THE CHEVRON DOCTRINE AND ITS EVOLUTION IN AMERICAN JUDICIAL REVIEW

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Abstract: On June 28, 2024, a decision was issued by the US Supreme Court in relation to Relentless v. Department of Commerce and Loper Bright Enterprises v. Raimondo. This date became a historical one in the jurisprudence of the Court due to the two landmark cases that deserved such a status by overturning the 40-year-old doctrine of judicial deference known as the Chevron Doctrine. Chevron U.S.A., Inc. v. NRDC – the 1984 case that gave rise to the doctrine – established a rule that required courts to defer to a state agency's interpretation of the statute that it administered provided two conditions were met: 1) the statute was either silent on the matter in question or its relevant provisions were ambiguous, and 2) the agency's interpretation was reasonable. Thus, the Supreme Court's judgement of June 28, 2024, overruled the precedent that had served as a guideline for the adjudication of similar cases for four decades. Although it is too early yet to assess the impact of such a disruptive decision in light of its repercussions, it is worth inquiring into the nature and history of the concept to later be able to properly evaluate the transformation of the court's practices. It is the purpose of this article to analyse the evolution of the Chevron doctrine and to suggest

certain arguments both for and against its preservation.

Keywords: judicial deference, Chevron doctrine, regulatory agency, rulemaking, administrative state, judicial review, statutory ambiguity, stare decisis.

Introduction

That the principle of the separation of powers constitutes one of the most attention-drawing topics of professional, academic and public discourse comes as no surprise. Indeed, what can occupy humans' minds more than what can or does directly affect their lives and, in particular, the civil transactions they enter into? In light of this, barely anyone would doubt the significance of cases that have the issue of the delimitation of state powers' authority at their core. However, categorising legal cases as such is often not a straightforward task. Therefore, it is crucial to conduct a thorough analysis of legal controversies that at least remotely resemble the disputes revolving around the question of competence of different branches of state power. In this context, Chevron U.S.A., Inc. v. NRDC and Loper Bright Enterprises v. Raimondo are particularly relevant. They serve as examples of disputes that provided the ground for discourse on the relations between the branches of power. Indeed, they do so by counterposing the notions of administrative state and judicial superiority. Nevertheless, as in many other instances, one can easily overlook the actual practical elements of these cases due to the highly technical and particularised nature of the questions they pose. The purpose of this article is to analyse the concept of the Chevron doctrine, which constitutes the essence of the Chevron U.S.A., Inc. v. NRDC case, and its evolution throughout its forty years of existence – from 1984, when the doctrine was initially framed, until 2024, when it was eventually overruled in Loper Bright Enterprises v. Raimondo. The article will focus on the most significant parts of Chevron history, examining the modifications that the doctrine underwent as a result of the Supreme Court's practice, while at the same time dealing with the arguments both for and against

the preservation of the doctrine of judicial deference and offering a negative assessment of the doctrine's overruling. The relevance of this topic is demonstrated by the fact that many outstanding legal practitioners and scholars have addressed the issue of the concept and justifiability of the Chevron doctrine. A truly remarkable work in this regard is that of Columbia Law School Professor Thomas Merrill, *Step Zero After City of Arlington*, which focused on one of the structural components of the test carried out by judges to determine the applicability of Chevron in a case at hand as well as on its changes following the Supreme Court's ruling in the City of Arlington v. FCC. Interestingly, this professor is also an author of the amicus brief to the Supreme Court penned for the very case that resulted in the doctrine's overruling. The aspects of the Chevron deference other than its concept and reasonableness found reflection in the work of Kristin Hickman and David Hahn (*Categorising Chevron*), as well as that of Cass Sunstein (*Chevron without Chevron*), who wrote about different approaches to and perceptions of the Chevron doctrine and about alternatives to the institute of judicial deference, respectively. In addition, the most recent publication on the topic, entitled *Loper Bright and the Future of Chevron Deference*, by Jack M Beerman, addressed the issue of Chevron's overruling and future scenarios for the development of the Supreme Court's jurisprudence in relation to the niche of judicial deference. In light of the above, one of the aims of this article is to serve as a comprehensive summary of Chevron deference and the Supreme Court's exercising of it by analysing the concept and evolution of the doctrine. The methods deployed for the purpose of the work detailed in this article included an examination of the relevant academic literature from various time periods, but mainly from 2014 to 2024; case studies, based on jurisprudence dating from the 1970s to 2024; and an analysis of the relevant legislation, namely the US Administrative Procedure Act. To make the article comprehensible for the reader, it is divided into five parts, as follows. The first part provides an overview of the legal framework of judicial review in the

