

A Hard Look at Project 2025 – Part Two

[TRANSCRIPT & SHOW NOTES]

[TRANSCRIPT]

Sophia Navedo

Welcome back to a hard look, a podcast by the Administrative Law Review. Your hosts today are Sophia Navedo and Victoria Paul, third year law students at American University, Washington College of Law.

Victoria Paul

Today's episode is Part Two of our series on Project 2025, where we bring in experts to critically analyze the document's policy objectives and its potential impacts on the regulatory state. As a quick recap Project 2025, officially titled *The Mandate for Leadership 2025: A Conservative Promise*, is a nearly 900-page document curated by The Heritage Foundation and other conservative organizations. For an objective overview of Project 2025's structure and proposals for the administrative state, checkout Part One

Before we begin, please note that positions views and ideas advanced by the speakers of this podcast, are representative of themselves alone and cannot be fairly attributed to the Administrative Law Review, Washington College of Law, the American Bar Association, nor any of the organizations that the speaker may be affiliated with.

Sophia Navedo

We're excited to have two esteemed experts with us today: Dr. Donald Kettle and Dr. Jennifer Selin.

Dr. Kettle, is our public policy expert. He is a professor emeritus and former dean at the University of Maryland School of Public Policy. Until his retirement, he was the Sid Richardson Professor at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin. He holds a PhD in Political Science from Yale, and has authored or edited 25 books, including *How Government Can Transcend Boundaries to Solve Big Problems*; and *The Politics of the Administrative Process*. His work has earned him numerous accolades, including six-lifetime achievement awards and three national best-book awards, and he continues to shape the landscape of public service with his insights.

Dr. Selin, is an expert in administrative law. She is an associate professor at the Arizona State University Sandra Day O'Connor College of Law, and focuses her scholarship on exploring legal institutions and how they work. Using both legal analysis and empirical tools, she demonstrates how the structure of administrative decision-making has important consequences for policy implementation. With a J.D. from Wake Forest and a Ph.D. from Vanderbilt, her scholarship has influenced the Obama, Trump, and Biden

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administrations and has been utilized by Congress, the Supreme Court, and the media. Before joining ASU, she served as a senior attorney advisor at the Administrative Conference of the United States—an independent federal agency within the executive branch whose statutory mission is to identify ways to improve the procedures and processes of federal agencies by ensuring the rights, privileges, and obligations of private individuals are implemented within the administrative process.

Together, Dr. Kettl and Dr. Selin will apply their expertise and share their perspectives on the intricacies of governance and the vital role of legal frameworks in shaping policy.

[Transition Music]

Victoria Paul

So in today's conversation, we'll take a closer look at the document's proposed reforms and their potential impact on the operation of federal agencies, the relationships between the three branches of government, and the impact to citizens.

Let's start with some historical context. Project 2025 is a federal policy agenda published [in 2023] by the conservative think tank, The Heritage Foundation. Dr. Kettle, when we reached out to you to discuss Project 2025 on the podcast, you mentioned that the agenda could be viewed as a greatest hits album, trying to get the old band back together again. Can you explain more about this analogy from your perspective of how the policy document came to be and what ideologies inform it?

Dr. Donald Kettl

Sure, that's such a great question because I think it's been viewed often as a kind of big monolithic single theme, sharp sword to the heart of government kind of proposal. And I think it's in many ways anything but that. A quick piece of background is that Heritage has been doing these transition reports since the transition to Ronald Reagan back in 1980. And they're argument has always been that they wanted to try to frame a conservative agenda for a new president coming in with helpful suggestions and ideas. But this time around, they have massively increased the size and the scale of this. For anybody who hasn't actually looked at Project 2025, it is literally a three-inch-thick book. I've weighed it, it weighs five pounds and it's 900 pages. So this is a massive document. I think it's probably pretty fair guess that nobody except for probably the editors have read every word in it. And most people have just skipped through, and cherry picked their favorite spots in it. So in that respect, it's like an album that people are going through looking at their favorite tracks.

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But more importantly, the way in which it was put together is that they decided that they're going to start early. They're going to try to put together set of ideas that would guide a new administration. They hope to be a new Trump administration and to try to frame the way in which people want to think about it. Maybe by even the people who might be in the process of running a new administration. And so they rounded up a collection of authors to write chapters essentially on each federal department and major federal agency. And to do that, they collected people who had either prominent spots in previous Trump administrations or who were prominent conservatives in themselves and use that to try to frame the idea. So it really is a kind of greatest hits album. There's very little in my mind, at least, that's fundamentally new about it. But there is a lot of it that represents the collection of the stilt ideas of conservatism from the right as it existed when they wrote this. The pieces are individual. They don't really link to each other. And so they really are individual tracks by individual band members hoping to be able to advance their, their favorite tunes, but also they hope to be able to put it all together into an album that somebody is going to be able to play. So I think it needs to be understood both in that historical context, in terms of the people who are involved, and then also the collection of ideas that they're putting forward in a sense that it's where it's important to understand that this is not just a concerted, strong, single strategic argument that they're trying to make.

Victoria Paul

I think it's really interesting that you mentioned that one, a lot of the ideas are not new. And granted, you know, the document is set up where there are several authors who are given their positions on very specific things and that it can be difficult to identify what the overarching theme can be for Project 2025. So in terms of the ideas not being new, what are some reoccurring themes that we are seeing in the policy document?

