NEWSLETTER 11 APR 2026 *WHAT'S NEW IN THE COMPARATIVE ADMINISTRATIVE LAW WORLD?*

Comparative Administrative Law Scholarship Corner

Affiliation with the Yale Comparative Administrative Law Listserv

Edited by Eduardo Jordão
Professor of Law at FGV Law School in Rio de Janeiro
eduardo.jordao@fgv.br

Assisted by Eduarda Onzi
PhD candidate in Regulatory Law and Research Assistant at FGV Law School in Rio de Janeiro
eduarda.onzi@fgv.edu.br

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eduardo.jordao@fgv.br

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Barrett's Red Flag: Why the Court Should Order Re-argument in Trump v. Slaughter

Written in: March 03, 2026; Posted in SSRN: March 04, 2026

Ackerman, Bruce

While there are a host of essays dealing with the Slaughter and Cox cases presently under consideration by the Supreme Court, this is the first one exploring a fundamental point about Humphrey's Executor that was advanced by Justice Amy Coney Barrett in her remarkable interventions during December's oral argument in Slaughter. She emphasized that, in gaining unanimous support for Humphrey's Executor in 1935, Justice Sutherland was building on the successful construction of a series of independent agencies by both Democratic and Republican Administrations over the preceding half-century -- beginning with Grover Cleveland's breakthrough success in gaining Congressional approval for the nation's first independent agency: the Interstate Commerce Commission in 1887. As Justice Barrett pointed out, during the early twentieth century, Cleveland's presidential successors built on his landmark precedent to gain repeated Congressional support for a wide range for agencies that continue to play a crucial role in today's America – including the Pure Food and Drug Administration (Theodore Roosevelt), the Federal Trade Commission (Woodrow Wilson), and the Federal Communications Commission (Calvin Coolidge). Since these Democratic and Republican Administrations profoundly disagreed on a host of other fundamental issues, their repeated and bipartisan affirmation of expert agencies as a "fourth branch of government" was even more remarkable.

Indeed, Justice Barrett suggested that this bipartisan consensus provided a distinctively democraticfoundation for Humphrey's Executor. After all, Justice Sutherland announced his unanimous opinion in March of 1935 when Sutherland was leading his six Lochnerians in an escalating constitutional assault on the activist regulatory state – despite the eloquent dissents of Brandeis, Cardozo and Stone. Nevertheless, these bitter disagreements did not lead the Lochnerians to challenge the legitimacy of wide-ranging regulation of the market-economy by independent agencies – since American voters had repeatedly vindicated a bipartisan effort to create independent agencies with the requisite expertise required to confront the scientific and industrial revolutions in a responsibly democratic fashion. Instead, Sutherland reached out to his three progressive to join in emphasizing a crucial point of consensus at a time of escalating polarization.

Justice Barrett suggested these points during the give-and-take of oral argument in the Slaughter case. Unfortunately, however, the lawyers for Rebecca Slaughter and Donald Trump were not prepared to respond with sophisticated analysis of the constitutional significance of the half-century of history that she was emphasizing. It happens, however, that I have spent a great deal of time exploring these issues when preparing my multivolume series, We the People – and believe that a deeper understanding of the half-century between 1887 and 1935 powerfully supports Justice Barrett's interpretation of its constitutional significance. To be sure, I expect this essay to provoke serious critiques, as well as significant elaborations, of the themes I present. Indeed, this is precisely why I believe that the Court should defer its final decision in Slaughter and Cox so as to give it the opportunity to consider serious briefs and serious scholarship before it makes a fundamental decision on an issue which will profoundly shape the course of American government for future generations.

Unitary Enforcement

Written: February 08, 2026; Posted in SSRN: February 21, 2026

Almendares, Nicholas

Enforcement is an essential part of law. Yet, increasingly Congress has no say over it. A full-throated embrace of the unitary executive theory by the Supreme Court has combined with other doctrines to push ever more power over enforcement to the executive branch—to the President. The Roberts Court has simultaneously empowered the President while eliminating Congress' tools to steer, or circumvent, government action. When it comes to enforcement, all roads now lead to the President.

This Article traces the cumulative consequences of these doctrines. It highlights the interrelated nature of law: on their own these doctrines are important. Take together, they have remade the separation of powers, aggrandizing the executive and judiciary at the legislature's expense. The Supreme Court has thus contributed to congressional dysfunction, making it harder and more costly for the legislature to do anything of consequence. And there is little Congress can do to rectify this state of affairs. These doctrines are constitutional, and they find a willing and able ally in the President, their main beneficiary. Congress' options are limited, but there are some creative solutions still available. The most promising of which is, surprisingly, Congress turning to the states for help against the other two branches.

The Unnecessary Agency

Vanderbilt Law Review (forthcoming 2026)
Minnesota Legal Studies Research Paper 2025-12

Anderson, Jonas
Contreras, Jorge L.
Kumar, Sapna

Recently, the U.S. Government has reduced the power of federal agencies. The Supreme Court has shifted power from agencies to courts by, among other things, eliminating Chevron deference and curtailing agency authority to issue civil penalties. Moreover, the Trump administration has expressed interest in streamlining agencies in order to eliminate redundancy and waste.

In this time of rethinking the balance of power between federal agencies and courts, the U.S. International Trade Commission's (ITC's) role in intellectual property law is outdated. Decades ago, Congress granted the ITC the power to investigate acts of IP infringement along with the authority to grant exclusion orders prohibiting the importation of articles that infringe U.S. patents. However, most of the original rationales that supported the ITC's broad jurisdiction over infringing articles have fallen by the wayside, as federal district courts now have jurisdiction to hear almost all (if not all) IP disputes that are currently brought before the ITC. Although the ITC remains an attractive forum for patent holders, the duplicative system of ITC and district court litigation is costly for both domestic businesses and the public. This duplication also creates intractable conflicts between judicial and administrative patent law decisions.

Accordingly, we propose that Congress revoke the ITC's jurisdiction over IP infringement cases and grant the federal district courts in rem jurisdiction over infringing articles imported into the United States. Such legislation would maintain the advantages that make ITC patent suits attractive to patent holders, while greatly reducing the costs of patent enforcement and rationalizing the substantive and procedural law applicable in patent disputes.

Behavioral Recognition Technology

Indiana Law Journal, Volume 102, forthcoming, 2026
San Diego Legal Studies Paper 26-008
Bar Ilan University Faculty of Law Research Paper (forthcoming)

Aronson, Ori
Feldman, Yuval
Lobel, Orly

The rapid adoption of artificial intelligence (AI) by regulatory agencies marks a fundamental shift in legal compliance and enforcement. While law and policy debates have heatedly focused on the threat of AI biometric tools such as facial recognition technology (FRT) to privacy and equality, the field of AI-driven behavioral recognition technology (BRT) has been far less charted. In contrast to FRT, BRT uses machine learning not simply to identify who a person is but to predict what they are likely to do. Agencies from the IRS to the EPA increasingly deploy these algorithmic tools to predict individual and corporate behavior and the likelihood of regulatory violations, yet legal scholarship has focused more narrowly on government use of AI in policing and criminal law enforcement. This Article demonstrates that as governments and administrative agencies embrace BRT to make fine-grained determinations about whom to trust and whom to monitor, investigate, audit, or sanction—and in turn to determine how to allocate limited enforcement resources—behavioral prediction becomes a central technology of governance.
In providing the first comprehensive legal framework for evaluating and ethically implementing BRT, this Article makes three key contributions. First, it maps how regulatory agencies are using AI-driven technology to make nuanced determinations about whom to trust and monitor, revealing an emerging regulatory paradigm that accelerates a paradigm shift from traditional command-and-control approaches toward data-driven trust assessments. Second, it argues that while deploying BRT as a regulatory practice raises significant constitutional and administrative law concerns regarding privacy, equality, and autonomy, properly designed systems can enhance these values by enabling more individualized and evidence-based enforcement decisions, as opposed to random selection or demographic-based proxies. Third, it develops a novel normative blueprint for responsible deployment of BRT in regulatory enforcement. The Article establishes a set of principles including the privileging of individual over group-based predictions, requiring strong empirical justification for public sector cross-domain data use, and dynamic balancing of predictive accuracy with civil rights protection. Rather than embracing or rejecting BRT wholesale, as has too often been the case with debates and policies on FRT, we chart a dynamic path forward that harnesses these tools' benefits while preserving democratic values and individual rights. The Article concludes by offering practical guidance for courts and agencies evaluating and implementing these emerging technologies.

