
A Golden Anniversary?

The Administrative Procedures Act of 1946

Martin Shapiro

This year marks the 50th anniversary of the Administrative Procedures Act of 1946. The act's passage marks America's fatal ascension to bureaucratic complexity governing the procedures of rulemaking by executive branch agencies. Some of the act's original proponents regretted the need to codify procedures for government rulemaking but thought the act would temper some New Deal abuses of power. But after fifty years, American administrative law has evolved into a burden not simply on bureaucrats but on businesses and private citizens alike. The APA has made government rulemaking painfully cumbersome, costly, and slow.

Classical Rule of Law

Administrative law is always the product of the politics of regulation. And the politics of regulation always boil down to a clash between those who want more government regulation and those who want less.

Traditionally those Americans who wanted less government opposed the very existence of administrative law. Following the great spokesmen of nineteenth century classical English liberalism such as A. V. Dicey, classical liberals held

Martin Shapiro is professor of law at the University of California at Berkeley School of Law.

that the absence of administrative law was one of the hallmarks of the rule of law. If an individual and the government disagreed about the lawfulness of an exercise of state authority, the dispute ideally would be settled in a regular court. The government would be treated as if it were an individual engaged in a dispute with another individual, bound by the same laws—no more or no less than any other citizen. Such an arrangement would put the government and the citizens on equal legal footing, and presumably curb government abuses of power. By contrast, administrative law and administrative courts, found first in Europe, grant the government a superior legal status.

Origins of the Administrative Procedures Act

Before the APA, Congress usually would spell out the procedures for rulemaking for particular acts and agencies. There seemed to be little need for special administrative law. But whenever Congress did not explicitly provide a rulemaking procedure for an agency, uncertainty arose over what type of approach would be appropriate.

In the 1930s many advocates of limited government changed their minds about administrative law under the onslaught of the New Deal legislation. Administrative law appeared highly desirable as a restraint on an executive branch

armed with broad public support and an obedient body of bureaucrats. While President Franklin D. Roosevelt certainly did not support such a move, he countered the call and adopted it as his own. A special presidential commission was appointed under the direction of loyal New Deal lawyer Walter Gellhorn. In typical New Deal pragmatic style, the committee went about documenting the actual practices of the Washington agencies, codifying the practices into the first draft of the Administrative Procedures Act.

The original proponents of an administrative procedures act did not favor the Gellhorn version, which ended up not as legislation but as an Attorney General's report. After World War II, Republicans and Democrats finally hammered out the Administrative Procedures Act of 1946.

Structure of the APA

The APA originally rested on a basic distinction between two types of administrative actions: actions that potentially could affect the legal rights of individuals, and actions concerning general policy—that is, the making of rules and regulations.

In the first situation regarding legal rights—for example, deciding whether a company should be ordered to cease engaging in an allegedly unfair business practice—the act required government agencies to behave in a courtlike manner. Agencies held formal, adversary hearings with cross-examinations conducted by an officer who enjoyed some independence from the agency. (Years later these officers were given the title “administrative law judge.”) Their decisions had to be supported by formal findings based on “substantive evidence on the [written] record as a whole.” Further, citizens could seek appellate review by the regular federal courts.

In the second situation regarding general policy, the APA divides decisions into three parts: formal rulemaking, informal rulemaking, and discretionary actions. Formal rulemaking is subject to stringent adjudicatory procedures. For example, when the federal Food and Drug Administration sought to establish a standard for whether peanut butter should contain 87.5 or 90 percent peanuts, it followed formal rulemaking that generated a legendary 7,700 pages. But very few statutes specifically require an agency to proceed by formal rulemaking. Most agency rules are made by the “informal” or “notice and com-

ment” rulemaking process.

These far less formal procedures are the principal subject of this article. According to informal rulemaking procedures, an agency must give notice when it is contemplating making a rule. It must allow time for interested parties to respond, and must publish its rule along with a “concise, general statement of [its] basis and purpose.” Judicial review is available, but generally the courts strike down rules only if they are “arbitrary and capricious.” Informal rulemaking does not require a hearing, a cross-examination, a formal record, or a detailed grounding of the agency decision in recorded evidence. This process was meant to eliminate some of the delays and red tape associated with the formal rulemaking process.

The third type of agency action is discretion—that which is “committed to agency discretion,” and includes everything that is neither adjudication nor rulemaking. Such discretion is not subject to procedural rules and is subject to judicial review only for “abuse of discretion.”