Dr. Donald Kettl

One thing is that there is an eternal theme that's been emerging from the right for a long time in trying to slash the government by cutting back on government programs. There's a great deal of: eliminate, reorganize, reject, and if you even do a word search on what's in the document, lots of efforts are simply trying to just abolish programs. Lot of thoughts about the odds of being able to improve government's efficiency by combining related units. There are individual ideas about reorganizing, which are designed to try to enhance certain kinds of conservative themes or to make it harder to follow liberal ones. So there's that piece. There are some efforts to try to engage in some regulatory improvement. There's some, some efforts to privatize some federal programs. And then there is, if there is any underlying theme, it has to do with, with Schedule F. That effort [Schedule F] on the part of the Trump administration to make it easier to replace people who are viewed as not loyal to the administration and therefore ought to be replaced with people who are more in tune.

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And so if there's anything that runs through everything, is that argument about trying to redefine accountability in a way that's defined in terms of personal loyalty as opposed to old style technical judgment. so that's the, if there's any theme that runs through it, it's that, but otherwise there are these recurring themes that come from the long, long, long catalog of conservative ideas for reform that go back at least to Reagan.

Sophia Navedo

Dr. Kettl, we too saw some of the themes you've mentioned, while reviewing the document. In total, we identified five broad objectives that we talk about in Part One of this series. First—and most surprising to me—was the goal to overturn the Chevron Doctrine to limit a court's deference to agency action—which just this summer, they were able to check off the list.

The second theme, is eliminating or heavily restructuring independent agencies to make them more accountable to the executive branch.

Third—making federal service employees more accountable to the president—which as you mentioned, is done with tools like Schedule F.

Fourth—is reducing regulatory rulemaking authorities so that Congress can have a more active role in reviewing and approving significant regulations before they take effect.

And the fifth and final theme, is dismantling or significantly reforming the Environmental Protection Agency and other agencies perceived to be issuing regulations that go beyond congressional intent.

Dr. Selin, given your experience at ACUS, how would you characterize Project 2025's objectives towards the administrative state?

Dr. Jennifer Selin

Well, this may be slightly controversial to say, but the overarching objectives essentially relate to how major federal agencies should be governed. And this is something that any politician, any manager from any political persuasion is concerned about, right? We want the government to work better. We want federal agencies to be more efficient, more effective, and quite frankly, more equitable. And so it's just a matter of how we go about achieving these objectives. And this can vary, often does vary, depending on your political persuasion. And so from my perspective in the administrative state, it seems like there are really three things that are worth considering that would affect the way the federal government operates and particularly how federal agencies go about doing their jobs on a daily basis. And the first is the proposal to put more political appointees throughout the bureaucracy. We have some empirical evidence that shows that political appointees do tend to be less effective managers, not necessarily because they have less overall managerial experience or because they're unqualified, but because they tend to have less

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managerial experience in the bureaucracy. And as someone who just left the federal administrative state, I can tell you that it operates a very different way than say a traditional corporation. And second, Project 2025 really looks to assign delegated authority to those new political appointees right now. And this is again, something that the administrative state struggles with on a daily basis is when Congress writes a law and delegates authority to an agency, there's often a lot of question about who does what, when, where and how. And so one goal of Project 2025 is to place that delegated authority in political appointees hands with the idea that those political appointees are going to be more accountable to the president who is ultimately elected or selected as I say by the people.

And then the third real linchpin that relates to how federal agencies operate is to refocus federal hiring. Dr. Kettle mentioned schedule F, but it even goes a little bit more beyond that in that Project 2025 really wants to find a way to more effectively evaluate merit and reward administrators for doing good jobs. And this is something that both liberal and conservative administrations have struggled with over time. How do you get the best and brightest employees to be attracted to government service and to work hard once they're in there and be rewarded for that, but at the same time, protect those employees from political repercussions. And oftentimes when we evaluate merit, our own subjective viewpoints tend to come into play. And that's really where the struggle can be. And along with evaluating merit, there's some ideas about including more meaningful evaluations of employee performance. Again, this sort of opens the door for political evaluation and how you cut that off or in the case of maybe Project 2025, you don't want to cut that off, but that's something to consider. And then how to better reward administrators for good performance. And just again, just to be clear, federal agencies have struggled with these issues for decades. It's just the approach and how you go about trying to achieve these laudable objectives of accountability, efficiency, effectiveness, equity—these are great things. It's just a matter of making sure that you do those things while also protecting the civil service so that you can cultivate the expertise that administrators are known for.

Victoria Paul

Thank you for mentioning, you know, preserving the expertise that administrators are often known for. I'm curious to know what the cost benefit would be to assign more delegated authority to political appointees in particular. Would this theoretically improve agency efficiency? Could it stall it? I know another concern could be during the shift of different administrations across party lines, how that could also complicate the administrative process when we are discussing political appointees. So curious on the cost benefit analysis of that.

Dr. Donald Kettl

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One of the things, if I could be maybe even more controversial than Professor Selin, I would go so far as to say that the, the folks who are proposing Schedule F have been excoriated by people on the left as being either completely out of touch or wildly dangerous. But these are issues that we've been dealing with for very long time. And although I think that many parts of schedule up are dangerous, I think that trying to defend the status quo on the other hand is equally dangerous because it risks not only creating the kind of political controversy and drains political support from the process, which is dangerous for our ability to be able to get things done, but it is making the government less nimble and making it harder to try to couple expertise with the needs of policymakers to be able to do things.

I've talked with the people who actually wrote the Schedule, a chapter in particular, and even more so the people who wrote the schedule of executive order. And I have a pretty good idea about what it is that I think that they're trying to do. They look at particular agencies that when they were in power, were they believe, resistant to President Trump's policies, where orders would be given or policies would be made, and there would either be foot dragging, sabotage or other ways of trying to stop the process. They view some bureaucracies in particular as being captive of what they call woke liberals. And they single out in particular the Environmental Protection Agency, the Civil Rights Division of the Justice Department, and parts of the Department of Homeland Security—and those are the parts, those are the places where they really are aiming their fire. It's no secret that they've created a list of the people that they want to be able to replace because they think those are people who are not in tune with what it is a new administration would want to do. So it's the selective nature of this that in many ways raises one of the warning flags because it shows the ability of this process to be used both selectively and politically and ideologically in ways that undermine the expertise of being able to make government effective in doing what it is needs to do.

