Expertise and Accountability in the U.S. Government

Susan E. Dudley
Founder
Distinguished Professor of Practice
Trachtenberg School of Public Policy & Public Administration
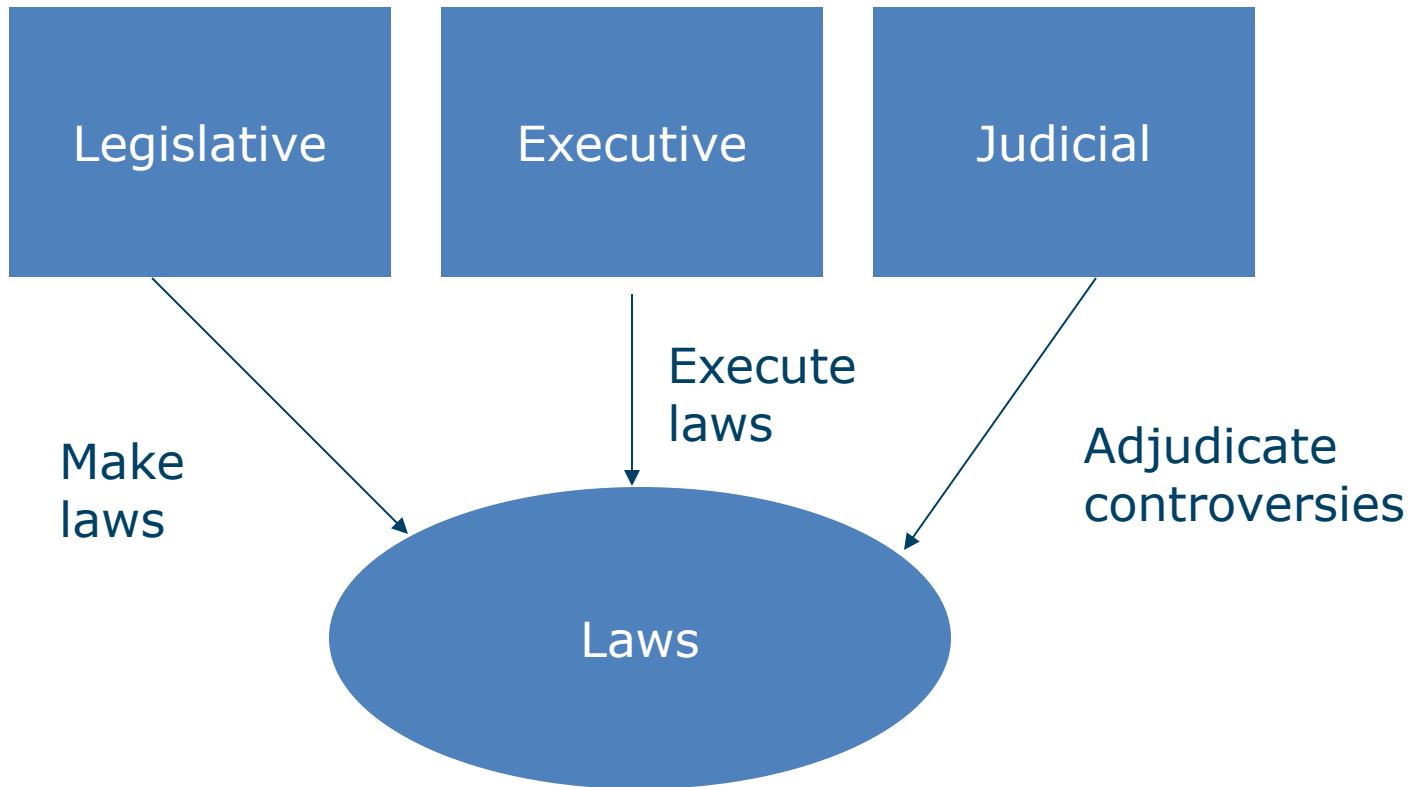
Transatlantic Law Forum

June 21, 2025

Agenda

- Deference to expertise in U.S.
- Justification for deference
  - Technical expertise
  - Policy judgment
- Challenges
- Recommendations

Roles of Three Branches

Legislative — Make laws — Laws
Executive — Execute laws — Laws
Judicial — Adjudicate controversies — Laws

Susan E. Dudley
@RegStudies
go.gwu.edu/RegStudies

THE GEORGE
WASHINGTON
UNIVERSITY
WASHINGTON, DC

2024 – Loper Bright v. Raimondo

- "Chevron is overruled"
  - Courts should no longer defer to agency interpretations of ambiguous statutes.

- Courts must
  - Exercise independent judgment in deciding whether agency acted within statutory authority.

- Remaining deference
  - Scientific and technical expertise
  - Policy judgment

Justifications

- Courts
  - Apolitical
  - Identify "what the law is"
- Congress
  - Political accountability
- Executive
  - Political accountability
  - Expertise

Susan E. Dudley
@RegStudies
go.gwu.edu/RegStudies

THE GEORGE
WASHINGTON
UNIVERSITY
WASHINGTON, DC

Prerequisites for Deference

- Ability to distinguish
  - Law
  - Fact (positive factors)
  - Policy (normative factors)
- Experts convey their knowledge objectively
- Policy officials take responsibility for policy decisions

6

Susan E. Dudley
@RegStudies
go.gwu.edu/RegStudies

Do Staff Objectively Convey Expertise?

- Incentives to blur positive & normative
  - Legislation
  - Judicial review
- Policy preferences disguised as fact
  - Fact alone rarely sufficient
- Behavioral biases amplify
  - Overconfidence
  - Confirmation

THE GEORGE WASHINGTON UNIVERSITY
WASHINGTON, DC

Susan E. Dudley
@RegStudies
go.gwu.edu/RegStudies

Are Policy Officials Accountable?

- Difficult to distinguish fact from policy

- Incentives to hide behind statistics etc.

- Behavioral biases
  - Confirmation
  - Temporal myopia

Post-Loper Challenges

- Congress
  - Less ambiguous but no less sweeping?
  - Distinguish positive from normative?

- Courts
  - Distinguish law from fact/policy?
  - Deference to non-law factors

Recommendations for Executive

- Clearly distinguish between scientific findings and policy judgments.

- Increase transparency about assumptions, uncertainties, and trade-offs.

- Present a range of plausible outcomes.

- Engage diverse input – experts & non-experts.

- Experiment, iterate, learn.

THE GEORGE WASHINGTON UNIVERSITY
WASHINGTON, DC

Susan E. Dudley
@RegStudies
go.gwu.edu/RegStudies

Recommendations for Congress

- Acknowledge that expertise alone cannot resolve policy questions.

- Write statutes that explicitly
  - Recognize trade-offs,
  - Acknowledge normative factors,
  - Encourage learning.

THE GEORGE WASHINGTON UNIVERSITY
WASHINGTON, DC

Susan E. Dudley
@RegStudies
go.gwu.edu/RegStudies

Recommendation for Courts

- Distinguish law from facts from policy.

- Establish epistemic deference:
  - Require demonstration of expertise.
  - Consider consistency across time and administrations.

- Demand clear, consistent reasoning and attention to peer review.

GW REGULATORY STUDIES CENTER

Contact info:

RegulatoryStudies@gwu.edu

sdudley@gwu.edu

Scan QR code to subscribe to our
Regulation Digest weekly newsletter.
Or visit go.gwu.edu/RegulationDigest

THE GEORGE WASHINGTON UNIVERSITY
WASHINGTON, DC

Susan E. Dudley
@RegStudies
go.gwu.edu/RegStudies