Opinion
News



Winter Palace in St. Petersburg, Russia, designed by Francesco Bartolomeo Rastrelli and constructed primarily from 1754 to 1762 (Pixabay/Alexander Grishin)



by Michael Sean Winters

View Author Profile

Follow on Twitter at @michaelswinters

Join the Conversation

Send your thoughts to *Letters to the Editor*. Learn more

March 23, 2021

Share on BlueskyShare on FacebookShare on TwitterEmail to a friendPrint

This should be the most important development in jurisprudence this year: Julian Davis Mortenson and Nicholas Bagley published an article in the Columbia Law Review that debunks the nondelegation doctrine Justice Neil Gorsuch embraces fully and to which other conservatives on the U.S. Supreme Court are sympathetic. The consequences of the court embracing the doctrine — which says that Congress cannot delegate its legislative powers to other entities — would be enormous and crippling. Mortenson and Bagley demonstrate that the theory has no basis in history and, so, has no claim to being an "originalist" argument. I will never link to a law review article, but the two legal scholars did a very accessible interview with Mark Joseph Stern at Slate.

The money quote, from Bagley:

> When you talk about the founding era, there's an awful lot to draw on because founders talked about their new Constitution all the time. If nondelegation was a thing, you should expect to find direct evidence of it. You'd expect it to arise in debates over laws that empower the president to act without much guidance from Congress. And when you look at those debates, it never crops up. It never shows up at all. And when you look at the practice before ratification, the founders delegated power *all the time*. It's not a surprise that when they formed this new Constitution, they continued that pattern. If you take a hard look at the evidence people claim for the nondelegation doctrine, it falls apart in your hands. As a matter of historical inference, it can't stand. History is not a game. It's not infinitely flexible. You can't read into it whatever you want.

Our conservative legal friends always claim that they follow principles and evidence wherever it leads, even if the outcome is contrary to their personal political ideas. Let's hope that holds true here.

In The Washington Post, a report on President Joe Biden's emerging policy relating to immigration, and it is not pretty. To be sure, undoing the effects of bad policy is no easy task, but adopting a tough "the border is closed" stance is still inhumane and likely unnecessary. The president should schedule a meeting with Missionary of

Jesus Sr. Norma Pimentel, who directs Catholic Charities in the Rio Grande Valley, Dominican Sr. Donna Markham, head of Catholic Charities USA, Archbishop José Gomez, president of the U.S. bishops' conference, and others who can help receive the thousands of migrants who have been waiting to enter the U.S. in refugee camps in Mexico.

Advertisement

Also in The Washington Post, Sens. Bernie Sanders and Elizabeth Warren have introduced a bill that would tax CEOs at a higher rate if they make more than 50 times the lowest paid employee in their firm. The government sets the speed limit, why should it not create some rules for the road in the area of corporate policy? This is a great idea and one the church could and should take the lead on by insisting that the pay scales for CEOs of our Catholic hospitals or universities similarly do not so far outstrip the remuneration of low-level workers as to create a manifest injustice. More on this soon.

Relatedly, CNN reports that the shareholders at Starbucks rejected the proposed compensation packages for the company's top executives, something that rarely happens. Shareholder votes are not binding on the board, but no board wants to fly in the face of the expressed wishes of its investors. It will be interesting to see if this kind of rejection of exorbitant salaries takes place at other shareholder meetings.

Two links about the great Maya Lin, whose groundbreaking design for the Vietnam Veterans Memorial in Washington D.C. developed our cultural canon about monument design: First, ArchDaily looks back to her award-winning design — I had forgotten she was still in college when she submitted it — and examines some of her other works and the work of other architects who were inspired by her. This article at Digs looks at Lin's work on the Children's Defense Fund's Alex Haley Farm, including a stunning interfaith chapel that I had not seen before. She is a genius, pure and simple, and the purity and simplicity of her designs prove it.

The New York Times remembers Steven Spurrier, whose blind tasting of California wines against French ones at a Paris hotel exposed how much of wine culture was affected by snobbery rather than honest assessments of quality: The tasters repeatedly confused the American wines with the French classics and gave the

awards for best wines to two American vintages.

At the Oxford University Press blog, Paul Werth offers a precis of his new book *1837: Russia's Quiet Revolution*. From the death of Pushkin in January to the burning of the Winter Palace in December, and a tour of Siberia by the tsarevich, the future Alexander II, Werth suggests 1837 should be ranked with 1613 (founding of the Romanov dynasty), 1862 (emancipation of the serfs) and 1917 (the revolution) in the annals of Russian history. If you are planning on some good summer reading, add this to the list.

This is the kind of thing that makes one want to become a conservative. From ClassicFM, four cellists join forces to play Maurice Ravel's "Bolero" on one cello. The result is as unfortunate as you would imagine. It puts me in mind of a seminar I attended in the late 1980s at the Monterey Wine Festival. The chef from the River Café, David Burke, was asked about a culinary experiment that went horribly wrong. He replied, "Oyster sorbet."