Neither antiregulators nor those who favored an activist government were completely satisfied with the act's structure. Antiregulators were pleased with the courtlike agency procedures and opportunities for judicial review where regulation directly impinged on legally defined private rights. On the other hand, those favoring government expansion were pleased with the limited nature of the procedures for informal rulemaking and the limited judicial review of informal rulemaking and agency discretion. But both sides faced an uncertain future. The APA was a supplementary statute only, not a “code” governing all regulations. Congress could provide any procedural rules it wanted each time an agency or regulatory program was established. The APA would come into play only when an agency's statute was silent on a procedural question or referred to an APA provision.

From its passage until the mid-1960s the APA operated smoothly. The Roosevelt administration had packed both the bureaucracy and the courts with its supporters. Republican presidents for the most part were content to hold the line on regulations rather than drive them back. New Deal judges reviewed New Deal programs run by New Deal administrators.

However, one change did occur during the act's first decade. Judges ruled very early that “substantial evidence on the record as a whole” really meant that only a small amount of evi-

dence favorable to the government was necessary in the formal rulemaking process. Thus government decisions in such cases were rarely reversed by the courts. The APA did not require agencies to prepare an evidentiary record in support of their informal rules. Courts then had little choice but to assume that agencies possessed the facts to back up their rules. Courts tended to defer to agency "expertise." New Deal appointed judges were loath to say that their bureaucratic colleagues were acting in an "arbitrary and capricious" manner or "abusing" the process.

The Evolution of the Act

Originally, the APA had created an extremely time-consuming, formal process of agency adjudication and a quick, informal process of agency rulemaking. But from the mid-1960s through the mid-1980s, radical changes occurred in American administrative law, turning the APA on its head. Three decades after the act's passage, the informal rulemaking process had become as cumbersome as the formal process.

This change occurred without replacing or amending the APA. It occurred largely by judicial interpretations and often by Congress when it wrote the procedural provisions for new statutes. The gap between the statutory text of the APA and actual practice became so great that a whole new set of legal terms cropped up. The actual language of the APA either was avoided entirely or spoken as a kind of secondary incantation that carefully failed to note the discrepancies between the new language and the old.

One specific change that occurred was the evolution of a requirement for a "rulemaking record" for the informal rulemaking process even though such a requirement was deliberately excluded from the original APA.

A second change replaced the requirement of a "concise general statement of basis and purpose" for informal rulemaking with a "dialogue" doctrine that required an agency to respond fully to each and every point raised by every party in a rulemaking proceeding.

In a third change, standards that had determined who could challenge a rule virtually were dropped; thus, nearly anyone could participate in the agency rulemaking process and subsequently seek judicial review.

In a fourth change, instead of limiting themselves to the authority to strike down a rule only

if it was "arbitrary and capricious," the courts announced a "partnership" doctrine in which they were equal partners with the agencies in the rulemaking process. Thus, striking down rules became a detailed task of taking a "hard look" at every aspect of a rule.

