ADMINISTRATIVE LAW'S NEOCLASSICAL TURN IN *SEVEN COUNTY INFRASTRUCTURE COALITION V. EAGLE COUNTY*

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INTRODUCTION

Has administrative law taken a "neoclassical" turn? Articulated by Professor Jeffrey Pojanowski in a 2020 *Harvard Law Review* article, neoclassical administrative law refers to a framework that tries to "find[] a place for both legislative supremacy and the rule of law within the administrative state."[1] It seeks to do so while rejecting the legal realist foundations of other approaches, instead urging "a more formalist, classical understanding of law and its supremacy."[2] Last term, in *Seven County Infrastructure Coalition v. Eagle County*[3]—a case brought under the National Environmental Policy Act[4] (NEPA)—the Supreme Court held first that "the D.C. Circuit did not afford the [U.S. Surface Transportation] Board the substantial judicial deference required in NEPA cases,"[5] and second that the D.C. Circuit incorrectly interpreted NEPA as requiring the Board to consider the environmental effects of wholly separate projects.[6] Immediately striking about this decision is the Court's emphasis on deferential judicial review, which initially seems hard to square with the anti-deference posture embraced in *Loper Bright Enterprises v. Raimondo*.[7] The way *Seven County* reconciles this apparent tension—including by insisting on a bright line between legal interpretations on the one hand and determinations of fact and policy on the other—illustrates that modern administrative law may be developing along neoclassical lines. But although the ascent of neoclassicism may be normatively appealing to some, it underscores the need for neoclassicists to grapple with certain unresolved difficulties going forward.

I. THE COURT'S HOLDING IN *SEVEN COUNTY*

In 2020, a group of seven Utah counties known as the Seven County Infrastructure Coalition sought to build an 88-mile railway in northeastern Utah.[8] The Coalition wanted to connect the Uinta Basin, which contains large reserves of crude oil, to the interstate freight rail network so

* Harvard Law School, J.D. 2022. Thanks to Tim Borgerson, Michael Bradley, and Jeff Pojanowski for helpful comments and feedback. Thanks also to the editors of the Harvard Journal of Law & Public Policy for shepherding this piece to completion.

[1] Jeffrey A. Pojanowski, *Neoclassical Administrative Law*, 133 HARV. L. REV. 852, 857 (2020).

[2] *Id.* at 856.

[3] 145 S. Ct. 1497 (2025).

[4] 42 U.S.C. § 4321, *et seq.*

[5] *Seven County*, 145 S. Ct. at 1508.

[6] *Id.*

[7] 144 S. Ct. 2244 (2024).

[8] *Seven County*, 145 S. Ct. at 1508.

that oil producers could more efficiently transport their oil to refineries.[9] But under federal law, that railway—like all new railroad construction—required the approval of the U.S. Surface Transportation Board.[10] So, the Coalition petitioned the Board for approval. As part of its decisionmaking process, the Board conducted an environmental review to comply with the requirements set forth in NEPA.[11] Under NEPA, federal actions "significantly affecting the quality of the human environment" require the preparation of an environmental impact statement, or EIS.[12] That EIS "must address the significant environmental effects of a proposed project and identify feasible alternatives that could mitigate those effects."[13] To that end, the Board prepared an EIS, spanning hundreds of pages,[14] that analyzed the railway's "significant and adverse impacts," such as "disruptions to local wetlands, land use, and recreation."[15] The EIS also "noted, but did not fully analyze, the potential effects of increased upstream oil drilling in the Uinta Basin and increased downstream refining of crude oil carried by the railroad."[16] Those upstream and downstream effects, the Board explained, were outside the scope of its authority to regulate and, in any event, too "'speculative' and attenuated from the project at hand" to merit an in-depth analysis.[17] Shortly after issuing its EIS, the Board approved the Coalition's proposed railway.[18]

