

Jerry L. Mashaw

*Norms, Practices, and the Paradox of Deference: A Preliminary Inquiry Into Agency  
Statutory Interpretation*

57 Admin. L. Rev. 501 (2005)

Abstract by Beatriz Ivanova

The author examines the future implications of the *Chevron* doctrine in relation to agency statutory interpretation. The article begins by proclaiming that although the Supreme Court established the validity of autonomous agency statutory interpretation in *Chevron v. Natural Resources Defense Council*, the decision also evoked many questions about the interpretative strategies and normative styles used by administrative agencies, which remain unanswered.

The article suggests that interpretative methodologies should vary based on the interpreting establishment and its particular role in the American constitutional legal structure. By underlining the important and necessary differences between fully legitimate judicial versus fully legitimate agency statutory interpretations, the author endeavors to begin construction of an ideal public administration interpretative technique. As in judicial competence discussions, agency interpretation analysis should take into account two dimensions - constitutional and prudential concerns. The first theme contemplates Congress's authority to delegate lawmaking power to agencies and the accountability of those agencies to the President and Congress, while the second theme, deals with the competence and expertise of agencies to accurately understand and implement statutory texts.

The first part of the article recommends certain factors, such as following presidential orders and using legislative history, that agencies should weigh more heavily than courts when interpreting statutes. The second part of the article advances the theory that agency interpretative methodology varies across different contexts based on the occasion, form, and process of interpretations. The third part suggests that although the main distinction between agency and judicial interpretation is its political context, agencies should also be guided by affected private interests and function as agents of change.