

To: PAPA 5014 Instructors and Peers
From: Morgan Ralph
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Subject: Chevron Deference and Public Administration

Chevron and The Supreme Court

The Supreme Court Case *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 468 U.S. 837 (1984), set the precedence for Chevron Deference. In *Chevron*, the Chevron Corporation, an oil and natural gas company, argued that the Environmental Protection Agency's (EPA) regulation that allowed a "state to adopt a plantwide definition of the term 'stationary source' under which a plant that contains several pollution-emitting devices may install or modify one piece of equipment without meeting permit conditions," as long as the overall emissions from the plant did not increase, was unconstitutional. (Cornell Law School Legal Information Institute). The regulation in question allowed the EPA and States to view emissions in one group. The agency's administrative authority was questioned by the Chevron Corporation and later the Natural Resources Defense Council (NRDC). This led to the landmark case revolving around judicial review and the ability of a federal agency to interpret laws not explicitly stated by Congress (Barczewski, 2023).

Chevron Deference

The term "Chevron Deference" is used to describe the legal test given by the Supreme Court in the *Chevron* case. Chevron Deference gives power to an agency to interpret the law and states that a court should refer to that interpretation (Cornell Law School Legal Information Institute). In ambiguous laws passed by Congress, Chevron Deference allowed agencies to decide how regulations should be enacted if they were considered to be reasonable (Cornell Law

School Legal Law Institution). The exception to Chevron Deference came only if Congress had explicated stated how a rule, regulation, or law should be applied.

The use of Chevron Deference by federal agencies, particularly the EPA, has been crucial for American public administration and policy, setting the standard for approximately 40 years of regulation interpretation. The EPU has used Chevron Deference in cases regarding the Clean Water Act, Clean Air Act, Safe Drinking Water Act, and various sources of pollution throughout the country. By leaving administrative decisions with the EPA, trained professionals have been able to shape environmental policy based on science and evidence.

Controversies and Overruling

While Chevron has been the foundation for administrative policy, it has not been without controversy. Opponents of Chevron deference argued that “*Chevron* gave agencies an unfair advantage if their decisions were challenged in court” as well as a “systematic bias” if agencies work with members of congress (Ballotpedia, n.d.). Another argument against *Chevron* was that it violated judicial review because it gives federal agencies the power to review interpretations of the law. The late Justice Antonin Scalia stated that though agencies might reach “the right result on interpretive questions because of their expertise...that is not a theoretical justification for deference,” (Ballotpedia, n.d.).

On June 28, 2024, the Conservative majority of the Supreme Court overturned Chevron Deference and the precedence set by the *Chevron* case in *Loper Bright Enterprises v. Raimondo* and *Relentless v. Department of Commerce* (Hannapel, 2024). The Supreme Court concluded that the “Administrative Procedure Act requires courts to exercise their independent judgement in deciding whether an agency has acted within its statutory authority” (Cornell Law School Legal Information Institute). The Supreme Court also ruled that “courts may not defer to an agency

interpretation of the law simply because a statute is ambiguous,” (Cornell Law School Legal Information Institute).

The fallout from *Chevron's* overturning will have complicated effects on public administration in the United States. While there are some consequences that are understood now, there will be legal ripple effects that could last several decades. A lack of clarity in regulatory authority now exists. Daniel Etsy, Hillhouse Professor of Environmental Law and Policy at Yale states “the Supreme Court has knocked out a core pillar of American administrative law and created a real risk of regulatory chaos,” (Etsy, 2024). Another consequence of *Chevron's* overturning is the power given to federal judges rather than agency scientists and experts. Federal judges have increased their role as policymakers in the United States (Turrentine, 2024). By letting these judges decide on regulations, there will be dire consequences for the EPA. Without Chevron Deference, the EPA’s “ability to protect water quality” will be “hamstring[ed]” (Anisfelda, 2024). It is also unclear how legal and regulatory cases previously decided under Chevron Deference will change in the future (Blumenthal, 2024).

Key Actors

The key actors that have played a role or have been impacted by *Chevron* include the Supreme Court, federal agencies, and federal judges. *Chevron* was created and later killed by the Supreme Court approximately 40 years apart. The Supreme Court’s opinion on deferring to an agency has changed drastically. Federal agencies have lost power to interpret decisions and carefully enforce regulations. In particular, the EPA has been negatively impacted. For example, in cases surrounding air pollution and varying weather patterns, “EPA scientists are better equipped than judges at determining how much a state should curb its air pollution,” especially given human health is the line (Turrentine, 2024). Additionally, federal judges are now

considered to be stakeholders as they are direct policymakers and will influence how Congress deems a law to be interpreted.

Chevron, Article III, and Alexander Hamilton

As previously stated, *Chevron* and Chevron Deference have been important aspects of public policy and public administration. The case and legal test have been directly impacted by Article III of the United States Constitution. Article III, Section 2 of the Constitution states, “the Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution,” (U.S. Const. art. III, § 2). Article III, Section 2 concludes with “the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make,” (U.S. Const. art. III, § 2). When creating the public administration system, we use today, Alexander Hamilton had a specific purpose in mind for the Judicial Branch of the United States. Hamilton believed that the Judiciary would “cooperate with the Executive in matters of law and policy,” and “confine the operation of ‘unjust and partial laws;” (Green, 2002). Prior to being overturned, Supreme Court Justice Clarence Thomas argued that based on these phrases of the Constitution, Chevron Deference is in violation of Article III (Barnett, 2021). They claim, “*Chevron*.... permits agencies, not courts, ‘to say what the law is,’” (Barnett, 2020). However, Kent Barnett, Associate Professor of the University of Georgia School of Law, argues that the Chevron Deference is not a threat to Article III, as Congress has powers that transcend Judicial review as well. He states, “if Congress bestows jurisdiction over claims, Congress can interfere with judicial decision making,” (Barnett, 2020). By this logic, one can argue that Congress is just as much a threat to judicial review and the power of judges as *Chevron*.

Conclusion

In conclusion, the United States Supreme Court's overruling of *Chevron* and subsequent removal of Chevron Deference has severely limited the regulatory authority of federal agencies such as the Environmental Protection Agency. Federal judges have been given authority to directly influence policy and interpret laws left ambiguous by Congress. The new power granted to federal judges will have consequences not anticipated in Article III of the Constitution.

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