USA; the second part examines the concept of the Chevron doctrine; in the third part the evolution of the doctrine of judicial deference is analysed; the fourth part is dedicated to the assessment of the justifiability and reasonableness of the Chevron doctrine by evaluating arguments both for and against it; and finally, the fifth part formulates the conclusions by summarising the most notable aspects of the Chevron deference doctrine.

1. The Legal Framework of American Judicial Review

When it comes to finding the legal grounds for such judicial activity as review of regulatory agencies' actions, inactions or omissions, acts, rules and decisions, the Administrative Procedure Act of the United States cannot but be mentioned. Although a vast number of administrative procedure acts exist at the state level – so called state APAs – the US-wide APA serves as a model APA for governing state agencies' adoption, implementation and enforcement of regulations. Adopted at the federal level in 1946, this Act provides the legal framework for the judicial supervision, or assessment, of various executive branch bodies of public administration. As the question of competence is particularly important in legal discourse, this Act defines the scope of review that the courts are entitled to exercise in relation to agencies' activities. Thus, Section 706 says that '[t]o the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law'[1]. In fact, one can derive several insights from this provision. Firstly, according to the APA's wording, the courts can exercise the function of review only 'to the extent necessary to decision' and 'when presented'[2] – meaning that in order to trigger the exercise of judicial review an interested party must initiate a case with a view to obtain the correction of the wrong, reparation for the

1 "5 U.S. Code § 706 – Scope of review", Legal Information Institute, accessed 9 October 2024, https://www.law.cornell.edu/uscode/text/5/706.

2 *Ibid*.

harm or compensation for the injury. Such arguments lead us to conclude that the very notion of standing, characteristic of the American justice system, is inherent in the mentioned provisions of the APA. One of the main requirements that must be satisfied before an action can be brought in American courts is the fact of the occurrence of certain harm to the party concerned, which, if so, will be eligible for a court's hearing of the case and thus for a court-driven reparation for the harm. Thus, the judicial review of agencies' activities also focuses on reparation for a particular harm and, most importantly, can be realised only to the extent that is required for the correction of the wrong in question in the particular case.

However, what is more important for the phenomenon of judicial deference is subsection 2 of paragraph 706 APA. In fact, it determines the demanded – by the legislature – outcome of the exercise of judicial review in cases of agencies' improper, or unauthorised, conduct, specifically to 'hold unlawful and set aside agency action, findings, and conclusions found to be – (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law' or '(B) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right'[3]. It is these specific terms – 'arbitrary', 'capricious', 'an abuse of discretion', 'in excess of statutory jurisdiction', and 'short of statutory right' – that are at the core of discussions regarding the doctrine of judicial deference. This is because they constitute the limitation on the judiciary's competence to defer to the agency interpretations of the relevant statute and thus to the agency regulations or decisions.

2. The concept of the Chevron doctrine

As was suggested by Shona Wadhia, – an American lawyer and officer of the US Department of Homeland Security, – in her 2021 publication, theoretical foundations of the Chevron doctrine are to 'better leverage agency expertise, to

3 "5 U.S. Code § 706 – Scope of review", Legal Information Institute, accessed 9 October 2024, https://www.law.cornell.edu/uscode/text/5/706.

engage in a more deliberative process, and to increase political accountability'[4]. Thus, I argue that the best starting point to engage in an assessment of the doctrine of judicial deference is to familiarise oneself with the purposes it serves – the primary of which are those mentioned above. With such a background regarding the context of Chevron, one can more effortlessly comprehend the notions underlying it.