I have friends of mine who have been around government for a long time and they have a story they tell me often that when a new appointee comes in there basically are two ways of undermining them seriously. One is to do nothing of what it is that they say. The other is to do everything of what they say. Because if you do everything then you can allow an appointee to sail themselves right over the edge of the world and into a never-land from which they'll never recover.

There's a terrific recent story about Australia where the *Political*s came in wanting to try to redefine the way in which benefits were calculated. *Careers* argued to them that this is going to be a bad idea, bad things would happen. They went ahead, did it anyway, bad things happened. Then the *Careerists* had to come in and try to find a way to sweep things up. There's a great case in Department of Homeland Security of the policy of family separation that where kids were ripped away from their moms and their dads as they crossed the border with an idea of trying to send a message that bad things would happen if you come in without permission and then a way to try to maybe reunite them later on. But

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they completely screwed this up in ways that created horrific scenes and family tragedies that continue to this day. *Careerists* inside the Department of Homeland Security argued this is a bad idea; that bad things would happen if they tried it, that if they wanted to try to engage in something like this, there were other, better, more legal and more effective ways of doing it. They issued the orders anyway, and it turns out that all the things that the *Careerists* argued for and suggested were problems happened anyway, and they had to go back and backtrack on the policy that they had announced. And so it is always a frustration for new *Political*s coming in and not finding that the bureaucracy does what it wants when they want. But there is the law that people in the bureaucracy are responsible for implementing and implementing according to the way in which the law is written. There's expertise that tells you how it is that you can do that most effectively. And the more that you disconnect the impetus toward policy from the needs of ensuring accountability to the law on the one side, and then ensuring that it is the most effective way of doing it according to expertise on the other is something that is just bound to get everyone into trouble. We forget so often that, and although this is the core of the unitary executive argument that's going on out there, that there are other sources of accountability in the system for career administrators. The people in federal agencies work in agencies that were approved by Congress, executing laws that were passed by Congress. With the number of employees authorized by Congress, with the money appropriated by Congress, and there is, beyond a doubt, accountability to the Hill as well as to the executive branch for the people who work within executive branch agencies. So it's not quite like a case where new executives, new policy people can come in, issue orders, and expect people to follow them because that's not quite the way that Madison and his colleagues wrote that up back in the beginning.

Victoria Paul

Thank you for that history. In discussing Schedule F and then also generally some of the other objectives that we've discussed, Dr. Selin, how have you seen the approach to pursuing these objectives develop over time? I think we contextualize this in that the discourse happening in Project 2025 is how do we approach governing agencies? So, I'm curious on how their approach to doing so has developed.

Dr. Jennifer Selin

So I think one thing that is worth picking up on that Dr. Kettl said, and when we're thinking about Schedule F and the federal service, civil service in general, when Congress is designing agencies and thinking about delegating policy to them, Congress is actually often quite intentional in creating certain positions and has historically over time, paired certain positions with requirements for who can serve in those positions. So this is most often thought of at the top of agencies, like someone who works as a member of the Fed, for

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example, has to have extensive experience in banking and regulation and serves long fixed terms and cannot be removed from their position for political reason.

However, these sorts of provisions stretch way down lower in the bureaucracy and Congress will often require positions such as CFOs or budget officers or accountants to serve in certain positions in order to promote this expertise.

And it's a little unclear. These positions aren't really that well discussed both in legal and political science literature, as well as thought about more generally in terms of what Congress was actually delegating and what they were thinking about at the time. But it does create a little bit of a wrinkle for Schedule F. So the same positions, the policy and supporting positions that Schedule F is actually contemplating, many of them statutorily are paired with expectations of continued service. So these positions may have fixed terms like five years or may have expertise requirements attached to them. And this is something that Paul Verkyle and I have spent a lot of time thinking about and trying to understand what this would mean with respect to Schedule F. And also it's interesting to think about it in terms of there's a lot in Project 2025 that either relies on Congress or asks Congress to do. And so the document and its perception of civil service does recognize Congress as a partner in structuring the administrative state.

And so thinking about how that would all work together and what's realistic and what's not is something that I think is worth exploring long-term. And I'm not 100 % sure if in the document, Project 2025, they really looked in detail at how agencies are structured and what this would mean long-term.

Sophia Navedo

So pivoting to independent agencies specifically, Project 2025 really focuses on restructuring governance, even going so far as eliminating independent regulatory agencies that were intentionally created to operate autonomously and insulated from direct presidential and political influence. Under the proposed reforms, that autonomy could be significantly reduced, making agencies more accountable to the executive branch.

So what are the pros and cons of having independent agencies such as the FCC, FDIC, and CFPB?

Dr. Donald Kettl

Yeah, one of the things that's fascinating about that question, again, is dipping back a little bit in history. And it comes from the time of the progressives at the end of the 18th century. I'm sorry, the 19th century, in the late 1800s, where there was a sense that the big, large

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private companies, private trusts were having far too much power over both the economy and creating problems for citizens with either prices that were too high, food that was too unsafe, and that government needed to be more effective in being able to deal with them. There's a sense that the existing federal agencies with the typical command and control systems weren't working very well and that they were too beholden to the political issues that they faced and political pressures in particular that they had to encounter.

