

Thomas W. Merrill

*The Mead Doctrine: Rules and Standards, Meta-Rules and Meta-Standards*

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Abstract by Dipal Shah

In his article, Merrill discusses the impact of *United States v. Mead Corp.* on judicial deference for agency interpretation of statutes. Merrill introduces the topic by commenting on the fundamental debate presented by *Mead*. This debate is one between the overwhelming majority which proposes the use of either *Chevron* or *Skidmore* deference, and Scalia's dissent, which rejects *Skidmore* and argues for the sole use of *Chevron* doctrinal analysis.

Merrill argues that both the *Mead* majority and Scalia's dissent were both too vague in defining a rule for judicial deference of agency interpretation. Merrill suggests a meta-rule, or a defined bright-line test should guide courts in their administrative analysis. Merrill contends that the majority was correct in assigning the *Chevron* doctrine in cases where Congress delegates authority to an agency with the force of law and the agency exercises this authority. However, the majority should have defined the meaning of "the force of the law." By surveying a variety of administrative factors, the majority evaluates the meaning of "force of law" as a standard, rather than defining it as a rule. Subsequently, Merrill argues, the *Mead* decision creates a possibility for future confusion for lower courts. In conclusion, Merrill accepts that *Mead* enhances the interpretational power of agencies and solidifies the use of *Chevron* for judicial deference analysis, though it leads to confusion.