Eagle County (a Colorado county through which the railway would run), along with a number of environmental groups, challenged the Board's approval by petitioning for review in the U.S. Court of Appeals for the D.C. Circuit.[19] They argued that "the Board failed to take a hard look at the Railway's environmental impacts in violation of NEPA."[20] They faulted the Board's EIS for "ignor[ing] certain upstream and downstream impacts of the Railway."[21] The D.C. Circuit agreed.[22] Writing for a unanimous panel, Judge Wilkins explained that the Board's EIS failed to adequately analyze certain "reasonably foreseeable impacts," including those that would flow from increased oil drilling in the Uinta Basin and increased oil refining along the Gulf Coast.[23] It did not matter, as the Board argued, that those environmental effects would arise from other projects separate from the proposed railway.[24] Finding the EIS deficient under NEPA, the D.C. Circuit vacated the EIS and the Board's final approval of the project.[25]

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[9] *Id.*

[10] *See* 49 U.S.C. § 10901.

[11] *Seven County*, 145 S. Ct. at 1508.

[12] 42 U.S.C. § 4332(C).

[13] *Seven County*, 145 S. Ct. at 1507.

[14] The Court's majority opinion characterized the EIS as "clock[ing] in at more than 3,600 pages," *id.* at 1508, but the concurrence qualified this characterization by observing that the EIS "consisted of a 600-page report accompanied by supporting appendixes and responses to public comments," *id.* at 1520 n.1 (Sotomayor, J., concurring in the judgment).

[15] *Id.* at 1508 (majority opinion); *see also id.* (noting that the Board's EIS also analyzed "minor impacts," such as "air pollution and big-game movement around the construction site").

[16] *Id.* at 1508–09.

[17] *Id.* at 1509.

[18] *Id.*

[19] Eagle County v. Surface Transp. Bd., 82 F.4th 1152 (D.C. Cir. 2023).

[20] *Id.* at 1169.

[21] *Id.* at 1177.

[22] *Id.* at 1164.

[23] *See id.* at 1177.

[24] *See id.* at 1177–80.

[25] *Id.* at 1196.

The Supreme Court reversed and remanded. Writing for the Court, Justice Kavanaugh[26] identified two main errors committed by the D.C. Circuit. First, the D.C. Circuit failed to "afford the Board the substantial judicial deference required in NEPA cases."[27] In this regard, the Court emphasized that NEPA cases are reviewed "under the Administrative Procedure Act's deferential arbitrary-and-capricious standard" and that, because "NEPA is a *purely procedural statute*," it requires only a reasonable explanation for a final decision rather than a particular substantive outcome.[28] The Court then identified "several forms" that the "substantial deference" to agencies in NEPA cases can take in practice.[29] For example, the Court pointed to NEPA's command that an EIS be "detailed."[30] Although "the meaning of 'detailed' is a question of law to be decided by a court," whether that standard is met "involves primarily issues of fact" that should be left to the institutionally better-equipped agency.[31] The idea is that a reviewing court should not "substitute its judgment for that of the agency" when it comes to the "fact-dependent, context-specific, and policy-laden choices" required in a NEPA analysis.[32] Underscoring the substantial heft of this deference, the Court then admonished lower courts that have "engaged in overly intrusive (and unpredictable) review," explaining that such an approach has transformed NEPA from "a modest procedural requirement" into a "Kafkaesque" burden that has resulted in "[f]ewer projects mak[ing] it to the finish line."[33] What was "a 1970 legislative acorn" was never meant to become "a judicial oak that has hindered infrastructure development 'under the guise' of just a little more process."[34] The Court forcefully concluded its description of the judiciary's role by declaring that the "bedrock principle of judicial review in NEPA cases can be stated in a word: Deference."[35]

The Court next addressed the D.C. Circuit's second mistake, which was that the panel "incorrectly interpreted NEPA to require the Board to consider the environmental effects of upstream and downstream projects that are separate in time or place from the Uinta Basin Railway."[36] The Court clarified that, because NEPA's "textually mandated focus" is on the "proposed action," agencies need only consider the environmental effects of "the project at hand—not other future or geographically separate projects."[37] Important for the Court was the distinction between the

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[26] Justice Kavanaugh was joined by Chief Justice Roberts and Justices Thomas, Alito, and Barrett. Justice Gorsuch took no part in the consideration or decision of the case.