In fact, two assertions must be made in order to characterise the Chevron concept. Firstly, the Chevron doctrine refers to the idea that courts should defer to agency interpretations of law – which, by virtue of the nature of the institution that adopts them, are considered to be more expertise-driven, informed and tailored. In other words, courts should give priority to agency constructions of statutes over those of their own. Secondly, such deference can take place provided two conditions are met: 1) the relevant statute is either silent or ambiguous on the particular matter in question; 2) the agency interpretation is reasonable or permissible. One observation should be made here. The interpretations to which I refer must refer to the statute that a particular agency administers, that is, of its organic statute or enabling law – these are the pieces of American legislation that set up administrative agencies and define the nature and scope of their functions and duties. As Professor Thomas Merrill puts it in his amicus brief to the Supreme Court (it is interesting to note that the amicus brief relates specifically to the case that will later result in the overruling of Chevron), Chevron stands for 'a fixed presumption that agencies have primary authority to resolve any and all ambiguities in the statutes they administer'[5]. In fact, the Supreme Court itself supported such an argument in several cases, for example, in Smiley v. Citibank,

4 Shoba Sivaprasad Wadhia and Christopher J. Walker, "The Case against Chevron Deference in Immigration Adjudication", *Duke Law Journal* 70, 5 (2021): 1203, https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4062&context=dlj.

5 "Brief Of Professor Thomas Merrill As Amicus Curiae In Support Of Neither Party", Supreme Court of the United States, accessed 9 October 2024, https://www.supremecourt.gov/DocketPDF/22/22-451/272562/20230721124931443_22-451acProfessorThomasW.Merrill.pdf.

N.A. (South Dakota)[6].

Although the question of the basis for agency interpretation is relatively straightforward – i.e. that those statutes that are subject to the rule of Chevron are organic, or enabling, statutes – the issues of the required statutory ambiguity and reasonableness of the interpretation are somewhat complex and demand more detailed elaboration. As regards statutory ambiguity, it should be observed that not only do the provisions of the respective statute need to be vague in order to trigger the application of Chevron deference but the fact of congressional delegation of the task of interpretation to the agency must be established as well. Thus, in order to justify the applicability of Chevron to the case at hand the court must prove – through its reasoning – that the Congress intentionally framed the statutory provision in vague terms so that the agency, when administering the statute, had the opportunity to interpret it by leveraging its expertise and professional knowledge and, later on, could give life to this provision by introducing a specific policy. As regards the second problematic issue, that is, the notion of reasonableness of agency interpretation, it should be emphasised that a so-called negative condition is applied here: unless the agency's interpretation can be characterised as either arbitrary, capricious or contrary to the statute, it is eligible for the court's deference. Thus, the reasonableness of the interpretation is determined not by its positive characteristics, but rather by its negative ones; to put it another way, by its not qualifying as arbitrary, capricious or contradictory to the statute. One observation should be made in this context, that the interpretation does not have to be considered reasonable by the court itself. This means that it does not have to be perceived as the correct, most logical or best suited one for the advancement of a particular policy by the court itself. Rather, it should qualify as reasonable by virtue of its not being 'damaged' by certain negative characteristics, for example,

6 "Smiley v. Citibank (South Dakota), N.A., 517 U.S. 735 (1996)", Justia U.S. Supreme Court Center, accessed 9 October 2024, https://supreme.justia.com/cases/federal/us/517/735/.

a reflection of an agency's bias or corruptness. The reason for such a line of argumentation being advanced by the Supreme Court is that the judiciary is not willing to substitute the legislature or executive branch policymakers and implementers for themselves by formulating the policies on their own. Therefore, according to the Court's reasoning in United States v. Mead Corp., the agency's statutory interpretation will be entitled to deference unless it is 'procedurally defective, arbitrary and capricious in substance, or manifestly contrary to the statute'[7].

Having discussed the essence of the concept of Chevron deference, before I move on to an analysis of the evolution of the doctrine, I will briefly outline various approaches towards framing the concept of Chevron deference. According to Professor Thomas Merrill, two perceptions of the Chevron doctrine can be distinguished: the first can be categorised as a maximalist one and the second as a general one. If one follows the maximalist concept of Chevron, he argues, one will perceive the doctrine as requiring 'reviewing courts to accept any reasonable interpretation by an agency of the statute it administers whenever that statute requires interpretation'[8] and thus will criticise the doctrine for its promotion of legal instability. This is based on the assumption that agencies are capable of engaging in statutory interpretation without paying due respect to the principle of consistency of their pronouncements. Conversely, if one advocates the general concept of Chevron, Merrill suggests that one will view the doctrine as a framework facilitating but not dictating judicial decision-making and thus will avoid the criticism based on agencies' unrestricted authority as well as circumvention of the judiciary's domain of independent judgement. Notwithstanding the different conceptions of the Chevron doctrine, one can with full certainty assert that

7 "United States v. Mead Corp., 533 U.S. 218 (2001)", Justia U.S. Supreme Court Center, accessed 9 October 2024, https://supreme.justia.com/cases/federal/us/533/218/.

