

As an ethicist and moral philosopher, I study moral questions in administrative law. One branch of my scholarship examines criminal enforcement by administrative agencies, an area which implicates questions of guilt, culpability, and other moral values. A second branch of my scholarship considers artificial intelligence, as used by agencies and regulated by agencies. In both branches, I evaluate attempts by agencies (and by the courts) to grapple with moral questions about fairness, efficiency, privacy, and other concerns. My scholarship draws on a variety of methods and literatures, including the philosophical literature on ethics of artificial intelligence, while using my training as an ethicist with a JD and a PhD in philosophy.

The first branch of my scholarship examines criminal enforcement by agencies. Criminal enforcement is an area that is saturated in moral concepts, such as guilt, wrongdoing, and criminal intent. These moral concepts are less salient in administrative law, which historically has invoked science and expertise rather than morality. Yet in recent years, the Court has broken with the past, particularly in cases involving criminal penalties for regulatory violations. In one of my papers, *Justice Gorsuch's Anti-Deference Maneuver*, I argue that the Court has used criminal penalties to import moral concepts into administrative law, for example, by appealing to the rule of lenity. I critique the Court's use of lenity, which the Court has used to undermine deference to agency statutory interpretations. In my other papers, I examine presidential administration in agency criminal enforcement (my job talk paper),<sup>1</sup> as well as criminal delegations in the decades before the Administrative Procedure Act (*A History of Criminal Delegations to Agencies*).

A second branch of my scholarship examines artificial intelligence, including agency regulation of (and adoption of) algorithmic tools. One of my papers, *The Case Against Algorithmic Price Personalization*, critiques algorithmic price personalization, which occurs when online sellers use sophisticated machine learning algorithms to offer different prices to different customers based on information such as customers' past purchases, web browsing history, location, or age, race, and gender. I argue that researchers have underestimated the harms from algorithmic pricing, including the harms from unexpected "nudging" behavior from pricing algorithms. My research in this area has been enriched by my interdisciplinary postdoctoral training at Berkeley's Kavli Center for Ethics Science and the Public, where I worked with colleagues from computer science, neuroscience, and other fields. Interdisciplinary learning is integral to my work, especially my research in artificial intelligence, and I have spent several years learning how to work productively with colleagues from different fields.

Finally, my scholarship is also informed by work with immigrants. I originally decided to apply to JD/PhD programs after I took an immigration law class and worked with asylum applicants as a Spanish interpreter. My job talk paper, *Presidential Administration via Criminal Enforcement*, was inspired by my work at the ACLU Immigrants' Rights Project in summer 2018, when the ACLU challenged the Family Separation Policy. In my scholarship, I strive to engage with theory while still staying practical enough to respond to real-world immigration policies like the Family Separation Policy.

## **I. CRIMINAL ENFORCEMENT BY ADMINISTRATIVE AGENCIES**

The first branch of my scholarship examines criminal enforcement by administrative agencies, an area which implicates questions of guilt, culpability, and blameworthiness.

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<sup>1</sup> Cristina Isabel Ceballos, *Presidential Administration via Criminal Enforcement*, 63 HARV. J. LEGIS. \_\_ (2026).

1. *Presidential Administration via Criminal Enforcement* (job talk paper) (forthcoming in the Harvard Journal on Legislation)

This Article critiques the President's use of criminal enforcement as a tool for presidential administration. In recent years, many Presidents have begun to use criminal enforcement to influence various areas of administrative law. President Trump, for example, directed criminal enforcement against immigrant families, creating the highly controversial Family Separation Policy. President Biden oversaw crackdowns against environmental crimes and corporate crimes. President Obama encouraged criminal enforcement against workplace safety violations. And President Bush used both civil and criminal enforcement in his attempt to overturn physician-assisted suicide in Oregon. In these examples, criminal enforcement has functioned as a tool for presidential administration, allowing the President to influence areas like environmental law, immigration law, workplace safety, securities law, and more.