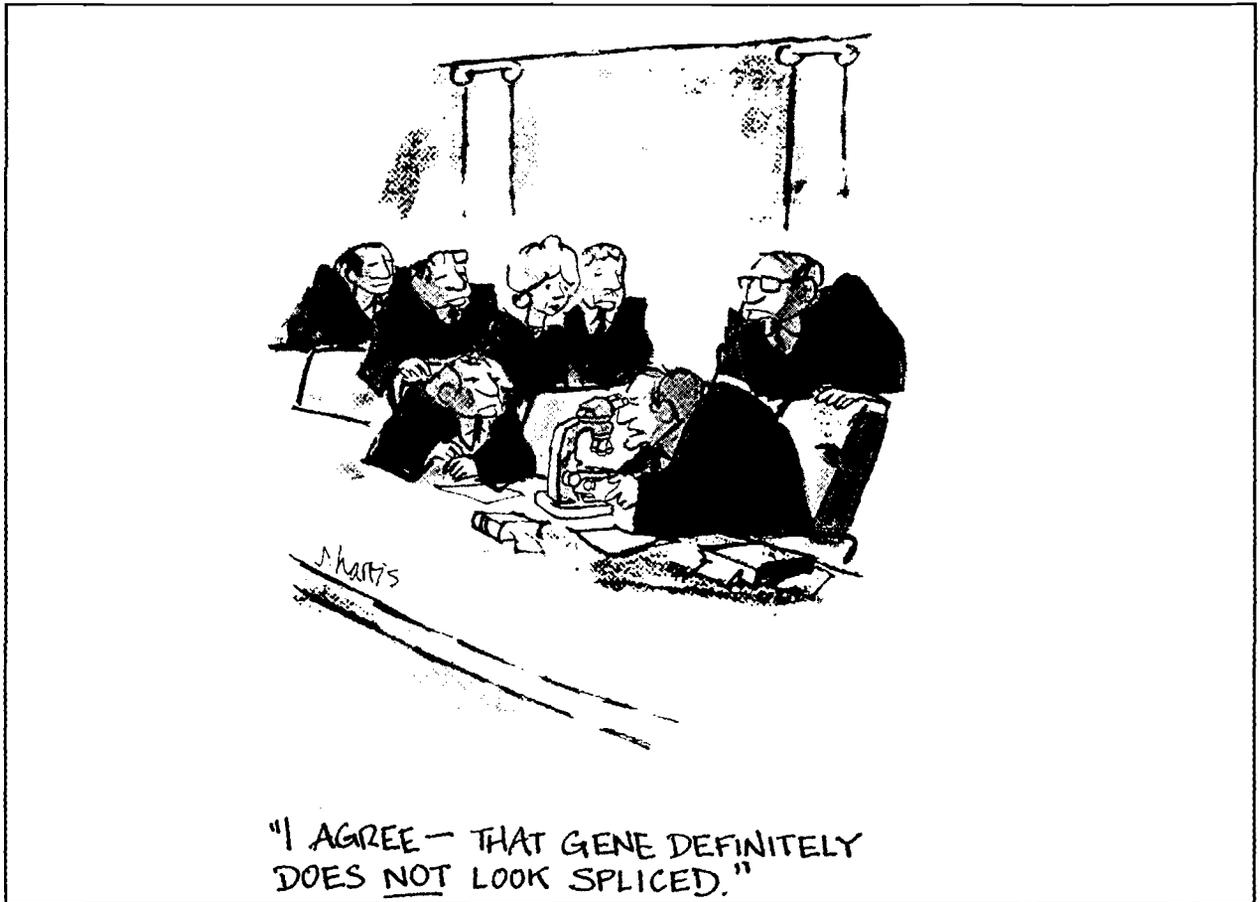
These new requirements in turn created their own administrative dynamics. Judges, for example, instead of having before them only a cryptic published notice of an agency's intention to make a rule, the bare rule itself, and a concise, general statement of its basis and purpose, now had a detailed record of everything that had been said by every party to the rulemaking process. After a rule was made, litigation inevitably would replay everything that had transpired during the initial rulemaking. And, in anticipation of probable judicial review, the rulemaking process became a dress rehearsal for litigation. Judges became full partners in the rulemaking process because they knew everything their agency counterparts knew, and they became senior partners because they had the last word on whether a proposed rule was lawful.

The ultimate result of these changes was that rulemaking agencies had to demonstrate that they had formally considered every fact, every bit of analysis, every policy alternative, and every possible cost and benefit before arriving at a rule. Indeed the current law comes very close to requiring agencies to show not only that their rules are compatible with all these considerations but that the rules are the very best that could have been made.

These radical changes in administrative law came about largely through the judiciary, especially the District of Columbia Court of Appeals. Hesitantly and with some self-contradiction, the Supreme Court also essentially supported the lower courts' decisions.

The Politics Behind the APA

One reason for the evolution of the APA is that after the death of President Roosevelt the dominance of New Deal policies was challenged by Republicans and resisted by many Southern Democrats. During the 1950s President Eisenhower appointed Republican judges who did not share the New Deal philosophy and thus interpreted the APA differently. Indeed, the first major move toward judicial reform of administrative law came from then-D.C. Circuit Court



Judge Warren Burger. While the effects of these appointments would not be felt for another decade or two, the basis for transforming the APA was set.

The evolution of the APA also reflected two deeper conflicting strands of American political opinion about government. The first emphasized the role of experts, recalling the Federalists of the first decades of America's history and the Progressives of the turn of the nineteenth century. The second emphasized popular sovereignty, recalling the Jacksonian practices of rotation in office and the spoils system. The New Dealers apparently had resolved this conflict with the popular President Roosevelt "on top," and an administrative apparatus of experts "on tap."

