

Accountable Expertise

Judicial Review Through The Lens Of
Three Jurisdictions

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Administrative Expertise in a Post-Truth Era

Structure

- I. Rationales Behind Judicial Deference
- II. Legal Standards to Weigh Executive Expertise
- III. Lessons and Consequences



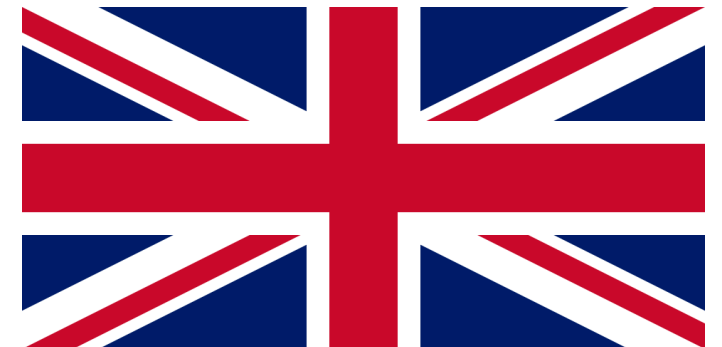
I. Why Courts Defer to Administrative Expertise

- Democratic legitimacy
- Forward-looking evaluations or predictions or when plurastic, representative bodies are involved
- (now diminished) Chevron: Congressional intent and statutory delegation
- Technical specialisation, thorough investigation and democratic accountability
- From royal prerogative to parliamentary accountability
- Complexity of subject matter



II. How Courts Scrutinise Executive Expertise

- Conditional deference relating only to the application requirements of delegating statutes
- Based on a lack of knowledge rather than special expertise
- Chevron deference to executive interpretation of ambiguous statutes
- In terms of fact-findings: »arbitrary and capricious«, »substantial evidence«
- Skidmore: optional deference
- Under the Common Law: inherently deferential Wednesbury unreasonableness; parliamentary sovereignty
- Under the ECHR: proportionality weighing in institutional competence



III. Theses

I. Accumulation of knowledge is a prerequisite for legitimate executive decision-making.

II. A strict legal standard for justifying administrative expert knowledge may lead the executive to build up additional administrative expertise.

III. To counterbalance deference to executive expertise, courts may advance their standards to protect parliamentary oversight.

Parliamentary primates

- *Wesentlichkeitstheorie*

Irrespective of parliamentary intent, essential matters of popular interest remain to the legislative; gradually stricter requirements for statutory delegations



- *non-delegation doctrine*

requiring Congress to set an intelligible principle when delegating essential decisions to the executive
→ *Gundy v. U.S.* (2019)



- *Constitutional scale argument*

»a major change to UK constitutional arrangements [...] must be effected [...] by Parliamentary legislation.«
→ *Miller* (2017)



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