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Book Review

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Brink have since been answered. Luckily, Greenhouse has discussed these historic moments at length in recent *New York Times* columns. Regardless of the trajectory of the Court in the upcoming years, Greenhouse has created a comprehensive account of the tumultuous October 2020 term. Recommended for all libraries.

Merrill, Thomas W. *The Chevron Doctrine: Its Rise and Fall, and the Future of the Administrative State*. Cambridge, Mass.: Harvard University Press, 2022. 355p. \$35.

*Reviewed by Jill A. Sturgeon**

¶29 *The Chevron Doctrine* is a narrative that winds through the decisions leading to and following the Supreme Court's decision in *Chevron, U.S.A., Inc. v. NRDC, Inc.*¹⁰ In the process, it tells the history of administrative law in the United States, emphasizing the Court's role in that development. Author Thomas Merrill points out flaws in the doctrine's deference standard, as well as the judicial branch's inconsistent application of that standard, after placing the decision in the context of the traditional canons of statutory interpretation.

¶30 While the book goes beyond being entirely informational (the author is making an argument, after all), it does contain a considerable amount of detail. An in-depth description of the *Chevron* case explains that the long opinion written by Justice Stevens was never intended to be a landmark decision altering the way courts approached agency interpretations. It was simply an answer to the EPA's "bubble" controversy, which allowed air pollution increases at one stationary source if there were offsetting reductions at another stationary source. Merrill then posits that the reason *Chevron*'s two-step analysis became the primary test for reviewing agency interpretations was that lower courts preferred the simplicity of applying Justice Stevens's two relatively straightforward steps over the complexity of applying the matrix of factors set forth in earlier cases.

¶31 At the outset, Merrill asserts that there are four values that should be kept in mind while evaluating the process of judicial review of agency interpretations. Basically, does the analysis of agency interpretations: (1) allow people to have consistent expectations about the rules they must follow? (2) reinforce constitutional rights? (3) require policy decisions be made by elected (and thus more accountable) branches of government? (4) encourage agencies to make sound interpretations? If you agree that these are the correct criteria for judicial review of agency interpretation, then the argument that follows regarding the *Chevron* doctrine's flaws is compelling.

¶32 Merrill also presents an interesting juxtaposition of the *Chevron* doctrine's rise in popularity and the argument between textualism and intent. The D.C. Circuit in particular actively applied the *Chevron* doctrine in the wake of the *Chevron* decision, and Justice Scalia became its champion on the Supreme Court. Scalia's passing, Merrill suggests, is one of many factors in *Chevron*'s fall from popularity. *United States v. Mead*

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10. 467 U.S. 837 (1984).

*Corp.*¹¹ introduced a step zero to the two-step review process, effectively dispensing with the straightforward benefits of the *Chevron* doctrine and limiting its application.

¶33 After pointing out the cases that further crumbled *Chevron*'s two-step approach into a multilayered morass, Merrill turns to the task of proposing solutions to the tangled process. Any solution would need to address evaluating the authority of agencies and courts in the realm of statutory interpretation and constitutional questions, including preemption. It would also need to achieve the four values outlined at the outset, and it would need to be straightforward if it was going to enjoy *Chevron*'s popularity.

¶34 A reformed doctrine might have three steps, the first ensuring that the agency had not exceeded the boundaries of its authority. The second would look for any deviation from statutory requirements, and the third would review the agency's own rule-making process, ensuring that the agency had complied with the notice-and-comment requirement. In the process of adopting this reform, the Court could both reaffirm *Chevron* and rediscover the Administrative Procedures Act.

¶35 Reading this book around the same time as I was preparing a proposal for an administrative law research course was especially useful for me. The book provides a good review of important cases in agency interpretation and is easy to read. The *Chevron* story is told with case summaries to demonstrate the evolution of the *Chevron* doctrine, and each chapter ends with a summary that encapsulates and emphasizes the chapter's main point. Overall, the book is a worthwhile addition to academic law libraries' monograph collections.

Roberts, Dorothy. *Torn Apart: How the Child Welfare System Destroys Black Families—and How Abolition Can Build a Safer World*. New York: Basic Books, 2022. 375p. \$32.

*Reviewed by Mary L. Shelly and Steven A. Nelson**

¶36 In *Torn Apart*, Dorothy Roberts analyzes the negative effects of the child welfare system in the United States, which are felt most acutely by Black families, and she advocates for abolition of the current system. Roberts is the George A. Weiss University Professor of Law and Sociology and the Raymond Pace and Sadie Tanner Mossell Alexander Professor of Civil Rights at the University of Pennsylvania. She is also the founding director of the Penn Program on Race, Science, and Society in the Center for Africana Studies. *Torn Apart* arises from and continues her previous published work in *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (Pantheon, 1997) and *Shattered Bonds: The Color of Child Welfare* (Basic Books, 2002), in addition to numerous related articles.

¶37 Roberts's analysis of race and the child welfare system is a much-needed update to an understudied aspect of the institution. As noted in the prologue, no book has been written analyzing race and the child welfare system since 1972. But since that time, the

11. 533 U.S. 218 (2001).

* © Mary L. Shelly and Steven A. Nelson, 2022. Shelly is a Reference Librarian, Biddle Law Library, University of Pennsylvania Carey Law School, Philadelphia, Pennsylvania. Nelson holds a J.D. from Wayne State University, Detroit, Michigan.