And so the progressives saw a major effort to create a collection of independent regulatory agencies like the FCC, like the FDA, even the Federal Reserve created during that period. A side note for those of you who are really fans of history is that a lot of the early progressives were actually Republicans and a lot of the Democrats were fighting with the progressives had in mind. And now we've got a point where it's the Republicans who are proposing what it is the Democrats once were in favor of themselves and with the label progressives now are that's being applied to liberal Democrats and interesting history along the way about how that word switch happened.

But we have this argument that goes way back about the need for independent regulatory power that has to do with something that's quasi-judicial in nature, vested in the hands of experts, independent of political pressure. In the interest of trying to ensure that the public interest is served. And so we've got a history that goes back more than a century, establishing the importance and the role of these agencies. And it is clear now that the Project 2025 themes in general would like to replace that by weakening the power of those independent regulatory agencies on the argument that agencies that are independent are not sufficiently accountable to a unitary executive.

And so the way to counter that is to bring more and more agencies under the direct control of the president. So it's a direct switch from what it is that we've been having for well over this point, 140 years.

Dr. Jennifer Selin

This is my bread and butter. This is where most of my academic research is. It's, you want to get me talking about agency structure? I could go on for hours upon hours. But I think that what's worth mentioning is that one of the reasons that these agencies were created was to sort of insulate them from the highs and lows of politics, right? We don't want the economy swinging in the highs and lows as our political system does. But these sorts of provisions often also create the possibility that the agencies being so insulated from politics that they drift away from the preferences of those who we directly elect.

And so striking that balance has been something that since the creation of administrative agency, independent agencies, we've really struggled with. And over time, politicians have gotten quite creative about how to pull those independent agencies back. They've created

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mechanisms such as OMB regulatory review or budget review in order to try to pull agencies back from their, their bureaucratic drift. The problem is that with independent agencies over time, many of them have been exempted from these exact tools of political control that were designed to rein them in, such as regulatory review or even the appropriations process. And so one of the concerns is that because they are so insulated from politics that they may not be responsive to the preferences of elected officials. At the same time, we know that that's probably the best way to cultivate expertise, right? I do my best work when I'm sitting in my office and really thinking and not worrying about someone looking over my shoulder and telling me, no, that's not right. Up, nope, stop, don't do that. Nope, up, wait, nope, go back. That's not conducive to really, really high-quality work.

Dr. Donald Kettl

A quick note on that, if I might, there's a story from back in the Nixon administration about the Federal Reserve. There's been a huge argument over time about how much independence the Fed ought to have in setting monetary policy because it's clear that everything having to do with monetary policy has political effects. And presidents hate the idea of having the Fed run against their interests during election years. And on the other hand, love the idea of having cheap, easy money as the elections get going. Early in 1972, as Nixon was up for re-election, he brought the chair of the Federal Reserve in, Burns, and squeezed him hard to lower interest rates as they were going into the campaign. I know about this for sure. It's been debated for a while, but actually interviewed John Ehrlichman, who was one of the key members of the Nixon administration's inner staff. And he told me the story and also to back it up showed me his contemporaneous notes where he, could sort of read the words of what it is that had been done. And Nixon pressured Burns heavily to, to goose the money supply in the middle of the campaign, which in fact the Fed did, which among other things helped Nixon get reelected and was been used since as an argument about the need for more independence because you don't want to have things as fundamental as the money supply oscillating wildly during political campaigns. Because it interferes with the ability of businesses to plan and interferes with job production and growth in the long haul. So on the other hand, of course, this, idea that presidents can't use all the tools of government available to them really annoys them when that happens. And so we have this tension that's hard baked into the role of these independent regulatory agencies. And it's been the case since the very beginning.

Victoria Paul

Thank you for that anecdote. I'm curious on your, I keep on saying I'm curious on things, but it is a very interesting document. What is your assessment on Project 2025's approach to striking that balance that we're discussing right now between insulating expert agencies from the constant sway of politics while also ensuring accountability to the electorate?

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Dr. Jennifer Selin

I would say the one thing that really got to me when I was looking through Project 2025 that I think is not getting enough attention is that along with this idea of removing independent agencies or making them more political, of breaking them up and then reorganizing the executive branch and placing the programs into different agencies and sort of reorganizing things.

One thing that has consistently been shown throughout history is that when we eliminate programs or functions that are duplicates or spread programs and functions out across multiple agencies when they were originally in one, there often is not enough thought as to how that transition will happen.

Politicians are very, very excited to say, okay, we're going to create a new agency or okay, we're going to split this agency up and move this over here. but thinking about like, okay, things, things in terms of like office space, chairs, let alone things like, okay, so how is the agency that's absorbing the program going to balance all of its new responsibilities? Do additional appropriations come from this? How are we going to merge the agency's culture in with the new agency? And these things that take time, energy, expertise to do well often get lost in the shuffle. And what ends up happening when you do that is that the exact problems that the reorganization was designed to address become exacerbated, whether it's timeliness in, say, decision-making processes.

Well, if you're moving an agency and you're creating an all new sort of points of contention and not giving them enough resources, those timeliness problems are only going to be more, not less. And so if you're worried about a particular agency not performing its mission appropriately, moving it to another agency or moving those programs to another agency can actually create more problems, not less.

Dr. Donald Kettl

Can I give an example of that?

Professor Selin is just right on target on that. After the attempted assassination of President Trump in Pennsylvania a couple months ago, I said, I wonder what Project 2025 has to say about how to try to solve problems like that. And so I did a careful look through the entire volume and the answer is, there's nothing to say about that. It is really organized completely by department and by agency and is interested in

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So the box moving, but not in the process of trying to produce results. And in fact, not only is there nothing there, but as Professor Selin points out, it's in all likelihood going to make things worse. The current structure of the Secret Service is the product of the big changes that were made after the 9-11 terrorist attacks in 2001, where the Secret Service was moved from Treasury into the new Department of Homeland Security.

