological interest group that I'll have to manage, and you'd better accept the authority that I'm about to invoke," you may collapse. You may crumble, just sift down into a little layer of flour on the floor. The cookie is gone and all that's left is the ingredients.

Of course, we crazies make *them* what *they* are, too. There's the moment in activist practice of disruption when you say, "oh, oh." The administrator, this can be anyone at any level, has been sitting there calmly, thinking to himself,

Oh, maybe if I give him that, it will shut him up. Let's just draw him out a little bit, let him be a little more crazy. I can use that when I am talking to *them*, and that will really scare them and maybe they'll accept my compromise if I persuade them he really will go very far.

There's this *kerchunk* of body armor, and that part of it is over. The liberal administrator looks at you with loathing, true loathing that comes from being jammed. The administrator feels unloved, the administrator feels the dark night, the night of the long knives, in this person who, as I said before, is arguing for a fifteen-cent-an-hour increase in the minimum wage. It's a chill.

And then you have got to be scared. You feel the ice in them that you've produced. I often feel that I have produced it out of what is a little crazy in me. It's not untrue altogether. In that moment, the administrator is experiencing what's not so great about the emotional push of activism.

Failed class compromise. A lot of this style, this practice of administration, this ethos of American ruling liberalism seems to me well explained in a political way. American liberal people in power in these institutions see themselves, and have seen themselves basically since World War II, as living off a wasting asset. They see themselves as standing for all kinds of left-wing things, like openness, equality, fairness. They're anti-authoritarian in their hearts; they're anti-feudal. They're against racism and caste relations. They're against extremes of wealth and extremes of poverty. They're against allowing people to be horribly self-destructive, and they're in favor of allowing people sexual liberation. They're in favor of dialogue; they don't like violence.

They see themselves, it seems to me, as the inheritors of a profoundly true, even rather revolutionary vision against the ugly realities of life in America in this century. And things were once going

great. There was a long-running, secular process of enlightenment of the people, managed and promoted by the liberal elite, that made liberal substantive ideals compatible with the liberal procedural ideal of democracy. When there were showdowns, in the Progressive Era, in the New Deal, over World War II, over the response to Stalinism, the liberals were on the side of the people. And they either won their battles with extremists of the right and left, or their intelligentsia so well controlled the telling of the tale that defeat was moral victory.

Then the people rejected them. First the masses, really meaning the working class, the American white working class, fell for Eisenhower. Economic growth and upward social mobility produced not enlightenment but a mild (though vulgar) cultural and political regression. Then minorities, women in radical feminist stages of the women's movement, and a whole generation of children, took things a long step further. The liberals' "natural" constituents casually lumped them together with their worst enemies, or demonized them as worse than the right because they were hypocrites.

The right began to generate its own populist politicians. Richard Nixon and George Wallace were the evil geniuses of this play to the disillusioned, once liberal people, the angry, marginalized working class, the self-made entrepreneurs of liberal prosperity, and all the uneasy or plain panicked suburban, upwardly mobile, middle Americans. Wallace and Nixon treated the staid compromisers, the liberals, as though *they* were the extremists, contaminated by the crazies they had tried desperately to control. When I was young, in these institutions all there were were liberal administrators. Now there were Robert Borks cropping up all over the place, a horrible right-wing intelligentsia, stealing the culture card.

Totalitarian moderation and authoritarian neutrality have always been part of the liberal administrative style. But as the class compromise began to fall apart, they have become the last port in the storm. They are all that stands. The appeal to law against unreason and ideology may be hollow at best, lying at worst; it may be that the treasonous liberal intellectuals who defected to modernism revealed its manipulability. It may be that the administrators themselves in their hearts don't believe that the rule of law settles the issue of abortion.

But they also believe:

Well, we're still sort of stronger in the judiciary than we are in the legislatures. We're still better at legal argument than we are at television, which is a pretty degrading medium anyway, though

maybe we can get some really slick media managers to put one over and not mention the word liberal at all if it looks too dangerous. Anything's worth it.