Structuring Skidmore After Loper Bright

UCLA School of Law, Public Law Research Paper

Asimow, Michael

The epochal Loper Bright decision overruled Chevron and established that courts must determine the best meaning of statutory text without being required to follow agency interpretations of ambiguous statutes. In determining the best meaning, courts must consider whether and how to apply Skidmore analysis. Skidmore calls for giving extra weight to agency interpretations of statutory text when it is appropriate to do so. This article addresses several issues involving Skidmore analysis that remain unresolved post-Loper Bright. So far, reviewing courts have often ignored Skidmore entirely, brushed it aside, or misapplied it. Court decisions before and after Loper Bright have not agreed upon a uniform structure for applying Skidmore. This article urges that courts must (rather than may) apply Skidmore analysis along with other familiar tools of statutory interpretation when seeking the best meaning of disputed statutory text. In addition, courts should engage with Skidmore without first determining whether the disputed text is ambiguous. The article further suggests that federal courts adopt a structure for applying Skidmore consistently across the wide variety of cases involving disputed agency legal interpretations. In establishing such a structure, courts should first determine whether courts or agencies have a comparative advantage in interpreting the text. They should also then take account of various contextual factors that determine whether the agency's interpretation has power to persuade. This structure is adapted from well-established California law to which federal courts might look for guidance in establishing a Skidmore structure. The article also proposes that courts unify the rules for interpreting the meaning of statutes and regulations by applying Skidmore analysis to both.

Quasi-Judicial: A History and Tradition

127 Colum. L. Rev. __ (forthcoming)

Baumann, Beau J.
Shugerman, Jed H

The Supreme Court's recent removal cases have revived a foundational question in constitutional law: whether all administration must be controlled by the President, or whether Congress possesses the power to insulate administration from the President's raw political will. This Article simultaneously delivers a blow to the unitary executive theory while fleshing out what comes next. It argues that contemporary debates have overlooked a lost tradition central to the Anglo-American constitutional project, one that redeems long-dismissed precedents like Humphrey's Executor.

Although lawyers have long dismissed Humphrey's "quasi-judicial" function, that phrase is just the label we put on a primordial instinct that predates the Constitution itself. Drawing on sources from early modern England through the Founding and the long nineteenth century, this Article reconstructs a constitutional tradition under which legislators insulated judge-like administrators from presidential control and removal. Under this tradition, officers who adjudicated, exercised equitable judgement, and made sensitive financial decisions were often independent from, rather than accountable to, a presidential chain of command.

This new history and tradition offers a compelling basis for curbing the Trump Administration's assault on the Federal Reserve System and scores of quasi-judicial agencies. It also provides a historical basis not only for saving the core of Humphrey's but also strengthening the Wiener default rule in favor of removal protections for adjudicatory officers. Far from an exception to the unitary executive theory, the quasi-judicial tradition is an existential challenge to the theory's historical pedigree. The quasi-judicial function from Humphrey's, contrary to popular belief, is not peripheral to the separation of powers. It is one of our constitutional tradition's most durable strategies for reconciling the demands of governance with legality.

Presidential Control of the Civil Service

Minnesota Legal Studies Research Paper 2025-56

Bednar, Nicholas

Conventional wisdom treats the federal civil service as largely beyond the president's reach. This Article challenges that assumption. Legal scholars too often focus on constitutional powers rather than statutory authority. Yet the president has possessed statutory authority to regulate entrance into the civil service and the conduct of federal employees since before the passage of the Pendleton Act. Through detailed case studies spanning recruitment, conduct, unionization, and removal, this Article demonstrates how presidents routinely alter the structure of the civil service. The analysis shows how presidents can use this statutory authority to strengthen administrative capacity when used in good faith or dismantle it when wielded as an instrument of deconstruction.

Congress has imposed few clear limits on the exercise of presidential authority over the civil service. The breadth of the president's statutory authority over the civil service has three main consequences for personnel management. First, presidents often use personnel policy as a means of advancing their substantive policy agendas, sometimes at the expense of sound principles of personnel management. Second, tensions within the civil service laws enable presidents to provide reasoned decisions for many controversial personnel policies. Third, confronted with broad statutory language and shallow invocations of the merit system principles, courts have largely deferred to presidents' use of this statutory authority. The result is a civil service that is not insulated from politics but contingent on the character and priorities of the individual who occupies the White House.

Normatively, the Article warns that unchecked presidential control imperils the administrative capacity on which the faithful executive of law depends. When Congress enacted the Civil Service Reform Act, it feared a "fox in the henhouse" scenario: a president capable of lawfully hollowing out the civil service faster than voters, legislators, or courts could respond. Such a scenario provides presidents a roundabout way of deregulating and sabotaging laws, polices, and programs with which they disagree. The Trump administration provides a contemporary case of how the civil service laws create this risk. The Article concludes by reenvisioning the balance of personnel authority between Congress and the president.

Transformative Competition Law

European Law Journal, 0

Bernatt, Maciej
Darr, Amber

The article sets competition law in the transformative context. It explains that competition law is not only something that is transformed, but that is transformative in its own right. A twofold argument is advanced: first, that competition law has an important role to play in ensuring that the wide range of transitions in play today (i.e. green, digital and industrial) are both just and enduring, and second, that there are significant lessons to be learnt from economic transformations that have already taken place in Central and Eastern European (CEE) countries and countries from the Global South. To this end, the article explains that the manner in which CEE and selected Global South countries designed and enforced their competition laws allowed competition law to play a meaningful role not only as an instrument but also as an architect of their economic transformations. Against this background, the EU's openness to these transitional experiences is desirable not only because it would supplement the transitions within the EU but also because it will facilitate the pathway to similar transitions in other non-European jurisdictions that look to the EU for guidance. In terms of structure, first, the article examines the role that competition law can play in the course of transitions. Second, it examines the possibilities and limitations of the role competition law has already played in the transitions in CEE and Global South countries. It concludes with an invitation to all readers to engage with the debate on the roles of competition law in a time of transition.

Should EU law Protect us from Eating Bugs? A Microstudy in Judicial Creativity

Prete and L. Rezki (eds.), Judging & (Re)Thinking European Union Law: Liber Amicorum in Honour of Nils Wahl (Springer, 2026)

Bobek, Michal

Should dried mealworms, locust, and crickets, to be consumed whole in the form of chips, be considered "novel foods" under EU law? This intellectually highly nutritious question offers not only the possibility of a detailed reconstruction of the reasoning choices present in an individual case before the Court of Justice of the EU. Furthermore, it equally provides the inductive springboard for a theoretical discussion of the limits to judicial further development of the law tied in the European legal space. With different legal cultures in Europe drawing different lines between normal judicial filling of gaps, on the one hand, and impermissible judicial rewriting of the law, on the other, the contribution closes with zooming in on the possible limits to judicial creativity and their academic discussion.

The Unitary Executive and the Due Process State

101 Notre Dame L. Rev. Reflection (forthcoming 2026)

Bremer, Emily S.
Eskridge William N.

In Trump v. Slaughter, the Supreme Court will consider whether to overrule Humphrey's Executor v. United States, 295 U.S. 602 (1935), a landmark case that affirmed Congress's authority to limit the President's ability to fire members of the Federal Trade Commission (FTC). Proponents argue that this is necessary to ensure unitary executive control over the significant policymaking functions of the FTC and other historically independent administrative agencies. But the legal principles reflected in Humphrey's Executor are also the foundation upon which Congress has constructed what we call the "due process state," i.e., the many impartial officers and institutions that the President requires to discharge his Article II duty to ensure the faithful execution of adjudicatory statutes. This essay argues that the unitary executive and the due process state can-and indeed must-coexist.

Vacatur Within the Appellate Model of Judicial Review

136 Yale L.J. ___ (forthcoming 2026)

Bremer, Emily S.

This Article situates vacatur within a holistic account of the appellate model of judicial review that Congress codified in the Administrative Procedure Act (APA). Revisionist objections to judicial vacatur of agency rules neglect this broader structure and impose upon the APA a modern idea of remedies that crystallized decades after the statute's 1946 enactment. Understood on its own terms, the APA uses pre-APA principles governing appellate jurisdiction to provide a constitutionally calibrated remedy for unlawful agency action. This Article uncovers those principles, and it argues that vacatur is not an equitable remedy but an appellate determination. It is statutorily authorized when an agency action is properly before a court on judicial review and is found to be unlawful under the applicable standard of review. But the approach has implications beyond vacatur, offering a revelatory blueprint for the APA's judicial review section. This blueprint can help to address some of the most intractable problems in the judicial review of agency action, including the timing of judicial review of rules, the relationship between APA review and other remedies, and the role of the scope of review in keeping courts within Article III's boundaries.

