

Administrative Law
Fall 2001

- I. Constitutional Framework for Admin Law
 - a. Con and Statutory Interpretation of Issues in the **Delegation of Legislative Power** to Admin Agencies
 - i. Basic Principles
 1. **Legality** – delegation is concerned w/ whether Cong has created enough structure to make it possible to assess and/or control legality of the delegate’s conduct (controlling gov actors)
 2. **Political Accountability Doctrine**
 - a. More power granted to agency, more suspect the delegation
 - b. Does good reason for delegation exist?
 - c. How much guidance has Cong provided
 - i. More important the power, more specific the guidance needed
 - ii. Ct often assumes Cong will give away lots of power w/ small amount of guidance
 - d. Use – ct often narrows scope of delegation to find it does not violate this doctrine (used as tool, NOT conclusion)
 3. **Separation of Powers**
 - a. J exercised judicial rev over leg and exec
 - b. Leg can impeach J’s and exec
 - c. Leg delegates power to exec
 - i. Art I, Sec 8 – Cong may make laws **necessary and proper** to carry out the laws
 - d. Exec can veto Leg
 - e. Independent Agencies (I/A) created by delegation of leg power to the exec and some judicial
 - i. Some what protected from exec – removable only “for cause”
 - ii. Thus leg and J powers also away from exec
 - iii. Some argue, creates 4th branch and is change in con structure
 - f. Agencies
 - i. Only operate w/n scope of authority granted by Cong
 1. Cong can w/draw delegation/authority through repeal of leg (law), but exec can veto
 - ii. APA injects accountability
 1. Makes regs that agency must go through, some are public proceedings
 - ii. Industrial Union, AFL-CIO v. American Petroleum (Benzene Case) – **Exceeding the Scope of Delegation**
 1. HOLDING – 2 interps (plurality)
 - a. Agency exceeded scope of statutory authority
 - i. Made reg w/o finding **substantial risk of harm**
 - b. Agency acted w/n statutory authority, BUT Cong granted too much authority (Rehnquist)
 2. OSHA made rule/law lowering permissible benzene exposure from 10ppm to 1ppm