

ABSTRACT

Matthew C. Stephenson

Mixed Signals: Reconsidering the Political Economy of Judicial Deference to Administrative Agencies

56 Admin. L. Rev. 657 (2004)

Abstract by April K. Whitescarver

The author examines the broad patterns of Supreme Court deference to administrative agencies and how the Court has adjusted the appropriate level of deference over time. The Article begins by explaining and critically re-evaluating Linda Cohen's and Matthew Spitzer's seminal work on the political economy of judicial deference against new data. The objective of the Article is to re-open a line of inquiry that many considered closed after Cohen and Spitzer published their influential article on the subject.

The Article suggests that there is little evidence to support the Cohen-Spitzer hypothesis or what their theory predicts and demonstrates the need for reexamination of the assumptions and theories about the politics of administrative law decisionmaking in the Supreme Court. The author presents two possible alternative theories—the presidential mandate theory and the Supreme Court centrism theory—that are more consistent with the data reported in the article than the original Cohen-Spitzer thesis. The author suggests that more refined versions of the Cohen-Spitzer hypothesis can and should be tested against new data with more sophisticated methodological techniques than those employed in the article to better understand the political, ideological, and institutional forces that shape Supreme Court deference doctrine.

Part I of the Article describes and summarizes the Cohen-Spitzer rational choice theory of the Supreme Court's deference doctrine and explains how this Article assesses the empirical support for their theory. Part II describes in detail the methodological approach for re-evaluating and extending the Cohen-Spitzer hypothesis, as well as some important differences in sample selection and methodology between the two studies. Part III presents the results of an empirical re-assessment of Cohen and Spitzer's rational choice theory of Supreme Court deference doctrine, showing little empirical support for their theory. Part IV considers potential explanations for and implications of the empirical findings, including discussing the "presidential mandate" and "goldilocks" or Supreme Court centrism alternative hypotheses.