The Transformation of Risk Regulation: Managing Uncertainty and Powers in the Digital Age

Written: September 30, 2025; Posted in SSRN: March 18, 2026

Celix, M Veronica Vargas
De Gregorio, Giovanni

Risk regulation has increasingly expanded in European digital policy, yet it is diverging from its roots, especially the precautionary principle. Rather than traditionally focusing on scientific evidence and knowledge, the European approach to risk regulation has been increasingly based on constitutional values such as the protection of fundamental rights and democracy. This article seeks to unravel the logic that has led the Union to move from an approach to risk more based on science to a model which considers constitutional values as parameters to assess and mitigate risks. By focusing on European digital regulation, primarily the GDPR, the DSA and the AI Act, this work underlines how the constitutional rationale of this transformation comes as a response to the intangibility of risks resulting from digital technologies and to imbalances of information and knowledge coming from the concentration of private power in the digital ecosystem. The primary argument is that risk regulation in European digital policy does not seek to rationalise uncertainty through science but to govern epistemological uncertainty through the instruments of constitutionalism, with the goal of addressing the impact of digital technologies on fundamental rights and imbalances of power.

The Storm of a Century – Separation of Powers in the United States in 2025

Written: December 01, 2025; Posted in SSRN: December 11, 2025

Conley, Anna

Separation of powers in the United States is experiencing an unprecedented stress test. The Framers' design envisioned three co-equal branches whose "ambition" would defensively counteract encroachment by other branches. In 2025, however, this structure is destabilized by an overly aggressive Executive, a subservient Congress, and a fractionalized Judiciary. The Executive's unprecedented encroachment on legislative power and disregard for institutional restraint is a result of: (1) the U.S. Supreme Court's ("the Court") adherence to the unitary executive theory, under which the President has unfettered control over the entire executive branch, (2) Congress' unwillingness to check the Executive, and (3) the Court's use of its place atop the judicial hierarchy to stymie lower courts' attempts to check the Executive. When neither branch is willing or able to check the Executive, separation of powers disintegrates.
The Court's adherence to the unitary executive theory resulted in its grant of expansive executive criminal immunity, allowing actions such as abuse of the pardon power and political prosecutions to go unchecked. The Court's adherence to the unitary executive theory has also resulted in presidential power to remove nearly all executive officials without adherence to statutory protections. These expansions of executive power by the Court simultaneously strip Congress of power. Congress is likewise unwilling to check the Executive, illustrated by legislative acquiescence to the Executive's refusal to enforce the TikTok Act. Congress' subservience to the Executive has also allowed actions such as impoundment of appropriated funds and extrajudicial killing of suspected drug smugglers to go unchecked.
While lower federal courts have tried to check the Executive, the Court has largely blunted these efforts by staying injunctions enjoining executive action, limiting lower courts' ability to issue nationwide injunctions, and directing lower courts to adhere to its short, cryptic stay orders rooted in the unitary executive theory. The result of both branches' inability or unwillingness to check the Executive has created the storm of a century disfiguring the U.S. Constitution's separation of powers design.

REGARDING AGENCY ACTIONS OF VAST ECONOMIC AND (OR) POLITICAL SIGNIFICANCE: THE MAJOR QUESTIONS DOCTRINE AS THE NEW ADMINISTRATIVE POLITICAL QUESTION DOCTRINE

Vanderbilt Law Research Paper Forthcoming

Craig, Robin Kundis
Ruhl, J. B

When in 2022 the Supreme Court majority announced the arrival of the Major Questions Doctrine (MQD) in West Virginia v. EPA, it purported to create a multifactor test to police federal agencies who were straying outside of their congressionally delegated authority--or, as Justice Barrett would later phrase it, operating outside their proper "wheelhouses." While many scholars have addressed the MQD's doctrinal legitimacy and purpose, few have focused on how the MQD is actually operating in practice and what additional power the MQD is giving federal courts to void federal agency decisions. This Article helps to fill that gap by showing that the "political and economic significance" factor within the MQD is beginning to take on a life of its own. This emerging trend is best understood by disentangling the various strands of precedent that the West Virginia majority attempted to weave into a single coherent doctrine to reveal the three basic categories of MQD cases: instances where federal agencies interfere with state authority; instances where federal agencies interfere with other federal agencies or congressional schemes; and instances where an agency regulation is "excessively" expensive or politically controversial. This last category, we argue, is where the true emerging power of the MQD lies. In particular, lower courts in the Fifth Circuit are reversing federal agency decisions purely on the basis that they are politically controversial, creating what effectively amounts to a political question doctrine for federal administrative agencies.

SPECIFICITIES OF THE SPECIAL ADMINISTRATIVE PROCEDURE WITHIN THE CROATIAN COMPETITION AGENCY AND ADMINISTRATIVE-JUDICIAL PROTECTION

Pravni vjesnik, 41(3), pp. 175-175., 2025.

Đanić Čeko, A.
Malenica, I.

The purpose of the paper is to analyse, through the application of the normative method, the basic procedural provisions and present the specific features of the special administrative procedure under the jurisdiction of the Croatian Competition Agency (hereinafter: the Agency) and to highlight certain misdemeanour-administrative elements. Furthermore, the Competition Act will be compared with previous legal versions, in terms of the legal position and powers of the Agency. It points out the specific features that stand out in terms of legal protection following the single-instance administrative procedure before the Agency. Further legal protection against the decision is achieved within the framework of an administrative dispute, initiated by filing a lawsuit directly with the High Administrative Court of the Republic of Croatia (hereinafter: the HAC). Therefore, the paper examines the justification of the form of administrative-judicial protection in a single-instance administrative dispute entrusted to the HAC, which constitutes an exception. The table presents and analyses the statistical data provided by the HAC in the period from 2013 to 2022, regarding disputes over the legality of the Agency's decisions. Finally, considerations and conclusions are presented in relation to the prominent research subject.

Pregled odabranih upravnoprocesnih specifičnosti u postupcima pred Agencijom za zaštitu tržišnog natjecanja (An Overview of Selected Administrative Procedural Specificities in Proceedings Before the Croatian Competition Agency)

Zbornik Pravnog fakulteta u Zagrebu 75, br. 3 (2025)

Đanić Čeko, A
Mirta Kapural
Tadija Kristić

U radu se, putem normativne metode na osnovi važećih pravnih propisa, daje pregled odabranih upravnoprocesnih instituta i njihovih specifičnosti – pokretanje upravnog postupka na temelju obavijesti ili predstavke i posebnog upravnog postupka podnositelja inicijative te izdavanja naloga za nenajavljene pretrage od strane Visokog upravnog suda Republike Hrvatske. Nadalje se uspoređuje njihovo pravno uređenje prema Zakonu o općem upravnom postupku, Zakonu o zaštiti tržišnog natjecanju i Zakonu o upravnim sporovima te upućuje na određena odstupanja i nedorečenosti. Prikazuju se i statistički podatci upravne prakse Agencije za zaštitu tržišnog natjecanja i sudske prakse Visokog upravnog suda Republike Hrvatske. Isto tako, pozivom na komparativna rješenja proizašla iz prakse Suda EU-a i odabranih sudova drugih država članica u odnosu na nenajavljene pretrage, pokušavaju se iznaći odgovori na postavljena otvorena pitanja u praksi, u dijelu upravnoprocesnih postupanja Agencije za zaštitu tržišnog natjecanja i odlučivanja Visokog upravnog suda Republike Hrvatske. Završno se daju zaključna razmatranja u odnosu na analizirane institute te kritički osvrt.

Translated by IA:

By employing the normative method based on current legal regulations, this paper provides an overview of selected administrative procedural institutes and their specificities: the initiation of administrative proceedings based on notifications or petitions, the special administrative proceedings of the initiator, and the issuance of warrants for unannounced searches by the High Administrative Court of the Republic of Croatia. Furthermore, the paper compares the legal framework established by the General Administrative Procedure Act, the Competition Act, and the Administrative Disputes Act, identifying certain divergences and ambiguities. Statistical data regarding the administrative practice of the Croatian Competition Agency and the case law of the High Administrative Court of the Republic of Croatia are also presented. Additionally, by invoking comparative solutions derived from the jurisprudence of the Court of Justice of the European Union and selected courts of other Member States concerning unannounced searches, the paper seeks to address unresolved issues in practice regarding the administrative procedural conduct of the Croatian Competition Agency and the adjudication of the High Administrative Court of the Republic of Croatia. Finally, concluding remarks on the analyzed institutes are provided, alongside a critical appraisal.