8 "Brief Of Professor Thomas Merrill As Amicus Curiae In Support Of Neither Party", Supreme Court of the United States, accessed 9 October 2024, https://www.supremecourt.gov/DocketPDF/22/22-451/272562/20230721124931443_22-451acProfessorThomasW.Merrill.pdf.

the word 'Chevron' refers not only, or even primarily, to the 1984 Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc. case. Rather, this term denotes a specific framing device that was developed by the judiciary via jurisprudence and which serves as a facilitator of the adjudication of cases involving statutory ambiguity and agency interpretation.

3. The evolution of the judicial deference doctrine

3.1 Pre-Chevron era

When speaking about the prerequisites for the emergence and subsequent elaboration of the Chevron doctrine, one cannot ignore or underestimate the phenomenon that, although not directly linked to the fact of the doctrine's occurrence, provided it with the foundation necessary for its development. In fact, if it were not for the introduction of the APA in the American federal legal system, the Supreme Court's specific line of reasoning, which is based on the courts' respectful treatment of informed policy implementation by expert regulatory agencies, would have had very few, if any, opportunities to arise. It must be emphasised that it is so not only due to the legal basis for courts' deference to the outcomes of regulators' rulemaking or adjudication that the APA provides by its provisions on the scope of judicial review of agency actions[9] but also because of the fact that the APA itself represents the idea that, by virtue of their professional nature, regulatory bodies are entitled to due respect with regard to their decisions. As Kristin Hickman and R. David Hahn put it, 'enacted in 1946, the APA is often described at least in part as a codification of existing legal understandings and administrative practices as they existed prior to its enactment'[10]. In fact, what

9 "5 U.S. Code § 706 – Scope of review", Legal Information Institute, accessed 9 October 2024, https://www.law.cornell.edu/uscode/text/5/706.

10 Kristin E. Hickman and R. David Hahn, "Categorizing Chevron", *Ohio State Law Journal* 81, 4 (2020): 662, https://ssrn.com/abstract=3693132.

led the authors of *Categorising Chevron* to make such an assertion is the observation contained in a 1947 issue of the Yale Law Journal, which runs as follows: 'In some respects it [the APA] is simply a codification of existing law and practice'[11]. Thus, one might quite reasonably conclude that the emergence of the Chevron doctrine was to a certain degree conditioned by a specific, already existing legal mindset and practices that were later reflected, and reaffirmed, in the federal model APA. However, questions may arise regarding the relatively lengthy time span between the introduction of the APA in 1946 and the judicial framing of the doctrine in 1984. Fortunately, the answer is rather straightforward and lies in the fact that agencies' activism as regards rulemaking did not significantly intensify prior to the late 1960s/early 1970s[12]. According to Thomas Merrill and Kathryn Tongue Watts, by the beginning of the 1970s, agencies adopted an approach towards interpreting the congressional grant of widened rulemaking authority as one that expanded their competence to engage in regulation through legally binding rules[13]. It is worth stressing that, when it comes to the so-called direct ancestor of the Chevron doctrine, the United States v. Florida East Coast Railway case, adjudicated by the Supreme Court in 1973, must be mentioned. The importance of this case primarily resides in the fact that, in its judgement, the Court significantly reduced the scope of applicability of formal procedures for agency rulemaking, thus facilitating agency engagement in regulation of a legislative nature[14]. Therefore, one can summarise the reasons behind the emergence of Chevron as follows: the APA's reflection of a long-existent legal mindset and practices as regards the courts' respect for agency expertise-driven policy implementation,

11 Marvin S. Chapman et al., "The Federal Administrative Procedure Act: Codification or Reform?", *The YALE Law Journal* 56, 4 (1947): 673, https://core.ac.uk/download/pdf/157778361.pdf.

12 Kristin E. Hickman and Richard J. Pierce, JR., *Administrative Law Treatise* (Wolters Kluwer, 2019), 40, https://lawcat.berkeley.edu/record/664853?ln=en.

