DOES DEFERENCE PROMOTE PRINCIPLED INTERPRETATIONS OF STATUTES?

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Abstract

Statutes permeate society. Administrators administer and interpret statutes. Litigants can challenge administrators' actions. In deciding the challenge, courts must interpret the statute. In doing so, courts must decide how much weight to give the administrator's interpretation. Doctrines of deference govern the amount of weight that courts should assign to agencies' interpretations. I use a sample of 1014 United States Supreme Court judgments to show that a low-to-medium level of deference is most likely to promote desirable interpretations that uphold the legislature's purpose for a statute and allow the words of the statute to reflect contemporary society.

Keywords

Deference; Statutory Interpretation; Agencies; Administrators; Administrative Law; JEL Classifications: D73, D78, K23

A. INTRODUCTION

Legislation permeates society and governs persons' actions. Administrators apply this legislation. Applying the legislation involves interpreting the legislation. People can challenge administrators' actions. Judicial review of administrative action plays an important role in improving public service quality Platt, Sunkin and Calvo.[2] Any challenge requires courts to interpret the legislation. In doing so, courts must assign some weight to the administrator's interpretation. This can range from zero weight to complete acceptance. Doctrines of judicial deference

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[2] L. Platt, M. Sunkin and K. Calvo, 'Judicial Review Litigation as an Incentive to Change in Local Authority Public Services in England and Wales' (2010) 20 *Journal of Public Administration Research and Theory* 243.

indicate the weight that courts should give administrators' interpretations. Some literature argues that deference induces courts to make unprincipled 'dynamic' interpretations that change the meaning of statutes over time and that depart from the legislative purpose.[3] However, the literature has not empirically assessed this claim. Thus, this paper addresses the gap in the literature by empirically testing the relation between deference and statutory interpretation. It finds that deference in general, and more specifically, deference that assigns administrators' interpretations a low-weight, actually encourages courts to consider legislative intent, and to make dynamic interpretations based on the legislative purpose.

Deference doctrines guide the weight that courts should give to administrators' interpretations of statutes. These doctrines exist in the United States, the EU, and in Australia. There are multiple types of judicial deference. Eskridge and Baer argue that there is a continuum of deference-levels;[4] however, the continuum collapses into three main categories:[5] low-level, medium-level, and high-level deference. Low-level deference gives limited weight to administrators' interpretations. It holds that courts have primary responsibility for interpreting legislation.[6] Medium level deference holds that courts should follow the agency's interpretation if the interpretation is 'reasonable'.[7] There is no presumption of reasonableness. High level deference presumptively holds that courts must follow the agency's interpretation unless it is clearly wrong (see for example *Bowles v. Seminole Rock & Sand Co*).[8]

The level of deference can influence the court's interpretation of a statute. Two important traits of an interpretation are (i) whether it is purposive, and (ii) whether it is dynamic. A purposive judgment is one that aims to uphold the legislature's intentions for the statute. A dynamic judgment is one that allows the meaning of the statute to change over time in order to suit the current social

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[3] See generally C.R. Sunstein, 'Interpreting Statutes in the Regulatory State' (1989) 103(2) *Harvard Law Review* 405. See also for a discussion on the interaction between deference and stare decisis R. Pierce, 'Reconciling Chevron and Stare Decisis' (1997) 85 *Georgetown Law Journal* 2225; P.A. Dame, 'Stare Decisis, Chevron, and Skidmore: Do Administrative Agencies Have the Power to Overrule Courts?' (2002) 44 *William and Mary Law Review* 405.

[4] W.N. Eskridge and L.E Baer, 'The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations from Chevron to Hamdan' (2008) 96 *Georgetown Law Journal* 1083.

[5] W.N. Eskridge and C. Raso, *Chevron as a Canon, not a Precedent: An Empirical Test of what Motivates Judges in Agency Deference Cases* (Center for Empirical Legal Studies 2009).

[6] P.A. Dame, 'Stare Decisis, Chevron, and Skidmore: Do Administrative Agencies Have the Power to Overrule Courts?' (2002) 44 *William and Mary Law Review* 405; K.E. Hickman and M.D. Krueger, 'In Search of the "Modem" Skidmore Standard' (2007) 107 *Columbia Law Review* 1235.

