The Life and Death of *Chevron* Deference and the Future of Administrative Law

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For four decades federal agencies have been given wide latitude to adopt and interpret regulations implementing statutes within their areas of expertise. This latitude has been viewed with both praise and scorn. On the one hand, many have argued that, due to their expertise, agencies are in the best position to determine how Congress intended the statutes it has adopted to be implemented. Conversely, others have argued this latitude has taken the power to make and change laws away from the legislative branch and transferred it to unelected members of the executive branch (i.e., the agency). While this debate will surely continue, a recent decision by the Supreme Court of the United States has changed the playing field significantly impacting the role of federal agencies in our society.

A. *Chevron* Deference is Born

On June 25, 1984, the Supreme Court of the United States issued its decision in *Chevron U.S.A. v. Natural Resources Defense Council*[i] establishing the legal doctrine commonly referred to as "*Chevron* Deference." That doctrine required courts to defer to a regulatory agency's interpretation of the statutes it administers if those interpretations were "permissible." The doctrine was a significant departure from the traditional judicial approach of independently examining each statute to determine its meaning.

Under *Chevron*, a court reviewing an agency's interpretation of a statute was required to engage in a two-part analysis. First, the court had to determine whether Congress had directly spoken on the issue. If Congress had done so, courts would apply the statute as directed by its plain language. However, if the statute was silent or ambiguous, courts were required to defer to the implementing agency's interpretation of the statute if it was based on a permissible construction of the statute even if that interpretation was different than, or even contrary to, what the court would have ruled in the absence of agency guidance.[ii]

The Supreme Court explained in a later decision that *Chevron* rested on "a presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows."[iii] As a result, for forty years, the regulated public could only truly challenge an agency's interpretation of a statute by demonstrating that the agency's interpretation was directly contradicted by the plain language of the statute.

B. The Death of *Chevron* Deference

That all changed on June 28, 2024, when the Supreme Court of the United States issued its decision in the cases of *Loper Bright Enterprises, et al. v. Raimondo, et al.*, and *Relentless Inc. et al. v. Department of Commerce, et al.*, which explicitly overruled Chevron.[iv] The *Loper Bright* Court specifically held that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority."[v]

In analyzing the issue, the Supreme Court provided a history of the judiciary's role in interpreting statutes beginning with the Federalist Papers, through the Court's early decision in *Marbury v. Madison*, the rapid expansion of the administrative process which took place during the New Deal era, and ultimately the adoption of the Administrative Procedures Act (APA).[vi] That history demonstrates that while courts should provide "due respect" to the executive branch's interpretation of federal statutes, no specific deference to that interpretation was required, or expected, prior to the *Chevron* decision.[vii]

While this history helped form the Supreme Court's decision, its primary focus was on the incongruence between

the APA and the holding in *Chevron*.[viii] Pursuant to the APA, a "reviewing court" is required to "decide all relevant questions of law" and "interpret . . . statutory provisions."[ix] The Court found that the APA, consistent with constitutional mandates, requires courts to exercise independent judgment to determine the best interpretation of the statute, and that this obligation could not be reconciled with *Chevron's* directive to defer to "permissible" agency interpretations. As the Court noted, "[i]n the business of statutory interpretation, if it is not the best, it is not permissible."[x]

Ultimately, the Court overruled *Chevron*, finding that it "was a judicial invention that required judges to disregard their statutory duties."[xi] Under the new standard of review, "court's must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires."[xii] While the Court acknowledged that "[c]areful attention to the judgment of the executive branch, may help inform that inquiry,"[viii] that judgment need not be provided any more significant weight than other rules of statutory interpretation.

The Court further acknowledged that Congress may delegate authority to agencies in the statutes it adopts, and where it has done so, within constitutional limits, courts must respect that delegation, while ensuring that the agency acts within it.[xiv] In such circumstances, courts must fix the boundaries of the authority delegated and determine whether the agency, acting within the scope of that delegation, engaged in "reasoned decision making."[xv] However, in the absence of such a delegation, courts must exercise their own independent judgment when interpreting statutes.

C. The Future of Administrative Law After *Loper Bright*

The *Loper Bright* decision represents a seismic shift in how courts will review agency action. Courts are no longer bound by the decisions of the implementing agency. Rather, courts are free, and indeed obligated, to determine for themselves what Congress intended when it adopted the statute.

The decision will likely lead to an influx of litigation challenging agency action, as the arguments raised by the regulated public regarding the best interpretation of the statutes implemented by the agencies will be placed on equal footing with the interpretations asserted by the agencies.

Nevertheless, it remains unclear how lower courts will implement the holding in *Loper Bright*. Given that the Court acknowledged that careful attention should be given to the judgment of the executive branch, an agency's interpretation will remain part of the analysis when determining the best reading of a statute. Similarly, the Court acknowledged that Congress can delegate authority to agencies, and when that has been done, courts should respect that delegation. Given the variety of judicial philosophies amongst the members of the federal bench, it is unlikely that lower courts will consistently provide the same level of attention to the judgment of the executive branch or apply a standardized test for determining when Congress has delegated authority to an agency.

Accordingly, the *Loper Bright* decision may, at least in the short term, be a double-edged sword for the regulated public. While there will be additional opportunities to challenge agency action, inconsistent decisions by the lower courts may cause confusion regarding the appropriate application of a statute, with federal statutes and regulations being interpreted in different ways depending on what part of the country one is located. Although such potentially conflicting decisions are likely to eventually be resolved by the Supreme Court, until that has occurred, it may bring uncertainty and continuous change to the regulated public.

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i *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837 (1984).
ii Id. at 842-843.
iii *Smiley v. Citibank (South Dakota), N.A.*, 517 U.S. 735, 740-741 (1996).
iv *Loper Bright Enterprises, et al. v. Raimondo, et al.*, 144 S.Ct. 2244 (2024)
v Id. at 2273.
vi Id. at 2257-2263.
vii Id.
viii Id. at 2263-2270.
ix Id. at 2261; 5 U.S.C. § 706.
x 144 S.Ct. at 2266.
xi Id. at 2272.
xii Id. at 2273.
xiii Id.
xiv Id.
xv Id. at 2263.