Where it was always an odd duck and where it's just never been effective since in terms of the overall coordination that they had in mind. The whole point of doing that was connecting the dots. If you read the report that came out just in the second week of October about what it is that ought to be done and the problems that underlay that attempt to assassination attempt, the failures that were there, it was the failure to connect the dots. And so we moved the Secret Service into this new department to improve the odds of connecting the dots and in fact made the problem worse.

Sophia Navedo

In what seems to be another effort to “fix” the bureaucracy, it sounds like Project 2025 wants to ensure Congress is stepping in a lot more, rather than the agencies.

Should these proposals be advanced or should we remain in the status quo?

Dr. Donald Kettl

That's a great question. A quick shot at that. It is one thing, the basic argument here in terms of constitutional law is this, that the president in fact has the power to execute the law as Congress writes it and in fact has the responsibility for doing that under Article II. He has a responsibility to take care that the laws be faithfully executed and the people who are behind Project 2025 take that very seriously and argue it very broadly that the President not only as the power but the responsibility and that includes then anything that the president might need to make that happen. And so that creates a broad grant of power from their point of view. To be able to make that happen then if there are questions and the problems and then it's up to Congress to write the laws more clearly to be able to say what it is that the law ought to be, that the president faithfully executes and that any questions having to do with either technical issues or problems or the constraints or guardrails in the law need to be defined by Congress.

Well, it's a fair bet that the reason why we have the situation that we do now is because Congress does what wants to do, because it does what it does, because it believes that it's in its interest to do it the way it's doing it. Some of these arguments ask Congress to do that which really can't be done, won't be done. Can Congress write more specific laws? Well, sure. Would it ever do so? Probably not. In part because Congress doesn't really have the

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expertise to be able to do this even on the committees, which have relatively small steps by comparison to the agencies that do this all the time. There are political cross pressures that exist on Capitol Hill. And so one of the reasons why legislation is often vague is that it takes that to avoid scaring people from one side or another off of the possibility of voting for it. And then there's the ultimate problem that Congress these days has had a very difficult time figuring out how to do much of anything, including even voting for an increase in aid for the people in North Carolina who are suffering the effects of the hurricane. And so Congress is doing, what it's doing as it chooses to do it and asking Congress to do things more or different is I think a fool's errand. And so it's not clear whether or not this is just whoops, we have to go back and rethink this or is it a conscious strategy to try to trim the power of the bureaucracy by reducing the amount of discretion that the administrators have and by doing that, if you can't abolish an agency, you can at least knee-cap it. If you can't reduce its power, you can reduce the amount of the law in which it can depend. And then of course, the Supreme Court recently has been reinforcing this basic argument where the court has said, we are expert, at least in matters of interpreting what the law says. And so we have a two front effort going on here.

What it is that Project 2025 asks Congress can't do and what it is that Congress can't do, the courts are happy to step in and try to reel in. And so from the point of view of the Right, this is in part conscious, but even more importantly, a subterranean effort to try to achieve a broader effort to try to reduce government power in general and to reduce the power of government administrators and government experts in particular.

Sophia Navedo

Dr. Kettle, you brought up a really good point about where Congress is at this point in time, how difficult it is to get legislation passed through Congress.

Dr. Selin, how realistic is it for Congress to take a more active role in reviewing and improving regulations?

Dr. Jennifer Selin

Well, I think it's all the same thing, right? So can Congress do it given the political dynamics right now? And also, does Congress want to? One thing, in addition to the things that Dr. Kettle mentioned, writing legislation is really difficult, right? And members of Congress, even in the best of circumstances, recognize that things on the ground change on a daily basis. We as policymakers cannot possibly anticipate all of the different ways that a particular statute is going to affect people on a daily basis.

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Members of Congress are acutely aware of that because their constituents raise these points on a daily basis. And so one thing that members of Congress really do try to do is recognize that, hey, we think we know what's going to happen here, but we need to build in some safeguards, some flexibility, so that if it turns out that the way that we're picturing the world working after we write this statute isn't actually how things play out—that we don't have to go back to the drawing board immediately. And that's one thing that federal agencies are really well equipped to do is to reach out to interested persons and engage with them on a daily basis and provide more information about the effects of the policy process. Now, one thing that I think is also worth noting about [Project] 2025 is that in the world where we are going to ask Congress to be a little bit more specific in its lawmaking and agencies to interpret statutes narrowly with the court backing that up—that will require agencies to issue a whole slew of new rules. The process of deregulation actually requires more regulation. And so agencies are going to have to really think about that tension between: okay, well, if we've been interpreting a statute this way, and it may be a little bit too pressure, it might be a little bit too expansive, or we know that the court is going look at this differently, the agency's going to then have to go through the rulemaking process or reinterpret a statute in a particular way to narrow its authority. And what we have seen over time, particularly with independent agencies, the Federal Energy Regulatory Commission is like the classic example of this. Often deregulatory efforts end up giving agencies *more* power, not less, because the lines of authority aren't as clearly drawn. And then the agency steps in to clarify the blurred lines.

So you know, just everything sounds good upfront, but then when you start peeling back the layers of the onion, things get so complicated. And again, it all goes back to the very beginning of our discussion. None of these proposals are new. We have seen this play out before, and yet we still don't seem to be learning from the prior times we've done this.

Victoria Paul

I have a follow up to the point that you're making about some of the potential unattended consequences to really placing the ball in Congress's courts and taking that—reducing regulatory rulemaking authority from agencies. So I would like to know in terms of leveraging agency expertise and efficiency, is there any way that that can be preserved in Project 2025's proposed approach to reducing agency rulemaking authority.