[27] *Seven County*, 145 S. Ct. 1497, 1510 (2025).

[28] *Id.* at 1511 (emphasis added).

[29] *Id.* at 1512.

[30] *Id.* (citing 42 U.S.C. § 4332(2)(C)).

[31] *Id.* (quoting Marsh v. Or. Nat. Res. Council, 490 U.S. 360, 377 (1989)).

[32] *Id.* at 1513 (quoting Kleppe v. Sierra Club, 427 U.S. 390, 410 n.21 (1976)). The Court provided two additional examples of what judicial deference in NEPA cases might look like. One involved the identification of significant environmental impacts and feasible alternatives. *Id.* at 1512. The Court explained that whether something counts as sufficiently "significant" or "feasible" depends on the sorts of "speculative assessments or predictive or scientific judgments" that agencies—not courts—are best equipped to handle. *Id.* The other example involved the scope of environmental effects that an EIS addresses. *Id.* Once again, the Court emphasized that "agencies possess discretion and must have broad latitude to draw a 'manageable line'" when it comes to determining how robustly to analyze a project's indirect effects or whether to consider the effects of separate projects. *Id.* at 1512–13 (quoting Dep't of Transp. v. Pub. Citizen, 541 U.S. 752, 767 (2004)).

[33] *Id.* at 1513–14 (quoting Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc., 435 U.S. 519, 557 (1978)).

[34] *Id.* at 1514 (quoting *Vt. Yankee*, at 558).

[35] *Id.* at 1515.

[36] *Id.* at 1511.

[37] *Id.* at 1515 (quoting 42 U.S.C. § 4332(2)(C) (2018)).

effects of the project at hand and the effects of separate projects altogether. Even "indirect effects" of the project at hand, such as certain geographically or temporally attenuated effects, may need to be analyzed under NEPA.[38] Different, however, would be the case of a wholly distinct project, such as "a housing development that might someday be built near a highway."[39] That separate project "breaks the chain of proximate causation," relieving the agency of the duty to consider that project's environmental effects.[40] The Court also identified an overlapping consideration: the agency's power to prevent certain impacts. On this point, "agencies are not required to analyze the effects of projects over which they do not exercise regulatory authority."[41] Applying these principles to the case before it, the Court concluded that the Board needed only to analyze the environmental impacts of the proposed Uinta Basin railway, and that the EIS "comprehensively" did so.[42] The Board did not need to consider the effects of future upstream oil production or downstream oil refining, because those effects would flow from separate projects and because the Board would lack authority over those projects.[43] The D.C. Circuit was thus wrong to demand otherwise.

Justice Sotomayor concurred in the judgment.[44] She agreed that the Board was not responsible for analyzing the effects of separate projects that would be spurred by the new railway.[45] She reached that conclusion "because, under its organic statute, the Board had no authority" to consider those effects.[46] This rationale followed from the Court's precedents, which "foreclose[]" the idea that an agency must "analyze[] even environmental impacts it [can]not lawfully prevent."[47] Although this reasoning in many ways aligned with the majority opinion's, Justice Sotomayor's view was that the majority "unnecessarily ground[ed] its analysis largely in matters of policy"[48]—a seeming reference to Justice Kavanaugh's multi-paragraph lament that some courts' overly intrusive approach to NEPA cases has "hamstr[u]ng new infrastructure and construction projects."[49] So, while Justice Sotomayor would have struck a different tone, she agreed with the Court's bottom-line holding.

II. *SEVEN COUNTY* AND NEOCLASSICAL ADMINISTRATIVE LAW

Seven County illustrates that the Supreme Court's administrative law jurisprudence may be moving in a neoclassical direction. To explain this, some background on the neoclassical approach is first worth understanding, and the best place to begin is its name. Neoclassical administrative law is called "classical" because of its commitment to a formalist, pre–legal realist vision of the

[38] *Id.* (noting that NEPA may require an analysis of effects that "extend outside the geographical territory of the project" or that "materialize later in time").