13 Thomas W. Merrill and Kathryn Tongue Watts, "Agency Rules with the Force of Law: The Original Convention", *Harvard Law Review* 116, 2 (2002): 549-570, https://www.jstor.org/stable/pdf/1342610.pdf.

14 Aaron L. Nielson, "In Defense of Formal Rulemaking", *Ohio State Law Journal* 75, 2 (2014): 252-253, https://kb.osu.edu/server/api/core/bitstreams/d7e7c12c-6d44-5401-a187-d6e598a9a828/content.

combined with judiciary-headed facilitation of agency legislative regulation, are the factors that predetermined its development.

3.2 Chevron times

It was Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., a case adjudicated by the Supreme Court in 1984, that brought to light such a doctrine as judicial deference to agency interpretations of law, which has subsequently become one of the landmarks of American jurisprudence. Thus, it was this case that gave its name to the Chevron doctrine, which came into existence as a two-question test or two-step approach towards judicial review of agency statutory interpretations. This can be phrased as follows. If the statute the agency is tasked with administering is either silent or ambiguous with regards to the issue in question, the agency's determinations of law are entitled to judicial deference provided they constitute permissible constructions of the statute. Interestingly, such a formulation of the doctrine was not developed in the Chevron case itself. Rather, Justice Stevenson, who penned the unanimous opinion of the Court, only mentioned that 'with regard to judicial review of an agency's construction of the statute which it administers, if Congress has not directly spoken to the precise question at issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute',[15] before proceeding to prove the latter by examining the wording of the Clean Air Act (the statute in question), legislative history, the Environmental Protection Agency's policy, and competing arguments. Already in the same year, that is in 1984, the D.C. Circuit relied on Chevron in the en banc adjudication of General Motors Corp. v. Ruckelshaus case[16], which marked the first application of the doctrine as we know it today.

15 "Chevron U.S.A., Inc. v. NRDC, 467 U.S. 837 (1984)", Justia U.S. Supreme Court Center, accessed 10 October 2024, https://supreme.justia.com/cases/federal/us/467/837/.

16 "General Motors Corporation, a Delaware Corporation, Petitioner, v. William D. Ruckelshaus, Administrator, United States Environmental Protection Agency, Respondent. (3 cases), 742 F.2d. 1561 (D.C.Cir. 1984)", Justia U.S. Supreme Court Center, accessed 10 October 2024, https://law.justia.com/cases/federal/appellate-courts/F2/742/1561/213324/.

The Supreme Court itself referred to Chevron just two years later, in 1986, when adjudicating Yong v. Community Nutrition Institute[17].

3.3 Post-Chevron era: the Mead standard

Chevron had been successfully deployed by the courts for more than fifteen years when, in 2001, a problematic question regarding the particularities of its applicability arose before the Supreme Court. It was necessary to determine whether Chevron applied to all agency statutory interpretations or only to those that carried the force of law. In fact, such a problem had already come to the Court's attention a year earlier, in 2000, when Christensen v. Harris County was decided. In that particular case, it was mentioned that only those agency determinations of law that carry legal force were entitled to judicial deference, and thus forms of agency interpretations, such as opinion letters or those not resulting from formal adjudication or notice-and-comment rulemaking, were excluded from Chevron's scope of applicability[18]. Nevertheless, it was held that agency determinations of law not characterised by the binding legal effect they produced were still to be treated with due consideration by the courts according to the less deferential 1944 standard of Skidmore v. Swift & Co. (in which case the Supreme Court ruled that 'although the rulings, interpretations, and opinions of the Administrator under the Fair Labor Standards Act do not control judicial decision, they do constitute a body of experience and informed judgement to which courts and litigants may properly resort for guidance.')[19].

Returning to the aforementioned 2001 Mead case, it should be stressed that this case reaffirmed the proposition put forward in Christensen (that only agency

17 "Young v. Commun. Nutrition Inst., 476 U.S. 974 (1986)", Justia U.S. Supreme Court Center, accessed 10 October 2024, https://supreme.justia.com/cases/federal/us/476/974/.

18 "Christensen v. Harris County, 529 U.S. 576 (2000)", Justia U.S. Supreme Court Center, accessed 10 October 2024, https://supreme.justia.com/cases/federal/us/529/576/.