Posebni upravni postupci procjene utjecaja zahvata na okoliš s osvrtom na upravno-sudsku praksu
(Special Administrative Procedures for Environmental Impact Assessment with Reference to Administrative-Judicial Case Law)

Očuvanje načela zakonitosti u postupcima prostornog uređenja i gradnje / Barbić, Jakša (ur.). Zagreb: Hrvatska akademija znanosti i umjetnosti, 2025. str. 65-95

Đanić Čeko, Ana
Senjak Krunić, Kristina

S upravno-pravnog gledišta, smatramo važnim analizirati posebne upravne postupke u odnosu na rješavanje upravnih stvari i donošenje upravnih odluka iz područja zaštite okoliša, odnosno važnosti procjene utjecaja zahvata na okoliš i izdavanje okolišne dozvole. Stoga se u radu, primjernom normativne metode, analizira pravni okvir temeljem Zakona o zaštiti okoliša u odnosu na istaknuto. Nadalje, ukratko se ističu nadležna javnopravna tijela i prikazuje se tijek provođenja posebnih upravnih postupaka. Navedeno upravno područje, s okolišnog aspekta, dovodi se u s vezu s područjem gradnje te prostornog uređenja, a sve u svrhu ocjene utjecaja izgradnje i radi osiguravanja visoke razine zaštite okoliša. Također će se, u procesnom smislu, usporedbom dvaju procesnih zakona, Zakona o općem upravnom postupku (lex generalis) i Zakona o zaštiti okoliša (lex specialis), ustvrditi postoje li i u kojem mjeri određena odstupanja. Nadalje, ukazuje se na važnost pravne zaštite u ovome području u okviru upravno-sudske zaštite, povodom tužbi radi ocjene zakonitosti pojedinačnih odluka (rješenja i okolišnih dozvola). Analizom dostupnih sudskih predmeta, omogućit će se izravan uvid u način odlučivanja upravnih sudova i ukazati na složenost predmeta iz okolišne problematike. Poseban se naglasak stavlja na ulogu prvostupanjskih upravnih sudova u Republici Hrvatskoj u osiguravanju sudske zaštite u navedenom posebnom upravnom području.

Translated by IA:

From an administrative-legal perspective, this paper considers it essential to analyze special administrative procedures concerning the resolution of administrative matters and the adoption of administrative decisions within the field of environmental protection, specifically focusing on the significance of Environmental Impact Assessments (EIA) and the issuance of environmental permits. Consequently, by applying the normative method, the paper analyzes the legal framework established by the Environmental Protection Act in relation to these issues. Furthermore, the competent public law bodies are identified, and the progression of special administrative procedures is presented. This administrative domain, from an environmental standpoint, is linked to the fields of construction and spatial planning, aimed at evaluating the impact of construction and ensuring a high level of environmental protection. In procedural terms, a comparative analysis of the General Administrative Procedure Act (lex generalis) and the Environmental Protection Act (lex specialis) is conducted to determine whether, and to what extent, specific procedural derogations exist. Moreover, the paper underscores the importance of legal protection in this field within the framework of administrative-judicial review, particularly regarding lawsuits for the assessment of the legality of individual acts (decisions and environmental permits). Through the analysis of available case law, the paper provides direct insight into the decision-making processes of administrative courts and highlights the complexity of environmental disputes. Particular emphasis is placed on the role of first-instance administrative courts in the Republic of Croatia in ensuring judicial protection within this specialized administrative area.

Drafting Regulatory Preambles (Draft Report to the Administrative Conference of the United States)

Administrative Conference of the United States (Mar. 16, 2026)
U of Michigan Public Law Research Paper

Deacon, Daniel

This is a draft report to the Administrative Conference of the United States on best practices for drafting regulatory preambles in light of recent developments in judicial review of agency action. It is based in part on interviews with nineteen current and former agency employees with experience writing the explanations that accompany agency rules. Among other things, it explores how the demise of Chevron affected agencies' approach to regulatory preambles. In addition, it provides guidance to agency rule drafters intended to help those drafters navigate the changing judicial review environment.
The draft report will undergo revisions before becoming final. The views expressed do not represent those of ACUS or the federal government. The ACUS project page can be found here: https://www.acus.gov/projects/drafting-regulatory-preambles.

The Interagency Integrity Doctrine: A National-Security Framework for Statutory Clarity, Boundary Integrity, and Structural Defense

Written: December 05, 2025; Posted in SSRN: December 12, 2025

Decker, Nicolin

The Interagency Integrity Doctrine (IID) advances a foundational assertion: structural ambiguity within the United States federal system—particularly across national-security, regulatory, and interagency authorities—is no longer a procedural inconvenience, but a materially exploitable condition shaping adversarial strategy, federal decision-making velocity, and national resilience. Modern threat environments—cyber operations, digital-asset finance, foreign standards-setting, cognitive warfare, and hybrid-domain statecraft—operate at a tempo that presumes clarity of legal authority. Where authority is undefined, overlapping, or unresolved, the result is not benign institutional diversity but hesitation, fragmented execution, and jurisdictional negotiation under live operational pressure.
Drawing on constitutional design principles, statutory interpretation doctrine, post-Chevron administrative boundaries, and intelligence-community risk modeling, IID demonstrates that ambiguity functions as an attack surface when adversaries can predict, model, or time U.S. authorization delays. Through comparative analysis of the People's Republic of China's long-horizon standards strategy and the Russian Federation's disruption-based exploitation model, the doctrine shows that foreign actors derive advantage not from superior capability, but from the differential between U.S. capability and U.S. coordination.
The doctrine establishes four core findings: (1) national security is derivative of constitutional clarity; (2) agency boundaries function as intra-executive separation-of-powers safeguards; (3) statutory ambiguity produces predictable operational latency; and (4) clarity—not consolidation—is the lawful and structurally appropriate remedy. IID does not recommend the redesign of federal institutions. Instead, it affirms Congress as the sole constitutional organ capable of restoring statutory certainty and aligning federal authority with modern threat environments.
As the fourth installment in The Republic's Conscience doctrine series—and the companion to The Structural Silo Doctrine—IID completes the evidentiary foundation first introduced in The Doctrine of Anchored Decentralization: that constitutional architecture is not conceptual theory, but operational defense. In a geopolitical era defined by speed, interoperability, and contested governance frameworks, ambiguity is not neutral—it is vulnerability. Clarity is deterrence.

The Sky Is Falling: Immigration Law and Agency Adjudicator Independence

Widener Law Commonwealth Research Paper No. 25-14
2026 Utah L. Rev., forthcoming

Family, Jill E.

This article examines the degradation of agency decisional independence under unitary executive theory through the experience of immigration law. The Supreme Court is expected to overturn 90 years of precedent this term, in Trump v. Slaughter, by embracing unitary executive theory to hold that Congress may not limit the president's power to fire the head of an agency. Congress has protected some agency heads with "for cause" removal restrictions that do not allow the president to fire the agency head for political reasons. Slaughter threatens the category of "independent agency" and could upset fundamental understandings of the structure of government. During the oral argument in Slaughter, Solicitor General Bauer asserted that the "sky will not fall" if the Supreme Court eliminates independent agencies. This article asserts that the experience of immigration law shows the opposite; the sky is falling.

The rise of presidential political control over administrative agencies has implications for agency adjudication. It raises the question whether the Court will extend the logic of unitary executive theory to agency adjudication. If it does, unitary executive theory will make all agency adjudicators more like immigration adjudicators. Congress has protected some agency adjudicators from political control. A president may fire these adjudicators only for cause. This type of restriction, however, is threatened by Slaughter. Congress has never insulated immigration agency adjudicators from political control. Immigration adjudicators decide cases with the knowledge that there can be employment repercussions if the president is displeased with the adjudicator's decision-making record. This is true through both Republican and Democratic administrations. Immigration judges fear for their jobs. President Trump pushed out about 140 immigration judges in 2025.

Unitary executive theory promises to restructure agency adjudication and to eliminate Congress' role in deciding which types of agency adjudication are subject to political control. The president would assume this power. Perhaps the executive branch will self-police and temper its use of political control. The experience of immigration law suggests otherwise.

Deference, Adrift

Columbia Journal of Law & Social Problems, Vol. 59

Fastow, Jeffrey

For more than a century, the federal courts have improvised their way through the overseas territories—sometimes treating them as states, sometimes as colonies, and often as something in between. This Note argues that this uncertainty is not merely historical but structural. Territorial courts, grounded under Article IV rather than Article III, require a distinct mode of judicial review: one bounded by political-question restraint and informed by administrative deference, rather than by analogy to state sovereignty. In particular, when territorial courts interpret their own organic acts or territorial statutes, such disputes should be understood as political questions textually committed to Congress under the Territory Clause and lacking judicially manageable standards. And even when courts believe review is appropriate, judges should afford territorial interpretations Skidmore-style respect-measured by expertise, consistency, and reasoned judgment-much as they once did to agency interpretations of delegated authority. The result is an account of Article IV-modulated review that preserves Marbury's core commitments, while insulating the territories from the ad hoc interventions that have long characterized America's law of expansionism.

Trust in Regulation in a Time of Revolution

Regulation & Governance, 1–14

Ford, Cristie

This article examines trust in regulation as a core value and precondition of the modern liberal democratic regulatory state. It develops a concept of justified trust in regulation, grounded in regulatory trustworthiness—honesty, competence, and reliability—rather than in proxies such as partisan loyalty, blind faith, obedience, or resignation. The article situates this conception of regulatory trustworthiness within liberal democratic rule-of-law commitments to equal respect, fairness, and accountability, and shows how it underpinned late-twentieth-century imaginings of the "regulatory state." It then contrasts this model with an emerging illiberal vision, exemplified by the current American President's emphasis on personal loyalty, in-group allegiance, and zero-sum politics—all of which actively repudiate the conditions for justified trust. Using regulatory theory and examples from contemporary US governance, the article argues that mutual justified trust between regulators and regulated actors is an indispensable "capital good" for effective, flexible, and fair regulatory regimes. It concludes that rebuilding a functional regulatory state after an illiberal turn requires explicitly naming, protecting, and measuring regulatory trustworthiness as a central liberal value, alongside the rule of law, democratic accountability, and a basic commitment to equality.