Belief in technocratic government reached new heights in the 1930s, but by the 1970s it had plunged to new lows. Science and technology had won World War II for the West and put men on the moon. At the same time the creation of the atomic bomb fed peoples' fears of the end of the human race. Once viewed as benevolent, political eunuchs in white coats, scientists came

to be seen as part of "big science," an interest group with its hand out for big public funding and part of the military-industrial complex that President Eisenhower denounced.

Concern about government, science, and technology led to emphasizing the need for popular input in decisionmaking, with a concomitant emphasis on two other factors in the public policy process: transparency and participation. Critics argued that if government is so complex that some degree of technocracy is inevitable, then citizens at least should have the opportunity to see clearly what the government is doing. And if technocrats are not neutral but are allied with particular interest groups, then at least rival interest groups should be allowed to participate in technical decisions.

But there was a special set of problems associated with popular control. Some groups seemed more equal than others. And because all groups could not participate equally, the rulemaking process became increasingly judge-centered. In the 1950s judges knew little of the details of policy and thus deferred to the expertise of tech-

nocrats. However by the 1970s, the judges' lack of expertise came to be viewed as occasion for intervention rather than deference. While learned in the law, most judges had little advanced scientific or technical knowledge. Vis-à-vis the technocrats, judges had a layman's perspective. But unlike the average citizen, judges had legal authority to rein in the technocrats due to the judicial review provisions in the APA. Thus the new administrative law was seen as democratic in substance. Judges, as members and representatives of the "people," supervised administrative elites.

Angst-ridden legislators increasingly mandated legislation with specific standards for health, safety, and the environment and gave executive agencies extensive rulemaking authority.

Judicial Review

Angst-ridden legislators increasingly mandated legislation with specific standards for health, safety, and the environment, which included "agency forcing" and "technology forcing" provisions. Legislators also gave executive agencies extensive rulemaking authority. Congress was saying in effect, "We have no choice but to employ technocrats in these complex scientific areas, but we don't trust them." Congress also included in many statutes numerous exceptions, loopholes, waivers, and opportunities for bureaucratic discretion.

Most statutes contained judicial review provisions. Given that such provisions authorized the courts to strike down unlawful agency regulations, a field day suddenly opened for "statutory interpretation." Whether an agency regulation was found lawful or unlawful depended on the court's interpretation of complex and often internally contradictory statutory language. Law schools that had been largely devoid of interest in or classes on statutory interpretation suddenly poured forth a deluge of law review articles, new courses, and even some casebooks.

The most obvious result of the emphasis on statutory interpretation was that judges received

a substantive arrow to add to their quiver of procedural ones. Courts might fault an agency rule not only because the agency had failed to take the procedural steps engendered by demands for participation and transparency, but also because the agency regulation failed to achieve the substantive goals stated in the statute.

Technocracy: The Fourth Branch of Government

The most important result of the changes in the APA's application, however, only became clear as the politics of regulation evolved. After the initial congressional enthusiasm for new regulation, Presidents Reagan and Bush were elected on deregulatory platforms. Congress became increasingly nervous about the costs of regulation, particularly in the face of global economic competition. But preregulation forces were not ready to acquiesce to a loss of government power.

There were two opportunities for maintaining the status quo or even expanding the regulatory system. First, if the aspirational commands of the health, safety, and environmental legislation could be kept legally operative, then regulation could continue to move forward vigorously in spite of declining levels of congressional and executive branch support. Secondly, by the 1980s the bureaucratic technocracy staffs had turned even more toward the preregulatory philosophy. The technical staffs of the Environmental Protection Agency, the Occupational Safety and Health Administration, and other agencies were bastions of the government-control-all spirit. If the agencies could be defended against presidential and congressional intervention, the pace of regulation could remain vigorous.

On both fronts the preregulation forces could take advantage of the Constitution's separation of powers. The president, the chief executive according to the Constitution, executes and carries out laws. Executive agencies therefore have a legal obligation to carry out the laws passed by Congress. Thus, departments and agencies live not under the commands of the chief executive but the commands of Congress. And they do not legally exist under the current daily whispers, nudges, inquiries, hearings, and budget cuts of Congress, but under its previously enacted statutes. Unless the Congress and the president would repeal statutes, the doctrine of statutory

duty combined with appropriate statutory interpretations would ensure that the regulatory regimes of the 1960s and 1970s continued through the 1990s. Thus statutory duty increasingly came to play a major part in post-APA administrative law.