19 "Skidmore v. Swift & Co., 323 U.S. 134 (1944)", Justia U.S. Supreme Court Center, accessed 10 October 2024, https://supreme.justia.com/cases/federal/us/323/134/.

interpretations with the force of law were covered by the Chevron doctrine)[20] and thus added an additional 'step' – a so-called Step Zero – to the Chevron framework. This step required the courts to firstly establish that Congress had delegated authority to the agency to act with the force of law and secondly that the agency had exercised that authority when introducing the interpretation in question, before allowing them to proceed with an analysis of the statutory ambiguity and reasonableness of the agency's interpretation.

3.4 Post-Chevron era: City of Arlington

Another milestone in the evolution of the Chevron doctrine was the 2013 case City of Arlington, Texas v. FCC. The issue present in this case was also related to the scope of Chevron applicability and concerned the question of whether Chevron deference could apply to agency interpretation of statutory provisions determining the agency's jurisdiction. In its 6-to-3 opinion, the Supreme Court upheld the ruling of the lower court and held that as long as the relevant statute is ambiguous and the agency's interpretation is reasonable, the agency's determinations of law are entitled to judicial deference under the Chevron standard even if related to the question of the agency's own authority or jurisdiction. Thus, no additional limitation on the applicability of the Chevron framework was introduced as a result of this case. As Professor Thomas Merrill put it in his publication *Step Zero After City of Arlington*, 'ironically, City of Arlington has done more than any decision since Mead to secure the core content of Step Zero as a basic limitation on the scope of the Chevron doctrine'[21]. However, what seems concerning in this case is the division of Justices' opinions, with those dissenting arguing quite strongly against the unjustified expansion of the power of the administrative state

20 "United States v. Mead Corp., 533 U.S. 218 (2001)", Justia U.S. Supreme Court Center, accessed 10 October 2024, https://supreme.justia.com/cases/federal/us/533/218/.

21 Thomas W. Merrill, "Step Zero after City of Arlington", *Fordham Law Review* 83, 2 (2014): 776, https://core.ac.uk/download/pdf/144230052.pdf.

and thus reflecting the emerging support towards limitation, if not elimination, of the Chevron doctrine.

3.5 Post-Chevron times: the dawn of Chevron

At the time this article was written, just three months had elapsed since the doctrine, which occupied pride of place in the Supreme Court's jurisprudence for forty years, was overruled. Thus, it was not until June 28, 2024, that the Chevron framework was eliminated from the courts' set of instruments for dealing with oversight of agency statutory interpretations as a result of judgements in the Relentless v. Department of Commerce and Loper Bright Enterprises v. Raimondo cases. It should be stressed that these cases will enjoy a landmark status not for the constructive role they played in the Court's jurisprudence, but rather for a destructive one due to their contribution to ending Chevron.

One might be interested in what reasoning the Court provided to substantiate its six-justice majority opinion. In fact, the arguments of the Court in these cases rested on three assertions made by the Justices. Firstly, according to Chief Justice Roberts, the fundamental function of the courts to provide interpretations of law is undermined by the Chevron concept, which provides for the judiciary's adherence to the agency pronouncements[22]; secondly, Chevron is inconsistent with the APA due to the unreasonableness of Chevron's notion that 'statutory ambiguities are implicit delegations to agencies'[23]; and, thirdly, Chevron undermines the principle of the rule of law by virtue of its being grounded in the idea of statutory ambiguity, the concept of which 'has always evaded meaningful definition'[24].

It is interesting to note that both of the most recent judgements of the Supreme

22 "Syllabus Loper Bright Enteprises rt al. V. Raimondo, secretary of Commerce, et al.", Supreme Court of the United States, accessed 10 October 2024, https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf.

23 "Skidmore v. Swift & Co., 323 U.S. 134 (1944)", Justia U.S. Supreme Court Center, accessed 10 October 2024, https://supreme.justia.com/cases/federal/us/323/134/.

24 "Loper Bright Enterprises v. Raimondo, 603 U.S._(2024)", Justia U.S. Supreme Court Center, accessed 10 October 2024, https://supreme.justia.com/cases/federal/us/603/22-451/.