[39] *Id.* at 1515–16.

[40] *Id.* at 1516.

[41] *Id.*

[42] *Id.* at 1516–17.

[43] *Id.* at 1516–18.

[44] Justice Sotomayor was joined by Justices Kagan and Jackson.

[45] *See id.* at 1519 (Sotomayor, J., concurring in the judgment).

[46] *Id.*

[47] *Id.* at 1524.

[48] *Id.* at 1519.

[49] *Id.* at 1514 (majority opinion).

law.[50] The neoclassicist believes in law's supremacy and thus "has a greater faith in the autonomy and determinacy of legal craft" than the legal realist might have.[51] As a result, the neoclassicist wants to find a place for "traditional notions of the judicial role and separation of powers within the administrative state."[52] At the same time, the neoclassical approach is "new" because it is distinct from "other more classical, critical approaches of contemporary administrative law," which often crave a complete judicial deconstruction of the administrative state.[53] Neoclassical administrative law is more constitutionally modest, simply seeking to "integrate" its "more formal commitments with the administrative state we have—and will have for the foreseeable future."[54] The neoclassical approach thus tempers its "classical" commitments to law's supremacy and the separation of powers with a "new" prudential sensitivity to the destabilizing effect that a comprehensive rejection of the administrative state would have. In this way, neoclassical administrative law hopes to offer an "equilibrium resting point"[55] for administrative skeptics, who see the administrative state as an unconstitutional Leviathan,[56] and administrative supremacists, who see administrative law's inner logic as compelling a judicial retreat to the margins.[57]

Neoclassical administrative law can also be identified by several related jurisprudential and doctrinal commitments. Jurisprudentially, "three commitments tie together neoclassical administrative law: (a) belief in the autonomy and determinacy of legal craft; (b) the priority of original, positive law over judicial doctrine; and (c) hesitance to engage in judicial deconstruction of the administrative state through constitutional law."[58] Flowing from these jurisprudential commitments are the two central doctrinal pillars at the heart of the neoclassical approach: de novo judicial review of law and substantial judicial deference on questions of policy.[59] The neoclassical approach embraces these doctrinal features because it "seeks to sharpen the line between law and policy in administrative law, with the consequence of increasing judicial responsibility on questions of law while decreasing it on matters involving policymaking discretion."[60] To put it crudely, the neoclassicist believes that courts should do law while agencies should do policy.

With all this in mind, the Court's apparent movement toward a neoclassical framework for its administrative legal doctrine becomes clearer. Specifically, *Loper Bright* can be understood as cementing the first of neoclassical administrative law's two doctrinal pillars, and *Seven County* can be seen as exemplifying the second. In *Loper Bright*, the Court overruled *Chevron, USA, Inc. v.*

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[50] *See* Pojanowski, *supra* note 1, at 856–58.

[51] *Id.* at 857.

[52] *Id.*

[53] *Id.* at 858.

[54] *Id.*

[55] *See id.* at 895.

[56] *See id.* at 854–55 (identifying Professor Philip Hamburger as an administrative skeptic who "sees contemporary doctrine propping up an unconstitutional Leviathan" (citing PHILIP HAMBURGER, IS ADMINISTRATIVE LAW UNLAWFUL? 7 (2014))).

[57] *See id.* at 855 (identifying Professor Adrian Vermeule as an administrative supremacist who "sees the inner logic of administrative legal doctrine 'working itself pure,' such that courts come to recognize the vanity of trying to do more than ensure agency decisions satisfy thin legal rationality" (quoting ADRIAN VERMEULE, LAW'S ABNEGATION 22 (2016))).

[58] *Id.* at 895.

[59] *Id.* at 857 ("The neoclassical approach rejects judicial deference on legal questions while respecting the policy choices that agencies legislate in the discretionary space Congress has given them.").

[60] *Id.* at 884.