To be sure proregulatory forces would have to rely on the judicial branch to achieve their goals, and the courts were becoming less tolerant of regulations as the proportion of Republican appointees increased. Yet the proregulatory forces had little choice but to woo the judiciary if they wished to create a new constitutional theory and reality of regulation favoring technocracy as the independent fourth branch of government. After all the courts had been aiding them already, backing the new proregulatory bureaucracy against presidential incursion. Regulatory politics are not only about struggles between the agencies, Congress, and the president, but also struggles among internal forces within the agencies. As courts demanded more complete, detailed rationales for agency rules, their demands increasingly advantaged technical staffs over political appointees.

Legislative Veto

The proregulatory legal campaign is most clearly revealed in the struggle over the legislative veto. When an executive agency makes a rule, it is exercising congressional lawmaking powers delegated to it by Congress. It would seem reasonable that Congress should exercise some supervision over its agent. Some congressional statutes delegating rulemaking authority to agencies also provided that before a rule came into effect, it should be returned to Congress for final approval. If Congress did not approve, the rule did not become law.

This legislative veto device could take various forms. It might require positive congressional approval of a rule, or it might require that a rule become law unless Congress disapproves within a specific time frame. The veto power might be assigned to one house or require the action of both houses. It could be assigned to the whole house or to the congressional committee within whose jurisdiction the legislation falls.

The legislative veto was a direct assault on the proregulatory forces' project for turning the agencies into an independent fourth branch because it brought agency rulemaking under

greater congressional control. Those forces mounted a constitutional attack on the veto. Unfortunately no one came to its defense. Congress is very poorly equipped to defend the constitutionality of its statutes in court. It is accustomed to relying on the Justice Department to mount such defenses.

The issue came to a head in the *Chadha* case (1983). At the time the Justice Department was in Republican hands and might have been expected to defend vigorously an institution under attack by proregulatory forces. But the Reagan administration saw the veto battle as one between the legislative and executive branches with Republicans in the White House and Democrats controlling Congress. The Justice Department sat on its hands. The legal counsel for the House of Representatives fought the case for the "government."

The very foundation of the APA—that is, the distinction between slow, formal adjudicative decisions and fast, informal rulemaking decisions has been destroyed.

In *Chadha*, the Court argued that a legislative veto was itself legislation; that the Constitution provided that legislation must be subject to presidential veto; that congressional veto actions were not subject to such presidential vetoes; and therefore, legislative vetoes were unconstitutional.

Of course, the agency rules that Congress could veto were themselves even more legislation than were the congressional vetoes. Those rules were not subject to presidential veto. Indeed the doctrine that held that in enacting such rules the agencies were obeying a statutory duty precluded any direct presidential intervention even though the rules were made by units of the chief executive's own branch. If the congressional veto was unconstitutional because it failed to allow for a presidential veto, then the delegation of its rulemaking powers by Congress to the agencies was even more unconstitutional. When an agency makes a rule it is making law. But the president cannot veto agency rules any more than he can veto a legislative veto. Yet, aside from a few decisions of the 1930s to the contrary, the Court has always upheld the constitutionality of such delegation. It firmly protects the baby while resolute-

ly throwing out the bath water when in all logic both agency rulemaking and congressional vetoes of legislative rules must be either constitutional or unconstitutional.

At the time of the Court's *Chadha* decision there was a good deal of ill-informed rejoicing by antiregulatory advocates over this victory for the Republican presidency. Yet, there was even more rejoicing among the proregulatory "public interest" lawyers who had brought and won the case. The right never seemed to figure out why there must be something wrong with their support of this litigation from the left.

Tensions in the New Administrative Law

The new body of administrative law into which the APA has mutated contains a great deal of tension and ambiguity. In the name of pluralist democracy, it sought more participation and transparency in rulemaking. But courts declared themselves the senior partner in the rulemaking process in order to ensure participation and transparency. While perhaps antitechnocratic, this arrangement of transferring power from a bureaucratic elite to a judicial elite is not entirely democratic.