Court, which became milestones in the evolution of the Chevron doctrine, that is, the 2013 City of Arlington and 2024 Loper Bright, witnessed a six-to-three division of Justices' opinions. However, the most striking difference between these two cases is their effect on Chevron's vitality. While City of Arlington introduced the idea that even agency interpretations as regards the agency's own authority are eligible for Chevron deference and thus avoided placing additional limitations on the doctrine's applicability, Loper Bright proved to be detrimental to Chevron's vitality by denying the soundness of the doctrine's core presumptions. Interestingly, the very case that to a certain extent strengthened the position of Chevron by not reducing the scope of its applicability, that is, the City of Arlington case, at the same time served as a signal of Chevron's decreasing support among Justices by the dissenting opinion incorporated in it.

4. Arguments for and against Chevron deference

As is the case with most standards developed by the judiciary throughout their practice for facilitation of the performance of their main function to administer justice, the Chevron framework has been subject to discourse as to its justifiability, reasonableness and practical usefulness. Inevitably, those concerning themselves with Chevron analysis have divided into two camps, namely, advocates and opponents of the Chevron concept.

Among the main arguments put forward by supporters of the doctrine, one can differentiate the following. Firstly, the assertion that Congress enacts 'an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation'[25] (supported by the example of section 10(b) of the Securities Exchange Act of 1934, which requires an agency to interpret the general wording of the statute by means of its rules and regulations[26]); secondly, the argu-

25 "Chevron U.S.A., Inc. v. NRDC, 467 U.S. 837 (1984)", Justia U.S. Supreme Court Center, accessed 10 October 2024, https://supreme.justia.com/cases/federal/us/467/837/.

26 "15 U.S. Code § 78j – Manipulative and deceptive devices", Legal Information Institute, accessed 11 October 2024, https://www.law.cornell.edu/uscode/text/15/78j.

ment that the Chevron standard is subject to a necessary limitation and thus reasonably does not apply to all agency pronouncements but only to those carrying the force of law (which reflects the Mead Step-Zero requirement); and, thirdly, the denial of the phenomenon of legal instability that the Chevron deference arguably causes (this relies on the fact that in one of its rulings the Supreme Court stated that '[a]n initial agency interpretation is not instantly carved in stone. On the contrary, the agency, to engage in informed rulemaking, must consider varying interpretations and the wisdom of its policy on a continuing basis'[27]).

Those who advocate for the doctrine's repudiation address the above-mentioned arguments of Chevron's supporters in the following way. Firstly, by acknowledging the fact of Congressional delegation of the task of statutory interpretation to the agencies, the fundamental concept of Article 3 of the US Constitution is violated (as '[i]t is emphatically the province and duty of the judicial department to say what the law is')[28]; secondly, by deferring to the agency pronouncements having the force of law – as required by Mead Step-Zero – Article 1 of the US Constitution is undermined (due to the disrespect paid, according to Chief Justice Roberts, to the First Article's grant of '[a]ll legislative powers' to Congress[29]); and, thirdly, the opportunity provided by Chevron deference to agencies to engage in the interpretation of ambiguous statutes creates the preconditions for different administrations' adoption of divergent determinations of law (West Virginia v. EPA case, which had the issue of different administrations' divergent interpretations of statutory provisions at its core, is pointed to as an example).

Thus, it should be stressed that a certain degree of reasonableness and logic is

27 "Chevron U.S.A., Inc. v. NRDC, 467 U.S. 837 (1984)", Justia U.S. Supreme Court Center, accessed 11 October 2024, https://supreme.justia.com/cases/federal/us/467/837/.

28 "Marbury v. Madison, 5 U.S. 137 (1803)", Justia U.S. Supreme Court Center, accessed 11 October 2024, https://supreme.justia.com/cases/federal/us/5/137/.

29 "City of Arlington v. Federal communications Commission, 569 U.S. 290 (2013)", Justia U.S. Supreme Court Center, accessed 12 October 2024, https://supreme.justia.com/cases/federal/us/569/290/.

present in the arguments of both proponents and opponents of Chevron, leaving the right to pass a verdict as regards the doctrine's justifiability to each individual who concerns themself with the issue of judicial deference. Nevertheless, the fact that the doctrine has been applied by American courts for forty years and during this time has been cited by the Supreme Court alone more than one hundred times[30] tips the scales with the arguments regarding the doctrine's soundness in favour of those supporting the Chevron concept.