Natural Resource Defense Council, Inc.,[61] which for decades provided the governing deference doctrine in administrative law. Under *Chevron*, when faced with a question of statutory meaning, a court was bound to defer to an agency's "permissible construction" of an ambiguous statute.[62] But *Loper Bright* altered that balance by requiring courts to "exercise their independent judgment in deciding whether an agency has acted within its statutory authority."[63] This holding aligned with the neoclassicist's desire to "replace deference on questions of law with either de novo review or something like *Skidmore* deference."[64] *Loper Bright* also reflected neoclassical commitments in its reasoning. For example, because the neoclassical approach emphasizes constitutional modesty and the "legislation governing judicial review," it is less likely to reject *Chevron* deference based "on constitutional arguments about the judicial power," and "more likely to invoke the original understanding of the Administrative Procedure Act and the principles of judicial review it sought to codify."[65] In this way, the neoclassical approach advances a formalistic conception of judicial duty while avoiding the greater disruption that would flow from a constitutional holding. And that is exactly what *Loper Bright* did. Although some on the Court would have preferred a greater emphasis on *Chevron*'s constitutional defects,[66] *Loper Bright* settled on a more modest statutory holding that rooted its rejection of *Chevron* simply in the APA.[67]

If *Loper Bright* is understood as erecting the first of the neoclassical framework's doctrinal pillars, then *Seven County* can be seen as establishing the second. "For the neoclassicist," Pojanowski explains, "deference on policy questions is the corollary of nondeference on legal questions."[68] So too, then, is *Seven County* the corollary of *Loper Bright*. *Seven County* emphasized that substantial judicial deference should be the norm on questions of fact and policy in NEPA cases.[69] And it did so in a way that aligns with the neoclassicist's desire to "sharpen the line between law and policy in administrative law."[70] Consider *Seven County*'s example of NEPA's command that an EIS be "detailed." The Court wrote, citing *Loper Bright*, that the meaning of "detailed" is a *legal* question proper for judicial determination.[71] But deciding "what details need to be included in any given EIS," and hence "whether a particular report is detailed enough in a particular case," is a factual/policy judgment that "requires the exercise of agency discretion—which should not be excessively second-guessed by a court."[72] Implicit in the Court's reasoning here is a distinction between "expository reasoning," which "search[es] for an authoritative text's original public

[61] 467 U.S. 837 (1984).

[62] *Id.* at 843.

[63] 144 S. Ct. 2244, 2273 (2024).

[64] Pojanowski, *supra* note 1, at 884. Notably, the Court in *Loper Bright* cited *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), for the proposition that "exercising independent judgment is consistent with the 'respect' historically given to Executive Branch interpretations." 144 S. Ct. at 2265.

[65] Pojanowski, *supra* note 1, at 885.

[66] *See Loper Bright*, 144 S. Ct. at 2273 (Thomas, J., concurring) ("*Chevron* deference also violates our Constitution's separation of powers[.]"); *id.* at 2282–86 (Gorsuch, J., concurring) (discussing *Chevron*'s tension with the nature of the judicial role and the judicial power vested by the Constitution).

[67] *See id.* at 2263 (majority opinion).

[68] Pojanowski, *supra* note 1, at 893.

[69] *See* 145 S. Ct. 1497, 1514–15 (2025).

[70] Pojanowski, *supra* note 1, at 884.

[71] 145 S. Ct. at 1512.

[72] *Id.*

meaning or intent," and "prescriptive reasoning," which entails "normative and empirical inquiries about the best choice to make within the ambit of one's discretion."[73] In the Court's view, the judiciary's job is to exposit the meaning of a legal term like "detailed," while the agency's job is to make normative and empirical prescriptions within the realm of its discretion. *Chevron*, by contrast, would collapse that distinction, instead filing both legal interpretation and policymaking "under the broader label of 'interpretation.'"[74] So, by its commitment to the law-policy distinction, *Seven County* fits the neoclassical model to a tee.[75]