When the courts went even further and demanded that the rulemaker not only respond to all issues raised by interested parties but also demonstrate that it had done a near perfect job of fact gathering and legal analysis, the courts initiated an at least partially self-defeating process. Law is not static. It governs ongoing processes. Over time the agencies learned. What they learned was how to create an enormous cloud of technological evidence to support whatever rule they made. Over time the reviewing courts were confronted by the enormous rule-making records that their own demands had engendered, but records that they obviously could not understand. The intervention of the judge as champion of the laity resulted in the further proliferation of technocratic power. The regulatory process became more transparent but the final substantive discretion of the rulemakers came to be clothed in ever multiplying layers of technological opacity.

Even the judicial demand for more elaborate procedures contained a sort of dialectical contradiction. At first the courts would strike down rules for procedural flaws. But the agencies learned to cure each flaw after a court's judgments. As other

flaws were discovered by judges, agencies would simply make other patchwork repairs. The final result was an "informal" rulemaking process that is now more cumbersome and time-consuming than the statutemaking process itself or the formal rulemaking process. The very foundation of the APA—that is, the distinction between slow, formal adjudicative decisions and fast, informal rulemaking decisions has been destroyed. Rulemaking suffers under more elaborate procedural burdens and requires far more time and staff resources than adjudication.

Those who attempt to deregulate by changing existing rules face the same impossible hurdles that frustrate proponents of more regulation. Indeed one favorite legal sport in contemporary Washington is figuring out how an agency can make new policy without having to enact new rules.

The administrative law of rulemaking has fallen into pathology. The massive tasks now involved in rulemaking rob the process of its basic virtues, namely the ability to respond to the rapidly changing and complex details of regulatory situations. And these very judicial demands on the rulemakers have created a body of law under which it is increasingly impossible for judges to conduct meaningful judicial review.

The new administrative law that has de facto replaced the APA has resulted in agencies generally producing rules that are far better researched, analyzed, and negotiated than they used to be. Transparency and participation have improved for organized groups in command of strong technological resources of their own. Nevertheless, the tensions in the new administrative law are great enough that the 50th anniversary of the APA must be celebrated in the expectation that there will shortly be a newer administrative law.

Looking Ahead

Despite the fact that the Supreme Court struck down the earlier legislative veto as unconstitutional, Congress has constructed a new veto process designed to meet the Court's objections in the Small Business Regulatory Enforcement Fairness Act of 1996. Further, in recent years the batting average of the agencies in judicial review of agency rules appears to have gone up. This may be because more cases have involved Republican judges reviewing rules made during

Republican administrations. It also may be simply because agencies have learned to meet the courts' established procedural requirements, and the courts less often introduce further requirements for rulemaking. In turn the courts may introduce further procedural requirements less often, in part because they have already demanded near procedural perfection. In *Vermont Yankee* (1978) the Supreme Court strongly denounced the court of appeals' continuous finding of new nits to pick. Although at the time the circuits seemed to ignore the decision; perhaps it has had a delayed impact.

Moreover, having confirmed and even pushed further past APA administrative law in the seat belts case, the Supreme Court in *Chevron* recently reintroduced the theme of judicial deference to agency expertise. What is most significant about *Chevron* is that it calls for deference not to agency fact finding but to agency statutory interpretation. The capacity of judges to intervene in agency fact finding has become more and more limited as the agencies have learned to armor their rules in more and more massive and complex scientific and technical data collection and analysis that the judges, unaided as they are by any technical staff of their own, are self-evidently unable to understand even when opponents of the rule present equal and opposite analysis to the courts. If judges are to assist agency technocrats in preserving the regulatory vigor of the 1970s, they will have to do it in good part through statutory interpretation, and the Supreme Court has signaled its displeasure with such judicial initiatives.

Preregulatory commentators have done their best to minimize *Chevron*. It certainly is a decision that is easy for the circuits to ignore, and could be enforced by the Supreme Court only if it were willing to take many more cases involving rulemaking than it has. Nor can *Chevron* be much more than an episode in a matched pair of continuous and conflicting lines of precedent; one of which says that courts should defer to agency interpretations of the statutes they implement, the other saying that questions of law ultimately should be decided by the Court.

A succession of Republican presidents had radically changed the complexion of the D.C. circuit, which hears most cases concerning rulemaking from Democratic to Republican. When the agencies were in the Republicans' roughly deregulatory hands, *Chevron* had considerable

force because it was preaching to the converted—that is, it was telling Republican judges to defer to Republican agency interpretation of statutes. Why should deregulatory judges not defer to deregulatory agency statutory interpretations? The return of Democratic control of the White House breaks into this trend.

