

Ronald J. Krotoszynski

*Why Deference?: Implied Delegations, Agency Expertise,  
And The Misplaced Legacy of Skidmore*

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Abstract by Dipal Shah

Krotoszynski's article assesses the tension between the *Chevron* implied delegation doctrine and competing expertise-based rationales for judicial deference to agency work product. Krotoszynski espouses an expertise-based rationale theory which he argues provides stronger underlying justification for granting deference to an agency's work product than does an implied delegation theory. Furthermore, Krotoszynski argues that the Supreme Court incorrectly evaluated the issue in subsequent cases. The *Chevron* doctrine should apply when the materials at issue reflect and incorporate agency expertise, rather than an analysis of the legal fiction of an implied delegation of lawmaking power.

Krotoszynski suggests that *Skidmore*'s holding reflects the general rule of law. In essence, an agency's decision should receive the amount of judicial deference that is proportionate to the court's own confidence in understanding and assessing the procedure associated with the agency making the decision. Furthermore, he maintains that *Chevron* deviated from the major justification for allowing agencies deference in their statutory interpretation. That justification, he argues, is that administrative agencies have greater expertise than the courts which review agency decisions. Krotoszynski concludes that if an agency can demonstrate that an action at issue represents the benefit of agency expertise, a reviewing court should grant deference. However, if the agency can not demonstrate this benefit, this deference is unjustifiable.