[7] M.A. Fitts, 'Retaining the Rule of Law in a Chevron World' (1990) 66 *Chicago-Kent Law Review* 355; O.S. Kerr, 'Shedding Light on Chevron: An Empirical Study of the Chevron Doctrine in the U.S. Courts of Appeals' (1998) 15 *Yale Journal on Regulation* 1; P.A. Dame, 'Stare Decisis, Chevron, and Skidmore: Do Administrative Agencies Have the Power to Overrule Courts?' (2002) 44 *William and Mary Law Review* 405; W.R. Andersen, 'Chevron in the States: An Assessment and a Proposal' (2006) 56 *Administrative Law Review* 1017.

[8] *Bowles v. Seminole Rock & Sand Co.* (1945) 325 U.S. 410.

context. Eskridge contends that dynamic interpretations are desirable.[9] Frankfurter argues that an interpretation is justifiable only if it promotes the legislature's purpose for the statute.[10] Joining these strands together, Graham and Humphery-Jenner indicate that an interpretation is principled if it is both purposive and dynamic.[11] It is not the aim of this article to debate the desirability of 'dynamic' or 'purposive' judgments. Instead, this article considers the issue: does low, medium, or high level deference promote dynamic interpretations that are purposive?

The level of deference could influence the court's interpretation. For example, if the agency adopts a purposive (or dynamic) interpretation, and the court must defer to the agency's interpretation, then the court must adopt a purposive (or dynamic) interpretation. This has lead prior legal literature to suggest that deference doctrines could influence courts' interpretations of statutes.[12] The empirical literature has not directly tested if deference promotes dynamism. But, it does imply that deference promotes dynamic interpretations. Prior studies indicate three presently relevant results.

First, courts are likely to defer to administrators' interpretations. Eskridge and Baer find that 68.8 per cent of Supreme Court decisions are in favour of the administrator's interpretation.[13] Schuck and Elliot find that after *Chevron*, the appellate court remanded 40 per cent fewer cases.[14] Hickman and Krueger indicate that of the courts that apply *Skidmore*, 74.5 per cent are likely to apply the more deferential interpretation of *Skidmore*, and 59.5 per cent of courts applying the more deferential interpretation accepted the administrator's interpretation.[15]

Second, even if the court rejects the agency's interpretation it is unlikely to be for substantive legal reasons. Thus, of those administrative interpretations

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[9] W.N. Eskridge, 'Dynamic Statutory Interpretation' (1987) 135(6) *University of Pennsylvania Law Review* 1479.

[10] F. Frankfurter, 'Some Reflections on the Reading of Statutes' (1947) 47 *Columbia Law Review* 527.

[11] R. Graham, 'A Unified Theory of Statutory Interpretation' (2002) 23(1) *Statute Law Review* 91; M.L. Humphery-Jenner, 'Should Common Law Doctrines Dynamically Guide the Interpretation of Statutes?' (2009) 3(2) *Legisprudence* 171.

[12] See *e.g.* E. Rubin, 'Law and Legislation in the Administrative State' (1981) 89 *Columbia Law Review* 369; C.S. Diver, 'Statutory Interpretation in the Administrative State' (1985) 133(3) *University of Pennsylvania Law Review* 549; C.R. Farina, 'Statutory Interpretation and the Balance of Power in the Administrative State' (1989) 89(3) *Columbia Law Review* 452; A. Scalia, 'Judicial Deference to Administrative Interpretations of Law' [1989] *Duke Law Journal* 511; W.N. Eskridge, 'Overriding Supreme court Statutory Interpretation Decisions' (1991) 101 *Yale Law Journal* 331; E. Rubin, 'Dynamic Statutory Interpretation in the Administrative State' (2002) 3(2) *Issues in Legal Scholarship* 1.

[13] W.N. Eskridge and L.E Baer, 'The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations from Chevron to Hamdan' (2008) 96 *Georgetown Law Journal* 1083.

[14] P.H. Schuck and E.D. Elliott, 'To the Chevron Station: An Empirical Study of Federal Administrative Law' [1990] *Duke Law Journal* 984.