Improving Regulatory Notice

SMU Law Review, volume 78, issue 4, 2025

Galperin, Joshua
Elliot, E. Donald

Effective notice of law is the cornerstone of any legal system, and yet many federal administrative agencies do not give small businesses, NGOs, and interested citizens notice of the vast amount of new or modified law they produce. They merely publish the text in the Federal Register, which works tolerably well for larger enterprises but not their smaller competitors and citizens' groups. Despite these facts, few scholars have explored how agencies provide notice of the law. Even fewer have proposed ways that agencies could improve the methods they use for giving more effective notice of significant regulatory changes and thereby increase compliance and fairness. This Article therefore examines notice-giving among federal agencies. Based on dozens of stakeholder interviews, this Article uncovers inconsistencies and shortcomings in the approaches some agencies use to make available information regarding significant regulatory changes. Even more importantly, we highlight successful approaches that some agencies use to get the word out to all constituencies. We argue that adapting these best practices to other agencies and their audiences can improve the efficacy and fairness of U.S. administrative law overall.

To most, the study of administrative notice begins and ends with the Federal Register. However, in many circumstances, mere publication in the Federal Register is inadequate, particularly for marginalized communities and small entities. But even larger entities struggle to "connect the dots" between the materials agencies publish, for example, in the Federal Register, only on agency websites, as adjudicative orders, or as guidance. These shortcomings raise concerns about the fairness and efficacy of administrative processes, but providing effective notice of significant regulatory changes is not merely a policy concern. Constitutional principles, particularly the requirements of due process, as well as a variety of federal statutes, require that agencies give.

Sufficient notice of certain regulatory changes. To improve administrative governance and meet both constitutional and statutory commands, this Article proposes a comprehensive strategy to improve the way agencies give notice of significant regulatory changes. Our overarching proposal is that agencies should develop proactive notice plans that, among other things, identify target audiences, evaluate costs, and establish policies for gathering and periodically reevaluating data about the effectiveness of agency notice practices. Additional recommendations include improving the usability of the Federal Register, leveraging technological advancements for automated notifications, and developing accessible digests and user manuals.

The needs of each agency vary, but by adopting an appropriate combination of these measures, agencies can avoid legal risk, improve communication, foster compliance, invite meaningful participation, and reinforce the legitimacy of the regulatory system. Ultimately, this Article asserts that effective notice of significant regulatory change is not only a legal obligation but a fundamental democratic practice that supports informed citizenry and good governance.

Noise Law

Michigan Journal of Environmental & Administrative Law

Galperin, Joshua

The rumble of traffic, the drone of air conditioners, the blast of construction equipment. These are the mundane sources of noise pollution that we all experience but rarely think about. Or, if we do think about noise pollution, we don't think of it as a central piece of federal environmental law. This Article, however, demonstrates that noise law is, or was, central to American environmental law, and it offers insights into how environmental protection and administrative governance work today.

In the 1970s, during the height of environmental activism and policymaking, lawmakers recognized noise as a serious pollutant alongside issues we continue to discuss today, such as dirty air, contaminated water, and biodiversity loss. The federal government built an impressive framework to tackle the problem, complete with science-based mandates, dynamic regulatory authority, and citizen suit provisions.

But then something remarkable happened: it quietly fell apart. Through presidential neglect and civil society inattention, the fledgling noise control system collapsed. This Article shows exactly how this happened, revealing the political and administrative forces that can make or break regulatory programs.

Three key components of noise law distinguish it from other environmental issues. First, by one line of thinking, noise pollution really isn't "pollution" because noise waves are not tangible like particles and toxins, both of which trigger greater disgust reactions and sustain public attention. Second, Congress created fragmented control over noise governance, giving the Environmental Protection Agency supervisory authority but lodging important authorities within agencies across the federal government. Third, noise does not travel as far as many other pollutants and it does not accumulate in the environment or bodies, making it easier to escape—spatially and temporally—for those with the political and economic power to do so. This last component makes noise an especially acute example of an environmental injustice, which may also make it an especially easy problem for elites to overlook.

Ultimately, this Article demonstrates that noise law serves as a revealing case study for understanding environmental policy and administrative governance broadly. Noise law offers insights into the dynamics of regulatory decline, the politics of environmental justice, and the difficulties of structuring administrative systems for complex public problems.

Zones of Independence at the National Labor Relations Board After Humphrey's Executor

GWU Legal Studies Research Paper, 78 Admin. L. Rev. (forthcoming 2026)

Jacob, Fred B

In 1935, Congress established the National Labor Relations Board independent of any cabinet department to resolve labor conflict and protected its members from at-will removal to ensure impartial and expert adjudication. Now, the unitary executive is en vogue. The President has fired a Board member without cause, the Supreme Court has suggested that the NLRB's removal protections may be coming to an end, and Congress doesn't seem to mind. Proponents of an independent NLRB have warned that subjecting members to the President's removal authority encourages White House interference in the disposition of individual labor disputes.

This Article, however, contends that the Constitution's Due Process Clause erects zones of independence that wall off the Board's adjudication from the pressure of the Executive. In numerous contexts, the courts have long recognized that excessive political interference in administrative adjudication violates parties' rights to due process of law and an impartial tribunal. The influence of politics must end at the courthouse steps. While the end of removal protections for the Board members brings with it significant negative consequences, which the Article discusses, the potential demise of the independent agency does not necessarily mean the end of adjudicative independence for workers relying on the NLRB to protect their rights under the law.

Women on Boards: The Importance of Gender Equality at the Croatian National Level

In: Macioce, F., Saeidzadeh, Z., Vujadinović, D. (eds) Feminist Legal and Political Practices. Gender Perspectives in Law, vol 6. Springer, 2025.

Kasap, J.
Lachner, V.
Čeko, A.Đ

Discrimination against women on the national labour market is manifested in professional gender segregation, whereby employed women predominate in "female" sectors, such as the education, health and social welfare systems, and face a glass ceiling, which is why the share of women in managerial positions and in representative bodies is significantly lower than the proportion of men. Regardless of the normative framework in Croatia based on the Constitution of the Republic of Croatia, the Law on Gender Equality and the Labour Law, the underrepresentation of female presence in the boards of directors of the largest publicly listed companies as weal in the highest levels of administrative position is one of the most important indicators of the existence of hidden gender discrimination at the national level. According to its Gender Equality Strategy, the EU is committed to take concrete steps to promote gender equality in decision-making, including proposing legislation where relevant. On the way to achieving goals in the field of Gender Equality, the European Parliament and Council established the latest Directive on improving the gender balance among directors of listed companies and related measures. As the deadline for the implementation of the Directive into the national legislation is relatively short, it is important in this research to determine the current situation regarding this issue at the national level. Furthermore, the specific objective of the research is to determine and identify compatibility between the EU and national policies on gender equality and to emphasize challenges and barriers that prevent progress in this area on national level. Primarily, with the aim of determining the position of women in the political, business and administrative spheres, the historical-legal context will be analysed. Further short attention will be paid to EU public policies in this field, basic strategic documents, national politics and mechanisms emphasizing greater participation and involvement of women in public decision-making processes. In this regard, the research will include the analysis of the normative framework at the national level and beyond and the available data on the representation of women in the labour market. Finally, recommendations will be made to improve and enhance the system with proposals of good approaches and practice.

Who Should Control Government Information?

1 Indep. L. J. _ (forthcoming 2026)

Katz, Emile J

This Article argues that the high risk of politically driven manipulation of data collected by agencies within the executive branch—combined with the Supreme Court's growing embrace of the Unitary Executive Theory—undermines the credibility of federal data and weakens Congress's institutional capacity. It proposes moving the government's core statistical functions currently located in the executive branch to congressional statistical agencies insulated by bipartisan appointment and removal, fixed terms, and professional standards. The Article demonstrates that shifting these functions to congressional statistical agencies would improve data availability and accuracy, increase public trust, and strengthen Congress's capacity. Furthermore, the Article explains that moving statistical agencies to Congress is consistent with actions taken by Congress in the past, that it can be implemented without violating the Constitution's separation of powers, and that it would be politically feasible.