Conclusions

When it comes to standards, tests, frameworks and doctrines that are developed in the course of courts' practice for the facilitation of adjudication of a specific category of cases and thus for the streamlining of the administration of justice in general, one typically examines such judicial mechanisms in light of several aspects. These include the legal basis for such mechanisms (or the provisions of law that authorise the introduction thereof), the history of the mechanism's development, and its positive attributes as well as its shortcomings. The Chevron doctrine constitutes precisely one such judicial mechanism; therefore, it is also typically analysed through these lenses, including in this article. Therefore, I will conclude by summarising the key features of the Chevron concept while adhering to the above-mentioned criteria.

Firstly, it should be stressed that the legal basis for Chevron deference can be found in the federal model Administrative Procedure Act, which was enacted in 1946 – eighteen years before the emergence of the doctrine – and which reflected an already existing legal mindset and practices as regards the entitlement to due respect from the judiciary of expertise-driven agency interpretations of law.

Secondly, when it comes to the question of Chevron's evolution, four milestones

30 Kristin E. Hickman and Aaron L. Nielson, "Narrowing Chevron's Domain", *Duke Law Journal* 70, 5 (2021): 1000-1013, https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4056&context=dlj.

thereof can be distinguished. (1) The 1984 Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc. case (which resulted in the postulate stating that on condition of statutory ambiguity and reasonableness of the agency interpretation, the latter is entitled to courts' deference); (2) the 2001 case of United States v. Mead Corp. (which introduced a limitation on Chevron applicability by establishing the rule that only agency interpretations carrying the force of law are eligible for judicial respect); (3) the 2013 City of Arlington v. FCC case (in which the Supreme Court ruled that the scope of Chevron application justifiably extends to an agency's interpretations of statutory provisions governing its own authority); and (4) the 2024 Loper Bright Enterprises v. Raimondo and the Relentless, Inc. v. Department of Commerce cases (which overruled the Chevron deference doctrine after forty years of its existence, with the Justices' reasoning being based on the ideas of interference in the judiciary's domain, a lack of grounding in the APA, and the vagueness of the concept of statutory ambiguity).

Thirdly, and lastly, the debates over the Chevron doctrine justifiability revolve around the following questions: the (non)fact of Congressional delegation of statutory interpretation to regulatory agencies; the agencies' (non)intrusion into the legislature's domain; and the phenomenon of legal instability – supposedly conditioned by divergence between different administrations' interpretations of law, which is (non)caused by the Chevron deference doctrine.

CHEVRON DOKTRINA IR JOS RAIDA AMERIKOS TEISMINĖS PERŽIŪROS KONTEKSTE

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Santrauka. 2024 m. birželio 28 d. JAV Aukščiausiasis Teismas priėmė sprendimą Relentless prieš Prekybos departamentą ir Loper Bright Enterprises prieš Raimondo. Ši data teismo jurisprudencijoje tapo istorine, nes gimė dvi svarbios bylos, panaikinusios keturiasdešimties metų teisminės pagarbos doktriną, žinomą kaip Chevron doktrina. Chevron U.S.A., Inc. prieš NRDC – 1984 m. byloje sukurta doktrina, reikalaujanti, kad teismai atidėtų agentūros administruojamo statuto aiškinimą, jei tenkinamos dvi sąlygos: 1) statutas nieko nenumatė nagrinėjamu klausimu arba jo atitinkamos nuostatos buvo dviprasmiškos; 2) agentūros aiškinimas buvo pagrįstas. Taigi 2024 m. birželio 28 d. Federalinio Aukščiausiojo Teismo sprendimas panaikino precedentą, kuris keturis dešimtmečius tarnavo kaip gairės sprendžiant panašias bylas. Nors dar anksti vertinti tokį sprendimą, verta pasidomėti koncepcijos prigimtimi ir istorija, kad vėliau būtų galima tinkamai įvertinti teismų praktikos pokyčius. Taigi šio straipsnio tikslas yra išanalizuoti "Chevron" doktrinos raidą, taip pat pasiūlyti tam tikrus argumentus už ir prieš jos išsaugojimą.

Reikšminiai žodžiai: teisminė priežiūra, "Chevron" doktrina, reguliavimo agentūra, taisyklių kūrimas, administracinė būklė, teisminė peržiūra, įstatymų neaiškumas, "stebėjimo sprendimas".