[15] K.E. Hickman and M.D. Krueger, 'In Search of the "Modem" Skidmore Standard' (2007) 107 *Columbia Law Review* 1235.

remanded, the percentage of those remanded for substantive legal reasons fell by 15 per cent.[16]

Third, the interpretations that courts accept are more likely to be 'liberal' or dynamic. Thus, Eskrdige and Baer indicate that both 'liberal' and 'conservative' judges are more likely to accept liberal agency interpretations than they are to accept conservative agency interpretations.[17]

This paper tests whether low, medium, or high deference increase the chance that the court will issue (i) a purposive interpretation, and (ii) a purposive interpretation that is also dynamic. I test the relation between interpretations and deference using a sample of 1014 Supreme Court judgments from between 1983 and 2005. The results indicate that particularly low level deference promotes interpretations that are both dynamic and that uphold the legislative purpose. There is no evidence that deference encourages dynamic interpretations that are non-purposive. Thus, the results indicate that deference may encourage courts to adopt principled dynamic interpretations.

B. DATA AND SET UP

The goal is to examine whether low, medium, or high level deference influences the court's interpretation after controlling for other factors that might influence the interpretation. This suggests a function of the form:

$$\boldsymbol{InterpType} = f(\boldsymbol{DefType}, \boldsymbol{Controls})$$

Where, $\boldsymbol{InterpType}$ is the court's use of a purposive, non-purposive, dynamic, or non-dynamic interpretation, or a combination thereof, $\boldsymbol{DefType}$ is the use of low, medium, or high level deference, and $\boldsymbol{Controls}$ are other factors that might influence the court's interpretation.

The study examines Supreme Court decisions from between 1983 and 2005. The paper uses the sample of Supreme Court decisions that featured in Eskridge and Baer.[18] Eskridge and Baer hand-collected a sample of 1,014 Supreme Court decisions that analyze administrators' interpretations of statutes. This sample

[16] P.H. Schuck and E.D. Elliott, 'To the Chevron Station: An Empirical Study of Federal Administrative Law' [1990] *Duke Law Journal* 984.

[17] W.N. Eskridge and L.E Baer, 'The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations from Chevron to Hamdan' (2008) 96 *Georgetown Law Journal* 1083.

[18] This data is available from <http://www.georgetownlawjournal.com/extras/96.4> accessed 16 May 2012. For papers using this data, see W.N. Eskridge and C. Raso, *Chevron as a Canon, not a Precedent: An Empirical Test of what Motivates Judges in Agency Deference Cases* (Center for Empirical Legal Studies 2009); W.N. Eskridge and L.E Baer, 'The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations from Chevron to Hamdan' (2008) 96 *Georgetown Law Journal* 1083.

yields three categories of variables: interpretation variables, deference variables, and control variables. The variable definitions table in the appendix summarises the variables.

1. Interpretation Variables

A judgment can be either purposive non-purposive, and a judgment can be dynamic or non-dynamic.[19] This means that if the judgment is dynamic, then it can be either purposive or non-purposive. Therefore, the paper defines the following variables: **Purp** equals 1 if the judgment is purposive and equals 0 otherwise; **PurpDyn** equals 1 if the judgment is both purposive and dynamic and equals 0 otherwise; **NonPurpDyn** equals 1 if the judgment is dynamic but is non-purposive and equals 0 otherwise.

2. Deference Variables

Judgments can adopt several approaches to deference. Judgments may adopt no deference. Alternatively, they may adopt some form of deference. If the court adopts some form of deference, then, they may adopt one of three types: low, medium, or high. Subsequently, the paper defines the following deference variables: **DefAny** equals 1 if the court adopted any deference approach and equals 0 otherwise; **DefLow** equals 1 if the court adopted low-level deference and equals 0 otherwise; **DefMed** equals 1 if the court followed medium-level deference and equals 0 otherwise; **DefHigh** equals 1 if the court adopted high-level deference and equals 0 otherwise.[20]

3. Control Variables

The control variables are exogenous variables that should theoretically influence the court's decision to make a dynamic or dynamic decision. All control variables are lagged proportions in order to ensure that the variables are exogenous. Thus, the model controls for the proportion of judgments in the last judicial term that deferred to agency interpretations (**p.def** $_{t-1}$); invoked legislative purpose (**p.Purp** $_{t-1}$); relied on textualism (**p.text** $_{t-1}$); utilised common law doctrines (**p.comlaw** $_{t-1}$); used a canon based on federalism(**p.fedcan** $_{t-1}$), avoidance (**p.avoidcan** $_{t-1}$), or due process (**p.dpcan** $_{t-1}$), or used another miscellaneous cannon (**p.othercan** $_{t-1}$); relied on the legislative acquiescence doctrine (**p.legaqui** $_{t-1}$); specifically referred

[19] Eskridge and Baer term these as 'liberal'. They code a judgment as 'liberal' if it supports a socially progressive outcome. Such socially progressive outcomes implicitly allow the words of the statute to change over time to address a current social issue.