Importantly, however, if it is the case that the Court is moving in a neoclassical direction, that development is not without its difficulties. Consider the position of Professor Adrian Vermeule. Vermeule has criticized the neoclassical model as not being "neo" at all, arguing that "the framework has already been tried and rejected by the development of our law."[76] In particular, in the 1932 case *Crowell v. Benson*,[77] the Court embraced de novo review of law and deference on questions of fact and policy.[78] But that classical framework quickly began to break down. About a decade after *Crowell*, in *NLRB v. Hearst Publications*,[79] the Court considered whether newsboys count as "employees" or "independent contractors" within the terms of the National Labor Relations Act (NLRA).[80] Although the Court noted that "questions of statutory interpretation . . . are for the courts to resolve," it nevertheless deferred to the Board's determination that the newsboys counted as "employees."[81] The Court explained that the task of defining the term "employee" had been "assigned primarily to the agency created by Congress to administer the [NLRA]," and that courts should therefore "giv[e] appropriate weight" to that agency's judgment.[82] For Vermeule, *Hearst* is evidence that the Court was unable "to sustain a clear distinction" between questions of law, fact, and policy.[83] Indeed, Vermeule would hold that "it is *chronically* true in such cases that

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[73] Pojanowski, *supra* note 1, at 888–89; *see also* Randy J. Kozel & Jeffrey A. Pojanowski, *Administrative Change*, 59 UCLA L. REV. 112, 141–46 (2011) (discussing this distinction).

[74] Pojanowski, *supra* note 1, at 888; *see also* Kozel & Pojanowski, *supra* note 73, at 143 ("*Chevron* is often read as collapsing the distinction between explication and policymaking.").

[75] In addition to adhering to the neoclassical framework's law-policy distinction, *Seven County*, like *Loper Bright*, exhibited the neoclassical belief "that courts should be more attentive and faithful to the positive law governing the administrative state." Pojanowski, *supra* note 1, at 858. For example, *Seven County* emphasized that its conception of the judicial role was animated by the specific statutory context at issue, stating that "the reviewing court must account for the fact that NEPA is a *purely procedural statute*." 145 S. Ct. at 1511. And it also mattered that the deferential mood called for by NEPA was itself nested within the deferential arbitrary-and-capricious standard mandated by the APA. *See id.* It was these formal, *statutory* considerations—and not the pragmatic considerations (like subject matter expertise) often invoked by defenders of *Chevron*—that reinforced the Court's deferential posture. This consideration further underscores the plausibility that the Court's administrative law jurisprudence is taking a neoclassical turn.

[76] *See* Adrian Vermeule, *Neo-?*, 133 HARV. L. REV. F. 103, 104 (2020). Vermeule's co-author, Professor Cass Sunstein, has also signed onto Vermeule's criticism of the neoclassical approach. *See* CASS R. SUNSTEIN & ADRIAN VERMEULE, LAW & LEVIATHAN: REDEEMING THE ADMINISTRATIVE STATE 104–15 (2020).

[77] 285 U.S. 22 (1932).

[78] *See id.* at 45–46 (holding that an agency's determinations "upon questions of law are without finality," and that an agency's determinations "as to questions of fact . . . shall be final").

[79] 322 U.S. 111 (1944).

[80] *Id.* at 120.

[81] *Id.* at 130–31.

[82] *Id.*

[83] Vermeule, *supra* note 76, at 107.

lines between law, fact, and policy discretion are uncertain and unstable."[84] And it is the incoherence of these distinctions, for the administrative supremacist, that makes something like *Chevron* deference not only desirable, but structurally inevitable in administrative law.[85]