This Article argues that criminal enforcement raises normative concerns which were not fully addressed in Kagan's article.<sup>2</sup> For example, *mens rea*, also called "guilty mind" or criminal intent, is typically determined in a fact-specific inquiry about the individual's mental state.<sup>3</sup> In most instances, the President is too high-level to access the individualized facts about *mens rea* for any given case. My first claim is epistemic (namely, the President is too high-level to access relevant facts about *mens rea*), and the epistemic claim carries a normative pay-off (given his epistemic limitations, the President is ill-suited to directing criminal enforcement that involves individualized *mens rea* considerations). This Article proposes *mens rea* as a potential constraint on the President, and it explores specific examples where *mens rea* has served to limit the President's criminal enforcement powers. In some instances, *mens rea* may impose a hard constraint on presidentially directed criminal prosecutions, and in other instances, *mens rea* may function as a softer prudential constraint on the President.

2. *Justice Gorsuch's Anti-Deference Maneuver* (draft manuscript)

This Article critiques Justice Gorsuch's attempts to import moral concepts from criminal law and graft them into administrative law. In a series of cases, Justice Gorsuch has applied morally tinged rules from criminal law (such as the rule of lenity), and used them to undermine deference to agencies. To carry out his anti-deference maneuver, Justice Gorsuch has relied "hybrid" civil-criminal statutes, which carry both civil and criminal penalties. Hybrid statutes are very common, and they exist in landmark regulatory regimes like the Clean Air Act, the Food, Drug, and Cosmetic Act, the Immigration and Nationality Act, the Copyright Act, and the Bankruptcy Code, which can be enforced civilly or criminally.

In the hands of Justice Gorsuch, hybrid statutes have become a weak point for administrative agencies—a weak point which Justice Gorsuch has used to hammer away at deference doctrines like *Skidmore*, *Auer*, and *Chevron* (now overruled). Justice Gorsuch's anti-deference maneuver has been adopted by lower courts, too, across a range of cases in

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<sup>2</sup> Kagan's article did not discuss criminal enforcement, and it included the word "criminal" only once, in a footnote naming the "Assistant Attorney General for the Criminal Division." See Elena Kagan, *Presidential Administration*, 114 HARV. L. REV. 2245, 2385 n.193 (2001).

<sup>3</sup> For example, law students are often taught to distinguish between premeditated murder vs. murder that is committed in the heat of the moment. For a defendant who killed someone in a bar fight—did the defendant pull the gun out of his pocket? Or did he walk to his car to fetch a gun, forming a pre-meditated intent in the five minutes it took him to retrieve his weapon? These kinds of individualized, fact-specific analyses are essential to *mens rea*.

environmental law, immigration law, and other areas. This Article traces the courts' use of Justice Gorsuch's maneuver, then argues that the maneuver is the wrong approach to hybrid statutes. After critiquing Justice Gorsuch's approach, this Article proposes a more flexible interpretive approach to hybrid statutes, one which does less damage to deference doctrines from administrative law.<sup>4</sup>

### 3. *A History of Criminal Delegations to Agencies* (draft manuscript)

In recent years, conservative judges have frequently criticized criminal delegations, or delegations that allow agencies to seek criminal sanctions for regulatory violations. In *Cargill*, for example, the Fifth Circuit wrote that criminal delegations "raise[] serious constitutional concerns."<sup>5</sup> Justice Gorsuch, too, has criticized criminal delegations in cases like *Gundy* and *Loper Bright*. This Article argues that these judicial critiques are overstated. Although many critics have characterized criminal delegations as a modern-day malaise, this Article finds that criminal delegations have deep historical roots: criminal delegations have existed since the 1800s, and Congress was aware of (and affirmatively approved of) criminal delegations when it enacted the Administrative Procedure Act (APA) in 1946.

When the APA was enacted, criminal delegations already existed in areas as varied as meatpacking, antitrust, wage and hour laws, and maritime shipping. Congress was most definitely aware of criminal delegations, because it heard testimony from multiple experts on the topic: for example, the Secretary of Labor argued that criminal delegations ensured that "unscrupulous persons" would not "chart their course of action . . . to avoid criminal prosecution and be subject at most to civil restraint by injunction."<sup>6</sup> Other experts offered similar testimony before Congress in the lead-up to the Administrative Procedure Act.