Judging Emergencies

05 Texas Law Review __ (forthcoming 2026)

Landau, David

Presidents have increasingly leaned on emergency statutes to enact their policy goals. President Trump across his two terms has wielded emergency provisions to enact tariffs on nearly every country, deploy the National Guard to U.S. cities, construct a wall on the Southern border, summarily deport alleged members of Venezuelan drug gangs, and restrict the entry of foreign nationals. Scholars argue that recent invocations of emergency power are pretextual or abusive. They worry that courts will be insufficiently assertive in policing their use, but the judiciary has in fact already struck down many recent attempts to wield emergency power. The issue is not whether courts will review uses of emergency power, but how they ought to do so. This article shows that courts have focused primarily on whether the statute being wielded delegates the precise power or instrument used by the president. This powers-based approach threatens to hamstring presidents when they have legitimate need for emergency power, while also leaving the door wide open to abuse. It should be supplanted by two more productive and fundamental questions well-known in comparative and international law: (1) Is there actually an emergency? and (2) Is the proposed response proportional to that emergency? A reorientation along these lines is already visible in lower-court decisions, plausibly rooted in existing statutory language, and could be enhanced by common-sense statutory changes. Eliminating the major questions doctrine in emergency powers cases would also restrain the excesses of the powers-based approach and clear space for more effective judicial review.

Getting Personal: Individualized and User-Searchable Readability Results for a Large Corpus of Canadian Adjudicative Decisions

Forthcoming in (2026) 51:2 Queen's Law Journal

Madden, Mike

This article reports on an original empirical study of the quantitative readability of a large corpus of Canadian court and tribunal decisions. Specifically, the article uses a new law-specific readability formula that is designed to predict how well readers of different education levels will understand an adjudicative decision to compute readability scores for 1621 discrete decision/opinion files, containing over 9.3 million words of text, from cases that were decided in 2022. The results are coded based on author name, author gender, jurisdiction, legal subject area, opinion type, word count, and other variables-and are made publicly available. Although the article highlights and discusses some of the more noteworthy results, its true value lies in its potential as a resource for others. Future researchers can query the results reported within this article for their own purposes to answer their own research questions, based on the variables that are of most interest to them. Similarly, authors of adjudicative decisions whose scores are reported in this study can find and contemplate their scores to assess whether they are satisfied with the readability levels of their decisions. And, other judges or tribunal members can search the results to identify highly readable decisions that might serve as inspiration to these judges in their future decisions.

"Text as Anchor" in Statutory Interpretation

Forthcoming, Canadian Bar Review

Mancini, Mark

This article offers a doctrinal elaboration and defense of the Supreme Court's recent emphasis on the text as the "anchor" of the modern approach to statutory interpretation. Drawing on recent jurisprudence, including CISSS A and Kosicki, the paper argues that the concept of relative generality explains how the text controls judicial interpretation. Through the design of rules that are more or less general, legislative language functions as a deliberate signal of the degree to which courts can enrich the written law with potentially unwritten sources of law. Taking the text as anchor approach seriously suggests that statutory purpose can be deployed: (1) as an interpretive tool to select among plausible meanings of a text where the language is capable of multiple semantic interpretations; and (2) as a constructive tool to narrow specific statutory language to better align with the overall statutory scheme and the "domain" to which it applies.
Ultimately, this paper contends that clarifying these functions resolves tensions in the application of the modern approach, while centring the distinct contribution of statutory texts--the "writtenness" of statute law--to our legal order.

Co-creation and Multilevel-Governance: A Literature Report

Written: October 30, 2025; Posted in SSRN: April 1, 2026

Marjanovic, Marjan
Papadopoulos, Yannis
Trein, Philipp
Mueller, Sean

As the EU advances its green and digital "twin transitions," public authorities seek governance approaches that link policy innovation with democratic legitimacy and delivery capacity. This report clarifies the meaning of co-creation in public governance and examines how it can be embedded within multilevel governance (MLG) so legitimacy, effectiveness, and inclusion reinforce one another across local, regional, national, and EU levels. Based on a narrative review of 111 publications, it shows that co-creation involves collaborative practices across the policy cycle-joint problem framing, design, implementation, and evaluation-engaging citizens, public institutions, civil-society organisations, businesses, and experts. While most practice occurs locally, higher tiers shape mandates, resources, standards, and digital platforms that enable or constrain experimentation and diffusion. The analysis identifies key benefits, including improved democratic legitimacy, knowledge quality, service and policy outcomes, and social cohesion, alongside risks such as tokenism, elite capture, representation gaps, digital exclusion, and limited scaling. When adequately supported, co-creation complements representative democracy and strengthens MLG's problem-solving capacity. (Rethinking Co-Creation of Digital and Environmental Policy in Systems of Multilevel Governance) MLG, Horizon Europe Project. Project no. 101177521. We thank Stefan Gänzle, Amanda Manchin, Jacob Torfing, and Pieter Velghe for their very helpful written comments on an earlier version of the report. Furthermore, we thank Katherine Arena

The Constitutionality of the U.S. Sentencing Commission in the Formalist Era

Minnesota Legal Studies Research Paper 2026-14

Merchant, Sam

The Roberts Court's formalist turn has eroded the foundations of the modern administrative state, potentially placing the very concept of the "independent agency" on the path to extinction. As the nondelegation doctrine, major-questions doctrine, and Unitary Executive Theory gain ascendancy, the constitutionality of the U.S. Sentencing Commission, an independent agency whose members enjoy for-cause removal protection, appears increasingly suspect to some observers. Few agencies wield more direct influence over individual liberty than the Sentencing Commission, whose notorious Federal Sentencing Guidelines and policy decisions influence the fate of tens of thousands of federal defendants each year and shape the contours of justice even in state courts. This Article is the first to analyze the constitutionality of the modern Sentencing Commission, which has come into question in the Roberts Court era. It combines constitutional theory, administrative law, and the history and tradition of American sentencing to revisit Mistretta, the 1989 Supreme Court decision that affirmed, on functionalist grounds, Congress's broad delegation of power to the Sentencing Commission.
I show that despite the demise of bedrock cases like Humphrey's Executor, the Sentencing Commission remains constitutionally sound. The Supreme Court's landmark decision in United States v. Booker in 2005 solidifies this result. This Article explains that by rendering the Federal Sentencing Guidelines "advisory" instead of "binding" in Booker, the Supreme Court transformed the Sentencing Commission from arguably a "junior varsity Congress" into a "judicial auxiliary" that exercises no coercive Executive power or lawmaking power. I contend that the Sentencing Commission's unique placement in the Judicial Branch, combined with its strictly non-binding authority, insulates it from nondelegation concerns and Presidential removal power. This Article uses the Sentencing Commission as a roadmap that Congress can use to design other constitutionally durable agencies in a formalist era that is suspicious of independent agencies.

The Aftermath of Successful Planning Claims

In: Taylor & Francis: Citizens, the State and Justice, 2026

Mills, Alistair

There is a risk that even a successful public law claim will lead ultimately to the same decision being reached when the decision redetermines it. This may fuel concerns that public law is pointless, that claimant lawyers are merely seeking to delay the inevitable, or that lawyers are the only true winners from public law. This chapter investigates the scale of this risk, in the context of planning decisions. It describes the aftermath of planning claims which lead to a decision being quashed following a judgment of a court, and shows that, in well over half of such cases, there is a positive outcome for the claimant.

Time Limits for Challenging Administrative Policies and Guidance

Apollo - University of Cambridge Repository, 2026

Mills, Alistair

Time is short for bringing a claim by way of judicial review. What triggers time running under the Civil Procedure Rules is therefore highly significant. This article examines the trigger for bringing a challenge to administrative policy or guidance. Such documents seek to guide public bodies as to how to exercise their decision-making functions. They can themselves be subject to judicial review. As to the timing to bring such a challenge, the law currently draws a distinction between claims which are related to an impact upon the claimant, and those where the claim is brought in the abstract. More rooted in principle and practical reality would be to distinguish grounds of challenge which argue that a policy was directing a decision-maker to act unlawfully, from those claims which merely argue that there had been a legal flaw in the adoption of the policy. For the former type of challenge, this article argues that there should be no time limit for bringing a claim, albeit a court would be able to refuse relief or make a prospective-only quashing order, in the exercise of its discretion.