Seven County, on this view, represents a recapitulation of *Crowell*'s breakdown. The administrative supremacist sees deference to agency legal interpretations as the inevitable result of law's logic working itself pure over time, such that any attempt to eliminate it can only ever lead to its later reconstruction. This reconstruction, for Vermeule, was already at work in *Loper Bright* itself, and has now been confirmed by *Seven County*. After *Loper Bright* was decided, Vermeule confidently predicted that there would no *Loper Bright* "revolution" because *Loper Bright* simply "recreate[d] the *Chevron* framework while claiming to overrule it."[86] It did so by leaving open the possibility that an independent judicial reading of a statute may just be that the statute confers upon the agency substantial discretion within which to operate.[87] The implication of this is that what was once known as "*Chevron* deference" can now be relabeled as "*Loper Bright* delegation" without any change in substance.[88] In other words, "[c]ases that used to be labeled as 'deference to reasonable agency interpretations of ambiguous statutes' will now be called 'independent judicial interpretation that identifies a single best answer, an answer that consists of a delegation of discretionary authority to agencies within a given range.'"[89] *Seven County*, with its strong emphasis on deference, could be read as vindicating this "low-temperature reading" of *Loper Bright*.[90] From this perspective, all *Seven County* represents is that the Court has relabeled everything agencies do as "policymaking." This relabeling "saves the appearances, as the theologians say, and allows the Justices to take themselves to be doing all the law, while the agencies only ever do policy."[91] But substantively, the institutional relationship between courts and agencies remains the same.

Neoclassical administrative lawyers should respond to these difficulties. Specifically, neoclassicists should address whether *Loper Bright* contributed anything new to the law. Or is the Court merely engaging in a relabeling of categories such that *Seven County*'s deference to agency "policymaking" is substantively identical to the *Chevron* deference that *Loper Bright* purportedly displaced? More fundamentally, neoclassical administrative law depends entirely on a contested premise—namely, faith in the autonomy of law and the corresponding distinction between legal and non-legal questions. Neoclassicists should defend the coherence of the law-policy distinction.[92] Is it the case, as Vermeule contends, that there can be no return "to the garden of naive

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[84] *Id.*

[85] *See* VERMEULE, *supra* note 57, at 12–14 (arguing that the "[a]rc of [l]aw [b]ends toward [d]eference" and that judicial deference to agency legal interpretations "predates *Chevron* by many decades" and "would persist in *de facto* form even if *Chevron* were overruled *de jure*").

[86] Adrian Vermeule, *The Old Regime and the* Loper Bright *"Revolution,"* 2024 SUP. CT. REV. 235, 242 (2025).

[87] *Id.* at 247–48. As *Loper Bright* put it, "the statute's meaning may well be that the agency is authorized to exercise a degree of discretion." 144 S. Ct. 2244, 2262 (2024).

[88] Vermeule, *supra* note 86, at 248–49.

[89] *Id.* at 249.

[90] *See* Adrian Vermeule, *Yes, There Will Be No* Loper Bright *"Revolution,"* NEW DIG. (May 30, 2025), https://thenewdigest.substack.com/p/yes-there-will-be-no-loper-bright [https://perma.cc/W6XE-WCFQ].

[91] Vermeule, *supra* note 86, at 253.

[92] Other scholarly treatments of *Seven County* underscore the need for such a defense. One case comment, for example, argues that *Seven County*'s "threshold bifurcation between what is required by the statutory language and what is left to 'the

classicism" once "the apple of realism has been tasted"?[93] Or can a successful defense of formalism be lodged against realism? Answering such questions is an ambitious task that would likely require a robust research agenda.[94] But considering that the Court appears to be flirting with the neoclassical framework—as evidenced first by *Loper Bright* and now by *Seven County*—that agenda may well be worth pursuing.

exercise of agency discretion' seems like a choice unmoored from any guiding principles." *The Supreme Court, 2024 Term—Leading Case:* Seven County Infrastructure Coalition v. Eagle County, 139 HARV. L. REV. 409, 415 (2025). The author contends that "the Court can now, seemingly at will, use that threshold question of type of review to make unprincipled, statute-by-statute determinations of what level of deference an agency will receive." *Id.* at 409. And this, in turn, "can create unpredictability and generate accusations of politicization." *Id.* at 417. Articulating a principled way of distinguishing legal questions from policy determinations would help to ensure that courts review agency actions consistently and impartially.

[93] Vermeule, *supra* note 76, at 111.

[94] *See* Pojanowski, *supra* note 1, at 904–05 (noting that "[a]djudicating these deeper questions of interpretive method and legal determinacy is a matter for a separate paper—or, indeed, research agenda").