Dr. Donald Kettl

I guess I have answer in terms of what is it that you're trying to accomplish. If your goal is to try to reduce agency rulemaking authority and therefore have fewer rules, then it's possible to do all kinds of things to pull the rug out from underneath the process. If you're trying to advance certain regulations, then it obviously gets in the way very clearly. But one of the

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things that I think that, and this is something where the, the Right and the Left, I think, tend to veer off the tracks: What's the result of what we're trying to accomplish? What is it that we are trying to do? And how would we know it when we saw it?

And for example, when it comes to rulemaking authority having to do with the behavior transportation security administration officials, it's one thing to talk about changing that privatizing [it], but what is it that we're trying to accomplish? And what we want to do is to make sure that people can get through the airports as easily and quickly as possible, and then we keep the air safe. And so there are lot of ways of being able to do that, but we've disconnected in so many of these discussions, the question of results on the one hand, from the processes we use to try to get there. And one of the things that concerns me greatly about the Project 2025 debate is that it has almost nothing to do with the basic purposes of government, its mission and how can we make sure that it actually serves the needs of what it is the public wants and expects.

Victoria Paul

Dr. Selin, I'd also be curious on your position and how they can preserve agency efficiency and expertise.

Dr. Jeniffer Selin

I'm going to actually pick up on the role of the courts here and recent Supreme Court decisions. We often this summer have heard discussions about what the Supreme Court is doing to the administrative state. And so I've spent a lot of time thinking about the implications of the decisions and how justices are making their decisions and in the context of agency independence and delegation. And one thing that's really, really interesting that I have shown with Pam McCann at the Price School of Public Policy, we have a forthcoming article coming out, that the court is contemplating the administrative state along three dimensions: agency independence, delegation, and judicial review.

And the one area where the court has really actually preserved a lot of agency independence is in the mechanisms that remove the agency from political control that are designed by Congress. Things like being able to operate on an agency's own funds as opposed to going through the appropriations process. The court is much more concerned about restrictions on the president's appointment and removal process. And so one thing that Congress has been relatively successful in doing is insulating an agency, promoting expertise by limiting political review in the ways of say, limiting regulatory review or limiting budget review. And has actually often paired those limiting procedures with statutory provisions that also prevent court review. So there are many provisions about a third of major laws that delegate authority to federal agencies also limit judicial review of certain

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agency policy and programs. Now, that is a potential way that Congress can continue to cultivate expertise. If we are—which could undermine all of 2025 and accountability and all of those things—but by allowing agencies to create policies without worrying about review at the backend, that could be a way to promote expertise. Now the problem with that is that then what politicians are going to do is rely on ex ante procedural mechanisms such as appointments, which is what Project 2025 is actually doing.

Victoria Paul

I think it's definitely important to talk about how courts are involved in this conversation with Project 2025. I think following the overturn of the Chevron Doctrine, we're definitely seeing how consequential and how important of a role courts play in this conversation. So thank you for offering that.

Dr. Jennifer Selin

The one thing that I also haven't heard a lot of dialogue about Project 2025 but is worth noting is the relationship between the federal government and the states. I think Project 2025 superficially would say we need to give more authority to the states. But the proposals in each of the agency plans as well as the overarching plans are a little bit more inconsistent with that depending on ideological views based on the policy. So in some areas, Project 2025 wants to limit federal interactions with states in various policy areas. But in others, Project 2025 really does want to encourage federal involvement with the states and create partnerships through grants and other mechanisms to help direct state policy in particular ways. And so it would be really interesting for a discussion to evolve on sort of what the overarching views of that are and then the overall inconsistencies that those dynamics play into the general themes of Project 2025, which is to promote presidential authority. If we're delegating to the states, that creates some tensions for accountability to the President.

Dr. Donald Kettl

There's lots of things I'd be happy to follow up on. I think that there's an interesting point on the federalism question. So if we were talking about the issues of federalism that are buried in Project 2025, and one of the things that the project people have in mind is a way of return to the 10th Amendment with clear dividing lines between the federal government's role and the state and local government's role, and to try to get the federal government out of as many activities as it can—that affects state and local governments.

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For example, there's a plan to try to turn almost all the FEMA work over to state and local governments there. And there's also plan to close down the Department of Education. And so in theory, they make a kind of interesting and even theoretically elegant sense. But the problem is you can see instantly with what happened in Florida, but especially in North Carolina, that the idea of having the federal government back off is something that doesn't work for more than 30 seconds than the real world in real time when it comes to real disasters, because the complaints instantly were from people in Western North Carolina. Where is FEMA? FEMA hasn't been here yet. It's been 24 hours. We haven't seen anybody from FEMA. And so we have expectations, rightly or wrongly, of what the federal government ought to do and the idea of backing the federal government off in some kind of stricter sense of separation of powers is simply not going to happen. And that vastly complicates the question of administrative law here because it has to do with the question of assignment of responsibilities and the nature of accountability and how that ought to work.

There's a proposal to close down the Department of Education at the federal level. And that's a favorite of conservatives saying that the federal government has no business in education and that it ought to get its nose out of the way in which local governments run their schools, except that if I do some calculations on this, if you did that, states would have to in general raise their taxes about 3% just to make up for the federal aid that would be lost, and the federal aid goes for programs like aid for the disadvantaged, special education programs, the kind of vocational educational programs that are increasingly important or for preparing the people who are going to be in the workforce of the future, especially in new age factories, which are precisely the kinds of jobs that the Republicans want to try to increase.

And so, in theory, again, it sounds kind of neat and nifty to try to get the federal government out and to try to rely more on the states. But it's really asking the states for things that they can't do, won't do, don't have the money to do, but which people want to have done. And so there's this internal conflict between the great ideas on the one side and the practical implications on the other.