The Socio-Political Origins of the Israeli Second Constitutional Revolution

ICL Journal, Volume 20, Issue 1, January 19, 2026

Mordechay, Nadiv

In recent years, Israel has joined countries that are experiencing democratic backsliding, which has reached its peak in the government presenting its '2023 legal reform', mobilizing a frontal constitutional change, and the constitutional crisis that followed. This event symbolizes the culmination of the Israeli Counter-Revolution, one that developed in the decades before 2023, and which aspires to replace the constitutional order established since the mid-1990s, known as the (first) Constitutional Revolution. To date, scholarship has so far failed to account for the underlying socio-political origins of this counter-revolution. This article will focus of the Israeli '2023 legal reform' in order to present five positive socio-political explanations to this Israeli Second Constitutional Revolution. According to the first explanation, Israel is going through a Constitutional Moment, a public rising to an unusual reformative republican moment, in which the public takes part in raising an unusual civil voice for constitutional change. According to the second explanation, the government's move should be explained as a deception and a mistake. The '2023 legal reform' was a radical and anti-democratic departure only as a deception move. Its initiators did not anticipate the public and political backlash. According to the third explanation, the changes we see should be explained as elite cooperation, a compromise (and not a struggle) between elites in Israel. According to the fourth explanation, the '2023 legal reform' is a smoke-screen for a deeper administrative change and has characteristics of Autocratic Legalism. Informal constitutional change is actually deeper; and in some realms of the Israeli administrative state – a deeper anti-democratic change is already taking place. The fifth explanation sees the '2023 legal reform' as a preventive insurance counter-move of political and ideological distress of its conservative perpetrators and as a 'hegemonic preservation' effort. The government's steps should be explained as a 'preventive insurance move' whose purpose is to prevent a deeper progressive constitutional change from the opposite political side.

Protection As Punishment: Victim Relief In The Crimmigration State

Written: March 06, 2026; Posted in SSRN: March 20, 2026

Nyborg-Burch, Erika

Over the past three decades, Congress has repeatedly promised noncitizen survivors of domestic violence, trafficking, and other serious harms a route from legal precarity to safety through victim-based immigration relief. Yet in today's enforcement system, that promise is increasingly inverted. The same law-enforcement contact that makes survivors eligible for relief often triggers arrest, serving as an on-ramp to removal proceedings. As requests for statutory protection move through slow and discretionary agency adjudication, immigration court proceedings and deportations often outpace relief, especially for survivors in detention. This enforcement architecture cuts off access to protections and reproduces harm as state policy, undermining Congress's commitments to noncitizen survivors.

This Article offers the first account of how the immigration enforcement system is vitiating the victim protections that were meant to temper it. The collapse of protections is not primarily a problem of individual ineligibility but a design flaw in federal immigration law. This Article's intervention operates on three levels. Conceptually, it shows how victim statutes carve out a narrow, deserving victim against a legal system that increasingly treats illegality as a marker of criminality, blurring the line between victim and offender that relief presupposes. Doctrinally and institutionally, it identifies the mechanisms that thwart statutory protections: enforcement pipelines that link law enforcement encounters to deportation, criminal and discretionary filters that disqualify survivors for conduct shaped by coercion and precarity, jurisdictional separation between the immigration benefits agency and immigration courts, and detention-driven acceleration of removal. Normatively, it argues that this architecture both produces and obscures state-inflicted harms, like seizures in spaces of care, coercive confinement, and forced dislocation, perpetuating and legitimizing the very violence the federal statutes were enacted to prevent.

In response, the Article advances a reconstruction designed to operate where the current system fails. It proposes structural reforms that decouple survivor safety from enforcement: first, stabilizing protection on the front end through interim work authorization and access to essential services. Second, constraining enforcement overreach by cabining arrest authority, deputation arrangements, and enforcement in spaces of care. And third, making relief operative even after an arrest by narrowing disqualifiers, dismantling mandatory detention, and requiring pauses in removal proceedings during agency adjudication. Finally, because the communities most exposed to this enforcement.

Will the Administrative Review Tribunal's accountability functions improve administrative decision-making? Lessons from behavioural science

UNSW Law Research Paper No. 25-43

Rock, Ellen
Boughey, Janina

Merits review is intended to serve the important normative function of improving the quality and consistency of administrative decision-making. This normative function has received particular attention in the design of the new Administrative Review Tribunal, with a number of its features being explicitly intended to promote improvements in first instance decision-making. Whatever the intentions behind these reforms, quite little is known about how administrative decision-makers respond to the influence of external accountability bodies such as administrative tribunals. In order to better understand the potential impact of the ART, this article draws on lessons from behavioural science to identify relevant factors that drive behavioural reactions to the experience of "felt accountability". It concludes that certain features of the ART reforms have the potential to enhance its behavioural influence by: increasing visibility of the ART's expectations of decision-makers; intensifying the degree of involvement in Tribunal processes; and bolstering the perceived legitimacy and expertise of the Tribunal as a forum of review.

The Exclusive Powers Presidency

Arizona Legal Studies Discussion Paper No. 26-03.
106 Boston University Law Review __ (forthcoming 2026)

Roisman, Shalev Gad

Over the last decade, the Roberts Court has quietly transformed separation of powers law by centering the President's "exclusive" powers. Yet the Court does not seem to understand what it means to call a power "exclusive," or what consequences may flow from organizing separation of powers law around this concept. Scholars, meanwhile, have yet to confront the exclusive powers-turn head on.

This Article identifies the underlying conception of exclusivity that animates the Court's recent doctrine and explains what it means for the separation of powers. It argues that the Roberts Court has adopted a distinctive conception of exclusivity consisting of two principles: (1) The Sole Ownership Principle—the notion that, if the President's power is exclusive, only the President has any authority that falls under it; and (2) The Noninterference Principle—the notion that no other branch can interfere with an exercise of the President's exclusive power, even if that branch is exercising its own constitutional powers. Taken together, these principles have an unsparing doctrinal force. As the Article shows, given the presidential powers that the Court has deemed "exclusive," taking this conception to its logical conclusion would lead to an essentially unconstrained presidency in some of the most important areas of modern governance.

This is not merely a theoretical concern. The second Trump administration has repeatedly invoked exclusive-powers reasoning to justify unprecedented and expansive executive action in various domains. And it – or future administrations – might yet go considerably further on exclusive power grounds. Ultimately, while the exclusive powers conception yields clear answers in resolving disputes between the branches of government, it proves incompatible with foundational features of the Constitution's separation of powers and other strands of the Court's own doctrine. The Article concludes by charting potential paths out of the exclusive powers presidency.

Responsive Democracy And The Administrative State

Vanderbilt Law Research Paper

Rubin, Edward L

Theories of democracy tend to ignore the administrative apparatus of modern government or treat it as embodying conflicting principles and values. But the advent of democracy and administrative government in the Western Word occurred at the exact same time– the final quarter of the eighteenth century. This temporal correspondence is not coincidental, but rather reflects a deep structural relationship between these two supposedly distinct modes of governance.

Democracy can be defined as a system where an elected legislature, conceived as representing those who elected it, exercises supreme authority in the state, either by itself or in conjunction with an elected chief executive. But representative legislatures are an historically embedded institution, unknown to Ancient Greek democracy. They developed in medieval monarchies, most notably England, as a means of strengthening royal control against challenges by a truculent aristocracy. This mechanism, familiar by the end of thee eighteenth century, was adopted by opponents of royal rule in France, Britain, and the newly formed United States as a means of implementing their essential political commitment, which was that government should be responsive to the needs and desires of the populace. Their commitment arose, in turn from a profound shift in the moral outlook of the Western World, the displacement of the religiously based belief that people's action should serve a higher purpose, both sacerdotal and political, with the belief that their actions should be directed to their personal self-fulfillment and the protection of other people's ability to achieve that goal.

This same mentality generated a shift from the mercantilist idea that production should increase the wealth of the nation to the free market idea that it should meet the needs and desires of the citizens. When combined with the I advances of the Industrial Revolution, it has created a society of previously unimaginable wealth, but one whose cumulative knowledge and technological complexity exceeds any individual's comprehension. Expert administrative agencies, as defined by Weber, thus serve the same function as a representative legislature, which is to establish a government that serves people's needs and desires. Operating under the direction of the legislature, agencies are a mechanism by which the people can be represented in the decision making process that regulates modern technology and social services. Moreover, because the legislature is subject to the same knowledge limitations as the populace, these agencies must be able to exercise substantial discretion in carry out their representational function. This function is essential for modern democratic governance; global criticisms of the administrative state (e.g. Hayek, Friedman and Nozick) turn out, on examination to be propaganda that falls below the acceptable level of academic discourse.