The administrative law of one decade may well be the legalized political theory of the previous decade. The newest vogue in political theory is to denigrate special interests and the procedures that facilitate their pursuits, and to praise more communitarian processes of discourse and deliberation leading not merely to the accumulation of interests but to a substantively good outcome. This body of theory, however, has difficulty specifying what procedural changes would lead from the mere compromise of clashing interests to true deliberation toward a better result than compromise can bring. The communitarian approach also encounters the usual problems of identifying substantive goods at any concrete level. Nevertheless this direction, in theory, should push judges more in the direction of substantive as opposed to procedural review.

Judges usually do not undertake substantive review of rules directly although they can and sometimes do by turning "arbitrary and capricious" into "unreasonable," and "unreasonable" into "not the best." More typically substantive review takes place in the guise of statutory interpretation. Thus the new political theory may push administrative law even further down the road of statutory interpretation than the politics of regulation have. The new political theory's emphasis on substantive right and wrong and denigration of pluralist procedures also pushes judges toward substantive judgment of rules involving highly complex science and technology—a realm in which technocratic judgment appears far more authoritative than that of the judiciary.

Alternation of Republican and Democratic control of the agencies and judicial appointments results in a confused and fluctuating politics of regulation and thus a poor environment for the development of an even newer administrative law. The Supreme Court has signaled some softening in the "hard look partner" approach that the D.C. Circuit Court took toward agency rulemaking. But different panels of the D.C. Circuit Court respond differently to the new signals.

Political appointees to the agencies may do

much to move agency statutory interpretation toward greater or lesser regulatory vigor. But those political appointees must depend on their long-serving staff technicians for the scientific and technical armor necessary to make new rules judicial-review proof. Thus the procedural demands of the new administrative law advantage the technocratic, proregulatory forces within the agencies.

Now fashionable moves to "mediated" or "negotiated" rulemaking may slightly soften the adversarialism between pro and antiregulatory forces but are unlikely to speed up the rulemaking process. The waxing and waning vogue in "regulatory analysis" and "regulatory impact statements" may cut back the independence of the fourth branch as may Congress' waxing and waning enthusiasm for cost/benefit analysis and general budget tightening. The agencies may progress in their attempts to make policy without making rules. And the agencies will almost certainly continue to fare better in court, but they will do so in part because they are meeting judicial demands in advance rather than waiting to correct them at the review stage.

All in all judicial review of rulemaking seems far more firmly entrenched in 1996 than it was when the APA was passed in 1946. The country has gone from having no formal administrative law, to the APA, to the zenith of the mutated administrative law in 1986. But by now the agencies have learned to armor themselves against judicial intervention albeit at tremendous costs in time and human resources. There is a new interest in political and legal theory in substance over procedure that drives the judges onto their weakest ground when dealing with technologically complex regulation because it is hard for judges to understand substantive technical questions.

Policymakers in 1996 show increasing discon-

tent with both the levels of judicial intervention and the high costs, and long reaction time of the new rulemaking procedures. Uncertainty about rulemaking is the chronic state of the system. If the next fifty years of administrative law are as mercurial as the last fifty, we may expect more radical changes. Everyone seems to like the transparency and participation achieved by the administrative law of the 1970s and 1980s. Nobody seems to like the slow and cumbersome costs of those achievements. The perennial questions of how much courts should intervene in highly complex policy areas that they are neither trained nor staffed to understand, and how best to serve democracy by balancing bureaucratic and judicial elites remain with us. Sixty years of experience with "administrative law" and fifty years with the APA itself teach us that each tentative answer to these questions tends to be a temporary adjustment in the politics of regulation rather than the attainment of a perfected legal truth.

Selected Readings

- Chevron U.S.A. Inc. v. Natural Resources Defense Council Inc.* 467 U.S. 837 (1984)
Citizens to Preserve Overton Park v. Volvo. 401 U.S. 402 (1971)
Immigration and Naturalization Service v. Chadha. 462 U.S. 919 (1983)
Motor Vehicle Manufacturers Association v. State Farm Mutual Auto Insurance Co. 463 U.S. 29 (1983)
Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council Inc. 35 U.S. 519 (1978)