Critics of criminal delegations, then, have failed to appreciate their deep historical roots. This Article's findings will be especially significant for judges who have embraced "originalism" about the APA, and who seek to interpret the APA consistent with the historical understanding at the time of its enactment.

### 4. *Making Sense of Unitary Executive Theory* (early work)

My work on criminal enforcement often touches on *Morrison v. Olson*. In *Morrison*, Justice Scalia advanced a strong version of unitary executive theory which gave the President full control over core executive powers, including criminal enforcement.<sup>7</sup> If read broadly, Justice Scalia's dissent would discourage most constraints on the President's criminal enforcement powers. This Article proposes alternative, narrower reading of *Morrison* which would temper some of the stronger versions of unitary executive theory.

### 5. *Disparate Limo: How Administrative Law Erased Antidiscrimination* (Yale Law Journal)

While this Article does not focus specifically on criminal enforcement, it examines other significant moral values in administrative law, such as antidiscrimination and fairness. This Article argues that administrative law has developed a blind spot with respect to race and gender discrimination. The blind spot was created by APA § 704, which courts have used to channel

<sup>4</sup> This Article's approach is similar to (but not identical to) the approach adopted by legal philosopher Ryan Doerfler, who has previously discussed civil-criminal hybrid statutes. Ryan Doerfler, *Can A Statute Have More Than One Meaning?*, 94 N.Y.U. L. REV. 213 (2019).

<sup>5</sup> *Cargill v. Garland*, 57 F.4th 447, 472 (5th Cir.), *cert. granted*, 144 S. Ct. 374 (2023), and *aff'd*, 602 U.S. 406 (2024).

<sup>6</sup> *Hearings Before a Subcommittee of the Senate Judiciary Committee on S. 674, S. 675, S.918*, 77th Cong. 178 (1941).

<sup>7</sup> *Morrison v. Olson*, 487 U.S. 654 (1988) (Scalia, J., dissenting).

antidiscrimination claims away from the APA and toward other statutes that provide an alternative “adequate remedy.”<sup>8</sup> This article was co-authored with Dan Ho and David Engstrom.<sup>9</sup>

## II. ARTIFICIAL INTELLIGENCE USE AND REGULATION BY AGENCIES

A second branch of my scholarship examines artificial intelligence, as used and regulated by agencies. Many of these papers draw on philosophical literature on privacy, harm, and consent.

### 1. *The Case Against Algorithmic Price Personalization* (draft manuscript)

This paper examines algorithmic price personalization, which occurs when companies offer different prices to different customers for identical goods or services, based on personal information such as customers’ past purchases, web browsing history, location, or age, race, and gender. According to the standard economic view, algorithmic price personalization is permissible and even desirable because it increases efficiency. However, the standard economic view contains three imprecise assumptions: (1) it assumes that pricing algorithms will aim to identify willingness to pay while overlooking algorithms that nudge or inflate willingness to pay, (2) it assumes that pricing algorithms will charge higher prices to higher-income or higher-wealth consumers and lower prices to lower-income or lower-wealth consumers (3) it assumes away race and gender differences among consumers. Given the limitations of the standard economic view, we should be skeptical of recent attempts to defend algorithmic price personalization.

In critiquing the standard economic view, this paper highlights algorithmic nudging, a key concern which has been overlooked in the standard economic view. Many economists assume, incorrectly, that pricing algorithms all aim to identify willingness to pay rather than nudging it. Yet algorithms might easily attempt to nudge upward willingness to pay, for example by manipulating users’ news feeds to trigger envy or irrational behavior. Legal scholar Oren Bar-Gill, who has discussed algorithmic pricing, has found that algorithmic nudging may even reduce economic efficiency.<sup>10</sup>

In addition to discussing nudging, this paper also develops an account of privacy. Algorithmic pricing implicates privacy more than other forms of price personalization (such as discounts or marketplace haggling) because algorithms gather more information and do so continuously across multiple locations. A human haggler, for example, might carefully watch a shopper during one visit, or observe them over multiple days, but a haggler cannot follow a shopper home. An algorithm, by contrast, can follow a shopper across multiple websites and preserve every detail in perfect memory. Because algorithms have a much greater capacity to gather and store information, they create larger privacy impacts.