And it's that tension between the kind of basic policies and precepts and the realities that so often create the administrative law challenges that then make it hard and difficult to hold any these programs and the administrators accountable. And that's really at the core of things. You mentioned the importance of trying to at least acquaint people with the importance of administrative law. And that's just so important because in fact, most of the programs and public affairs and public policy across the country training the government's future bureaucrats don't spend any time at all in administrative law. And then these folks end up in jobs and discover the guardrails that exist on their behavior and don't have the context into which to sort that. think that like we're a lot worse off for not paying enough attention to this. And if nothing else, the Supreme Court has now made it inevitable that we will.

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Sophia Navedo

Yeah, definitely. I think it is a lot easier, to live with the mentality that ignorance is bliss—sort of like, “I’m not going to pay attention to this because I don’t want to worry about.” But it is incredibly important to engage and understand administrative law and how these proposals would impact us.

Dr. Donald Kettl

Absolutely. There's a kind of if you say to members of the public, if you say even to a lot of students, maybe to a lot of law students, that we're going to be talking now about administrative law. It's often a signal to people to yawn, check out, or take a good nap. If you tell them on the other hand that what we're going to do is to try to talk about just exactly how we should regulate the quality of the water that's coming out of our tap and whose responsibility that is and who ought to call the shots on that, then people's eyes pop open. And so as long as you don't tell them often it's about administrative law.

You get people keenly interested and that's something that I think we not only are doing but are going to have to do even more of to try to understand what it is that's happening and where we're going.

Victoria Paul

And that's definitely the goal of this podcast, to address that disillusion that happens and really contextualize this complex body of law in a way that is digestible for our audience. I wanted to ask about an issue that you raised regarding the reallocation of federal agency power to the state government and how Project 2025 proposes this. Does the Project reconcile how it would make up for the issue—that you present regarding funding programs and accountability? It's clear that it's an issue that the approach will propose, but does it try to reconcile that at all?

Dr. Donald Kettl

Only in the sense that this is a job that ought to be done by the states to begin with. The federal government really has no role. The federal government ought to get out of it and to allow the states to sort this out.

Those of you who have been following politics in the 2024 election know that the idea of trying to draw clean, easy lines on these issues often creates all kinds of problems, like the

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question of abortion access, the idea that we removed *Roe v. Wade* and left the decision up to the states, and then the states start making different decisions, and there is an inevitable pressure and tension try to re-federalize a lot of these questions because if you end up on the losing side, you want to try to find ways of either creating regulations or passing laws to make sure that your side wins. And so it's one thing to make the clean argument about trying to simplify things and perhaps along the lines of what it is that people imagine that the founders were actually thinking. But then in operation, the process of sorting that is far more complicated and the Project 2025 people have come down clearly on the side of trying to draw stricter lines with stronger accountability and hiving off as much as possible to the state governments, to local governments, to the private sector and getting the federal government's role shrunken down. But it doesn't deal with the realities of what you do if you're standing there in Western North Carolina and everybody's saying, where is FEMA? That's one thing to talk about. Let's make more of this a state responsibility. It's a different thing when people are in need and crying for help.

Sophia Navedo

So, looking in a world where Project 2025 is adopted, what unintended consequences could arise from its implementation? And if anything, what are the benefits potentially?

Dr. Donald Kettl

The benefits on the one hand, I think it's really important to look at a point that I made a little bit earlier, which will surely get me off the holiday card list of all my friends on the left.

But the fact is that there's something to what it is that the proponents of Project 2025 are actually arguing that there are problems in the system that, in particular, the basic issues of administrative law and accountability have become muddled and our ability to be able to find the experts that we need to get the jobs done that we need has created a system that is, it's over-regulated and has become a far more difficult and contentious issue. And so that's a, it's a real big problem that the Project 2025 has put its hands on and which people on the Left, I believe need to grapple with much more directly. And so I'm, hoping that one of the things that Project 2025 will do is to help try to focus that debate more.

On the other hand, unintended consequences—that the one thing that I can predict with absolute certainty, if Trump wins and the effort is made to try to advance Project 2025. There are other groups on the Right that would lose in the power struggle if that would happen, and they have an interest in trying to undermine Project 2025 per se. It's important to recognize that the Right is not a single unitary force, but which is a collection or coalition of different kinds of groups. And there's already been a lot of battling behind the scenes over this. And the Trump transition team has already explicitly said that neither Project

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2025, nor the people involved in writing it would have any role in the administration. Well, I think that's, that's a political statement for now, but reflects the tensions on the inside, so it means that, that everything's going to be up for grabs if in fact Trump wins.

Beyond that, one of the things that greatly concerns me is that there, we talked about Project 2025 per se, as if it were a kind of coherent body of thought. And while there are lot of interesting themes that run through it that, and you can pick up themes of small government and greater presidential accountability in many of the chapters, the fact is that it doesn't deal with the most important reality, which is the secret service problem, how to try to create better coordination among all the pieces. And in a book that is written and focuses completely chapter by chapter on agency by agency, department by department issues, there's really no discussion about how we try to ensure that kind of collaboration. And that kind of collaboration then raises important new questions for administrative law that we need to sort out. But then on top of that, even more worrisome for me is that if Trump wins, there will be a battle to see who can move forward, which parts of the agenda most quickly. The idea that this is going to then march as a kind of a single column through the federal government changing everything is just simply not going to happen. What would happen is that there will be individual administrators, secretaries and others who work far more aggressively than others to try to advance the theme. And we won't really know who that is, what kind of effects they're having. And in many ways, there is not likely to be as much transparency either about what's actually happening. And so the problem is that we could end up with a very, very, very uneven application of some of the basic principles and ways that make it very difficult to try to understand what really is happening. What are the implications? What's going to happen in an EPA versus Homeland Security versus Health and Human Services versus Social Security? There's going to be a very different kind of rollout depending on who's in charge, which then is going to raise given the nature of the issues.