It's not that it's a form of just plain false consciousness that traps and manipulates the liberal managers of our political culture. It's not that they're trapped and manipulated by a set of ideas that are causing them to do X, Y, or Z. It's more like a reflex, a compulsive personality style that they just can't get out of. They've been trained since childhood to be that way and it often works. And at the same time, it's a kind of cynical (in a nice way) belief that these issues are really important and therefore we have no choice but to snooker the masses and keep them from sliding backwards. Backwards into reactionary, pre-liberal, pre-modern, patriarchal attitudes, vicious class conflict attitudes in which the majority will crush the weak minority, racist attitudes.

If we are to stop that from happening, this stuff has got to be supported. It's all that stands between us, the cream at the top of the social milkbottle, and the now infected, Strontium 90 corrupted, rapidly disintegrating rest of the milk bottle. They understand themselves to be protecting us by any means necessary, including just compulsively categorizing us as disrupters and endlessly appealing to phony authorities. They're doing it with a good heart.

If they are intellectually sophisticated, they believe that there's no critique of the neutrality of these false authorities that they can't turn to their own purposes at a moment's notice. In fact, one of the ways they put authoritarian neutrality together with totalitarian moderation is by being incredibly bright at manipulating those authoritative sources to make it look like the compromise they favor is rationally compelled. You don't commission the social science study until you've made a few discreet inquiries as to the politics of the poll taker. At a higher level, you just *know* that if it's just, you can find a right to it in the Constitution, and make the argument impeccably legal.

So it's not that they are corrupt capitalist tools. It's that they have lost their faith. They think we're all going down slowly, though some of them will be able to use their skills to slow the snuffing-out of the lights of civilization one by one. Some of them will be able to build small liberal empires in the ruins, and sustain themselves and those who will go along with their understanding of things. Or maybe, hope against hope, they will manage to just barely squeeze and swindle their way back into power again. Then, without the lost

white middle class masses realizing what's happening, they'll find some technical modifications of the system that will redistribute the wealth and liberate everyone and we'll all live happily ever after.

There's too much despair in that, and too much daydream. It doesn't work except for the small group of liberal managers themselves. The rest of us should forget it. We need them to keep on doing what they're doing, and they should keep on doing that. They should maintain the consciousness that they have, and they should keep on trying to keep the liberal ship from capsizing utterly. But we shouldn't believe them. We should basically let them do their best for us as managers while we spend our time looking for a way to re-energize the project, keeping up our memberships in the ACLU and so forth to show our good faith and be minimally helpful.

It's *not* worth it to keep up the mythologizing or the internal posture of moderation. It's better to be a little bit of an extremist or a little bit of a fanatic. Not Hitler-Stalin. We should be extremists in favor of immoderate changes in the way things are that would shake things up, that would create the possibility of a new set of alliances between elites and masses.

For example, the attitude that we might take, that white liberals and radicals might take on race might not just be anti-prejudice, anti-discrimination, anti-segregation, understood as a classic example of neutral standards. It might be empowerment of whatever black communities we can get ourselves into relationship with by the transfer of material resources and governmental power. This is not an anti-integration position. You wouldn't be against integration ever. The first criterion of white left politics ought to be a coalition between black and white with the idea of power transfer, not as gratuity, not as handout or even simply as damages, as compensation for the history of taking away. Not giving back as charity but simply acknowledging an appropriate distribution of power in the present, in a multi-cultural society.

In thinking about the economy, the goal should be workers' rights and workers' control. We should change the system so that the workers own the factories. Our attitude towards our relations as white men with women ought to be based on acknowledgement that they are permeated by the possibility of violence, whether we are violent or not. We are beneficiaries and victims, as men, of the fear and anger we generate, and of the compromises that women are willing to make as a result of the fact that violence is a possibility. We should be willing to negotiate how the mutual constitution of men and women

through violence might be modified. Those are three kinds of ideas for thinking out of the combination of moderation and neutrality. They aren't a program. They are very moderate, actually, and compelled by the neutral standards to which we liberals appeal.