### 2. *Ethical and Privacy Concerns: Computer Vision in Hospitals and Care Settings* (work in progress)

During graduate school, I became a consulting ethicist for a group of computer scientists who piloted computer vision in hospitals. The group hoped to prevent hospital-acquired infections, so it installed cameras in Stanford hospitals and trained computer vision models to detect

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<sup>8</sup> 5 U.S.C. § 704.

<sup>9</sup> Cristina Isabel Ceballos, Daniel E. Ho & David Freeman Engstrom, *Disparate Limbo: How Administrative Law Erased Antidiscrimination*, 131 YALE L. J. 370 (2021).

<sup>10</sup> Bar-Gill’s article uses the term “consumer misperceptions,” rather than “nudging.” Oren Bar-Gill, *Algorithmic Price Discrimination: When Demand is a Function of Both Preferences and (Mis)Perceptions*, 86 UNIV. CHI. L. REV. 217 (2019).

handwashing. Their project later expanded to nursing homes, where cameras could detect falls and other health issues. But the group was concerned about privacy—especially because their work involved vulnerable patients—so they reached out to me and my advisor with ethics questions. Over the course of a year, I met with the group to discuss their concerns, learn about the details of their algorithm, and improve privacy protections in the next steps of their project. I also completed several Stanford courses in computer science, including an introduction to machine learning, so that I could better understand the technical details of their project. This paper was co-written with graduate students Zelun Luo and Daniel Wu in Fei-Fei Li’s lab, along with Dan Ho, Ehsan Adeli, and other collaborators from the Stanford School of Medicine.

### 3. *Law Enforcement at Customs and Border Protection* (ACUS Chapter)

This chapter examines Customs and Border Protection and its use of facial recognition technology. To build its facial recognition system, Customs and Border Protection used a database filled with decades of passport photos from U.S. citizens, who had provided their photos when they applied for passports.<sup>11</sup> This use of passport photos raises many legal and privacy issues, which are discussed in this chapter. The chapter was published in a report for the Administrative Conference of the United States (ACUS) in 2020. The chapter was co-authored with Nitisha Baronia, Mariano-Florentino Cuéllar & Dan Ho, and the report was peer-reviewed at Jotwell.com as among “the best new scholarship relevant to the law.”

### 4. *Algorithmic Enforcement and AI-Generated Probable Cause* (early work)

Many administrative agencies use algorithmic tools for enforcement. Customs and Border Protection, for example, uses a risk-assessment tool to identify suspicious cargo. The Securities and Exchange Commission, too, uses sophisticated machine learning models to detect potential insider trading. And the Environmental Protection Agency has explored machine learning tools to identify facilities at high risk of polluting. Via algorithmic enforcement, agencies can prioritize their enforcement resources and shift away from older enforcement tools like “tip lines” or time-intensive in-person inspections.

Yet algorithmic enforcement raises novel questions about AI-generated probable cause. Before searching a facility, an agency must generally show that it has probable cause to conduct a search. If an algorithm flags a facility as high risk for polluting, does the algorithm alone generate enough probable cause for an administrative search? This Article explores the emerging phenomenon of AI-generated probable cause in administrative searches.

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My scholarship examines morally inflected areas of administrative law, with a focus on criminal enforcement and artificial intelligence. These areas have undergone rapid changes in recent years, creating spillover effects in constitutional law, civil procedure, immigration law, criminal law, and other areas of public law. As these changes accelerate, I will use my training as an ethicist to address new moral questions in public law.

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<sup>11</sup> Nitisha Baronia, Cristina Isabel Ceballos, Mariano-Florentino Cuéllar & Daniel E. Ho, *Law Enforcement at Customs and Border Protection*, a chapter in GOVERNMENT BY ALGORITHM: ARTIFICIAL INTELLIGENCE IN FEDERAL ADMINISTRATIVE AGENCIES (2020), a report submitted to the Administrative Conference of the United States, at 35.