Some very different points of administrative law, depending on who does what, when and how, which then is going to create even more difficulty in understanding what it is that's happening on a broader basis, which then is going to make it that much harder for people to figure out how to react. So I worry about the lack of transparency, the inconsistency in application, and then the broader implications of what happens when some of it is administered aggressively and quickly and others maybe not so much.

We're sure to end up with many, many, many of these issues tumbling into the courts that will then have to resolve a lot of these puzzles.

Sophia Navedo

Dr. Kettle. I certainly don't think you're the only one that's going to be left off the Christmas card. California's Governor, Gavin Newsom, has alluded to the idea that maybe we have

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gone too far. And obviously, those are state regulations. But he's started looking at trying to streamline in his words, certain processes to implement infrastructure plans and other major projects in California.

So addressing the “bureaucracy issue” is one potential positive, but as you mentioned, the cons of the rest of the proposal unfortunately outweigh that.

Dr. Donald Kettl

And a point on that that's really important is the, as we get back to the federalism question is the possibility of a California-ization of some of the regulatory actions that are happening out there. When you look at a lot of the EPA standards having to do with air and water quality, a lot of states have adopted what is essentially a California rule that what California does, we will follow and adopt so that we have California as the de facto policymaker through the regulatory process for a large part of the country, but not for all the country. And so to what degree are we willing to accept disparities in the way in which the regulations are set and defined and the ways in which states collaborate in making that happen versus efforts to try to make sure that doesn't happen. you're interested in strong deregulation, you want to try to, to wring California out of that process. But then how do you do that without trampling on federalism as we've come to define it? Or on the other hand, how do you try to pass laws that would weaken California's role.

Which is yet another epic battle. And so the question of to what degree should the states in particular have a lead on some of these regulatory issues is a fundamental question, which is coupled with the question of to what degree is California essentially a de facto policymaker on the left as we get further and further and further into the question of, for example, what might happen under Project 2025.

The question of California leading the regulatory effort from the left versus Project 2025 trying to lead the deregulatory effort from the right is certain to be an enormous battle. And it's a political one to be sure, but it also gets the basic constitutional and administrative law principles there and the degree to which the federal government has the capacity even to try to step in and set national standards.

Sophia

Yes, we're definitely left with a lot more questions than we I think we're all expecting.

Sophia

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Again, thank you again Dr. Selin, Dr. Kettl. This podcast has been going for six seasons now and we do appreciate you all joining us for our first full episode of the season. We wanted to get this out before the election. It's very important to us to make the law accessible. And I know I personally had no idea how much administrative law impacted my life, prior to coming to law school.

And that's the point of this podcast is hopefully to just encourage people to pay attention to it and get involved.

I appreciate your insights today—I've certainly learned a lot.

Dr. Donald Kettl

Sure that sounds good, and this is—the one thing is for sure is that anybody interested in administrative law and these questions, has and will have more work than they can possibly handle, in the day, weeks, and months coming ahead. So I was really glad to have a chance to be able to talk with all of you about these issues.

Victoria Paul

It was also a pleasure to be able to speak with you as well, especially as an expert on these issues. I think that Project 2025 has been so sensationalized and in going through it, there are a couple of things that I would personally find sensible and there are other things that I think are incomprehensible [laugh].

Dr. Donald Kettl

Yeah absolutely.

Victoria Paul

Yeah I really appreciate being able to have this expert conversation, so thank you.

[Transition Music]

Sophia Navedo

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Thank you to our guests for such an enlightening conversation. And we hope our listeners feel that they have a better understanding of Project 2025's objectives and intent, as it represents a fundamental reshaping of administrative law.

If implemented, we'll be left asking whether these changes strengthen democracy or undermine the checks and balances that guide our government.

[Outro Music]

Sophia Navedo

If you enjoyed this episode, please take a second to leave a review and rating on your favorite listening app and be sure to subscribe and checkout our show notes for links to relevant resources.

We'd love to cover your questions on administrative law, so let us know what you'd like us to cover this season.

Stay informed, stay engaged.

As always, thanks for tuning in to, *A Hard Look*.

[Music Fades Out]

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[TRANSCRIPT & SHOW NOTES]

[SHOW NOTES]

- Jennifer Selin Google Scholar Profile
 - <https://scholar.google.com/citations?user=8qAFvIcAAAAJ>
- Don Kettl LinkedIn
 - <https://www.linkedin.com/in/don-kettl-451aa0272/>
- “Constraining the Executive Branch: Congressional Use of the Courts in the Administrative State” by Jennifer Selin and Pamela Clouser McCann
 - https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4890247
- “The Importance of Removal Restrictions in a Schedule F World” by Jennifer Selin and Paul Verkuil
 - https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4890241
- “The Transformation of Governance: Public Administration for the Twenty-First Century” by Donald Kettl
 - https://www.press.jhu.edu/books/title/10681/transformation-governance?srsltid=AfmBOorO0sZk1ySVYPR3ZzE-2B1WB9ceqileCJ2HmdRwGIRAO7yZXvc_
- “The Divided States of America” by Donald Kettl
 - <https://press.princeton.edu/books/hardcover/9780691182278/the-divided-states-of-america?srsltid=AfmBOore9dCLk39RhROUgHbgrklzRcDJ9GTBhJ2odOsypT8JUnKtpll->
- “Mandate for Leadership: The Conservative Promise” by The Heritage Foundation
 - https://static.project2025.org/2025_MandateForLeadership_FULLL.pdf