Smarter Deregulation

Vanderbilt Law Research Paper No. 26-05

Schoonover, Sydney C.
Viscusi, W. Kip

Citing high regulatory costs, the Trump administration has taken drastic steps towards administrative deregulation, prioritizing the repeal of existing regulations and discouraging the promulgation of new regulations. Executive directives advancing this deregulatory agenda encourage agencies to subvert the procedural and analytical requirements governing agency action, including reasoned decisionmaking, public participation, and regulatory impact analysis. The administration has directed agencies to prioritize compliance-cost reductions, most concerningly, by excluding public health impacts from regulatory impact analysis altogether. Myopic prioritization of compliance-cost reductions fails to account for the true quantitative and qualitative impacts associated with regulation and represents an unprecedented shift away from a regulatory decisionmaking process long-premised on social welfare maximization. The Trump Administration's policies do not constitute a defensible approach to deregulation. The revocation of a regulation can be desirable in some circumstances, for example, when it becomes inefficient due to technological advancements or changed circumstances. However, a rational and well-reasoned approach to deregulation is both economically preferable and legally mandated. We propose a smarter approach to deregulation by arguing that decisions to rescind existing regulations should be made by leveraging the empirical principles of cost-benefit analysis to prioritize deregulatory efforts towards regulations that are comparatively less costeffective. Under the proposed framework, agencies facing an upper bound on the regulatory costs an administration is willing to incur should compare the cost-effectiveness of similar regulations. Regulations that rank low on this metric are relatively less cost-efficient and therefore are the proper target for deregulatory action intended to achieve compliance cost savings. Conversely, agency action revoking regulations that are comparatively more costeffective is unjustified and will be vulnerable to legal challenges. The proposed approach serves to justify efficient deregulatory action while ensuring well-reasoned and transparent agency decisionmaking. Applying this approach to environmental regulations, which are a main target of recent deregulatory efforts, this paper demonstrates that many of these regulations are comparatively highly cost beneficial. Although environmental regulations account for the largest share of U.S. regulatory costs, they also generate substantial economic and public health benefits by mitigating future harms associated with climate change. Consequently, attempts to roll back these regulations are likely unjustified and violative of legal standards requiring agency action to be well-reasoned, evidence based, and transparent.

Non-Majoritarian Institutions at the Domestic Level: The Rise of the Unelected

2026, André Freire et al. (eds), The Elgar Encyclopedia of Political Representation, 707-714

Sethi, Amal
Jones, Brian Christopher

Non-majoritarian institutions have moved from the margins of constitutional design to the center of modern governance. Once limited to courts and a handful of oversight bodies, they now span central banks, regulatory agencies, ombudsmen, electoral commissions, and data protection authorities. This entry traces the evolution and growth of these institutions, from Enlightenment-era concerns about judicial independence through the post-war expansion of administrative governance and the later influence of public choice theory and neoliberalism. It then examines the central criticisms directed at them, including democratic deficit, transparency failures, elite capture, regulatory overreach, and the paradox that institutions designed to counter public disengagement may deepen it. The entry concludes by exploring reform options that seek to reconcile expert decision-making with democratic accountability, including advisory models, legislative approval requirements, diversified appointments, and mechanisms for meaningful public engagement.

Deemphasizing the D.C. Circuit

Fla. St. U. L. Rev. __ (forthcoming)

Squitieri, Chad

Students of administrative law learn quickly that the United States Court of Appeals for the D.C. Circuit is special. That is because the D.C. Circuit—which is widely considered the "second most important court" in the country—hears the lion's share of federal administrative law disputes. But although the D.C. Circuit's influence has been widely assumed by both students and scholars alike, no article has both offered a detailed empirical analysis of the D.C. Circuit's influential role and explained how that role first came to be. What's more, no article has explored the federalism-related problems associated with the system of administrative law—so heavily reliant on a single court of appeals—that was made in the wake of the modern D.C. Circuit's fascinating rise to power. This Article therefore fills several gaps in the scholarly literature by precisely outlining the nature and history of the D.C. Circuit's influence, explaining why the D.C. Circuit's influence presents federalism-related problems, and proposing what can be done to correct those problems by "deemphasizing" the D.C. Circuit's influence.

Unreliable Science in the Courtroom: Shifting the Courts' Focus from Assessing the Substance of an Expert's Analysis to the Process by which it was Produced

JUDICIAL POLICY MAKING, EMPIRICAL DATA AND SCIENTIFIC EVIDENCE (ROB VAN GESTEL, JURGEN DE POORTER AND EDWARD RUBIN EDS.) (forthcoming Edward Elgar Press -- March 2026)
U of Texas Law, Legal Studies Research Paper

Wagner, Wendy E.

Judges are tasked with safeguarding the reliability of scientific expert evidence-a responsibility complicated by the lack of in-house expertise and resources in the judiciary. Despite these constraints, courts must act as arbiters of scientific integrity, whether weighing evidence in litigation or reviewing agency science under the APA. This chapter critically examines how courts approach this challenge, comparing current judicial practices with the scientific community's standards for reliability. While courts gravitate toward assessing the substantive accuracy of scientific claims, they frequently overlook process integrity—key factors like research independence, clear attribution, and rigorous peer review—that form the backbone of trustworthy science.
To address this gap, the chapter proposes a pragmatic recalibration: integrating process-based disclosures into judicial oversight. By encouraging parties to voluntarily submit standardized information on the rigor of their scientific process during litigation, courts can move beyond merely adjudicating battles of the experts and begin to critically assess the integrity of the scientific evidence itself. Although these disclosures cannot resolve every challenge at the intersection of law and science, they offer a practical step forward—providing courts with greater insight into scientific reliability and promising meaningful improvements over current practices, with minimal disruption.

The Supreme Outlier: How SCOTUS Stands Out Among Global Apex Courts

Written: April 01, 2025; Posted in SSRN: December 02, 2025

Weinshall, Keren

How a country's apex court functions and how its justices decide cases is shaped by its institutional design and history and by the political and cultural context in which it sits. I compare the apex courts of 38 Organisation of Economic Cooperation and Development (OECD) countries, finding that the power and role of the U.S. Supreme Court (SCOTUS) makes it unique among them. SCOTUS's appointment process, lifelong judicial terms, agenda-setting powers, consensus norms, and constitutional framework make it an exceptionally powerful and exceptionally partisan court. Further, several factors that encourage a tendency toward the protection of rights in other apex courts are less relevant to SCOTUS. This comparison highlights that SCOTUS is the most partisan of the OECD apex courts, among the most powerful, and relatively less likely than other courts to uphold core democratic principles.

The Court of Small Things: Small Claims Courts and the Democratic Meaning of Law

Written: December 20, 2025; Posted in SSRN: December 30, 2025

Williams, Telia Mary U

This essay addresses the precipitous decline of small claims courts in the United States and argues that their erosion is more than administrative; it is a democratic and constitutional crisis. Small claims courts were once the laboratories of everyday justice, where ordinary citizens could access law without lawyers, ritual, or mystery. The seemingly minor disputes of the small claims court illuminate the democratic soul of American law. Yet, over recent decades, filings have declined dramatically, and the locus of power has shifted from the poor to repeat-player institutional actors. This is in part due to what I call, "legal superstition," an over-reliance on procedural complexity. This jurisprudential essay participates in a tradition of metaphor-driven, civic-minded legal writing, grounded in lived judging experience. The essay explores three interlocking themes. First, drawing on Peter Goodrich's theory of law and magic, Alexis de Tocqueville's account of the justice of the peace, and the curious medieval Courts of Love, the essay locates small claims courts within a tradition of legitimacy, participation, and narrative judgment. Second, the reader is invited to reflect upon how modern small claims courts perform democratic functions, including enabling citizens to tell their own stories, reducing procedural inequality, and oUering a constitutional experience of due process at a human scale. I illustrate these points with cases from my own bench. Third, the essay addresses the crisis of the decline of the small claims court, and the inversion of its original democratic intent. Finally, the essay proposes a roadmap for restoration. Key reforms include reclaiming small claims courts as constitutional infrastructure and adopting a jurisprudence of narrative and relational justice. The decline of small claims courts is not inevitable. With intentional reform, these modest courts can be reborn, not as relics, but as central instruments of democratic law.

Events and Informations:

- **São Paulo School of Advanced Science on Regulatory Governance – São Paulo, August 3 to August 13 – for more information, click here**

  The São Paulo School of Advanced Science on Regulatory Governance (ESPCA), to be held at FGV São Paulo, in Brazil, with financial support from the São Paulo Research Foundation, brings together leading international and Brazilian scholars, doctoral students, and policymakers for a 10-day immersion into the institutional dynamics that have shaped and continue to reconfigure regulatory governance in Latin America.

  Ten papers will be selected for a Paper Development Workshop led by editors of Regulation & Governance (R&G).

  The São Paulo School of Advanced Science on Regulatory Governance will select 100 participants: 50 international students and 50 from Brazil. There is no registration fee. All selected participants will receive full support, including transportation, accommodation, and per diem, for the duration of the School (10 days). Among the selected participants, 30 will be chosen to deliver flash talk presentations across the thematic sessions, 60 will have the opportunity to present as a poster, and 10 will be selected for a Paper Development Workshop with editors of Regulation & Governance (R&G), aimed at preparing manuscripts for submission to the journal.

- **ICON•S 2026 ANNUAL CONFERENCE – Dublin, June 29 to July 1 2026 - for more information, click here.**

  The Conference at University college Dublin (UCD) theme is "Reimagining Public Law for a Fractured World: Technology, Identity & Truth". Submissions can be to the conference theme, but other proposals were welcome addressing all areas of public law, broadly defined.

Please contact the editor at his e-mail with your comments, informations, questions or suggestions for our Comparative Administrative Law listserv.