[20] In all cases, the coding is based upon whether the court approved one of the paradigm cases in support of low, medium, or high level deference.

to legislative intent (**p.legintent** $_{t-1}$); examined the whole act (**p.wact** $_{t-1}$) or the whole legislative code (**p.wcode** $_{t-1}$) or relied on separation of powers (**p.seppow** $_{t-1}$). Correlation statistics (unreported) indicate potential collinearity between these variables. Thus, I ensure that the results are robust to collinearity by using principal components analysis (see the robustness section). The justification for the variables is as follows.

The average level of deference should influence the liberalness of the court's decisions. The literature indicates that agencies' decisions are dynamic or dynamic in nature.[21] And, if the court defers to more agency interpretations on average, then it indicates a willingness to adopt dynamic interpretations. And thus, it is more likely to adopt a dynamic interpretation in this case. Therefore, the models include the variable **p.def**$_{t-1}$, the proportion of cases that deferred to the agency's interpretation in the prior term.

Reliance on notions of 'legislative purpose' may induce judges to make interpretations that are more dynamic. Notions of a 'purposive' interpretation can encourage dynamic interpretations. This follows the notion that congress may use vague language since it cannot foresee all future circumstances.[22] And, this indicates that congress wanted the interpreter to adapt the word's meaning to changing social situations.[23] Thus, if the court adopts a purposive interpretation, then it may incline towards a dynamic or dynamic interpretation. Therefore, the models control for the court's tendency to adopt or cite legislative purpose in their reasoning. Thus, the models include the variable **p.Purp** $_{t-1}$ the proportion of judgements that cite legislative purpose in the prior term.

Judgments that rely on the 'plain meaning' of statutes are less likely to adopt a dynamic or dynamic interpretation. The rationale is that plain-meaning-based judgments rely on the strict text of the statute; and thus, preclude dynamic interpretation.[24] Thus, the models include **p.text** $_{t-1}$ the proportion of judgments that cite 'textual' or 'plain meaning' reasons in the prior term.

Judgments that use common law doctrines to help interpret legislation are more likely to be dynamic. Common law doctrines ordinarily change over time as society changes.[25] Thus, if the court relies more on common law doctrines, then it will be more likely to impose a dynamic of dynamic interpretation. Thus, the models include **p.comlaw** $_{t-1}$ the proportion of judgments in the prior term that cite common law doctrines in their reasoning.

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[21] J.E. Shuren, 'Modern Regulatory Administrative State: A Response to Changing Circumstances' (2001) 38 *Harvard Journal on Legislation* 291.

[22] F.H. Easterbrook, 'The Role of Original Intent in Statutory Construction' (1988) 11 *Harvard Journal of Law and Public Policy* 59.

[23] R. Graham, 'A Unified Theory of Statutory Interpretation' (2002) 23(1) *Statute Law Review* 91.

[24] C.R. Sunstein and A. Vermeule, 'Interpretation and Institutions' (2003) 101(4) *Michigan Law Review* 885.

[25] M.L. Humphery-Jenner, 'Should Common Law Doctrines Dynamically Guide the Interpretation of Statutes?' (2009) 3(2) *Legisprudence* 171.

Judgments that rely on interpretative canons are less likely to be dynamic or purposive. Canon-based judgments typically rely on strict 'rules' of interpretation. These rules in general motivate against dynamic interpretations.[26]

Three key canons are as follows. First, the 'avoidance' canon supports interpretations that avoid constitutional conflicts.[27] Second, 'federalism' include such doctrines as the presumption that congress did not intend to usurp the states.[28] Third, the due process canons presume that congress intended to support due process.[29] Thus, the models include variables representing the proportion of judgments that rely on canons in the prior judicial term; these are **p.fedcan** $_{t-1}$, **p.avoidcan** $_{t-1}$, **p.dpcan** $_{t-1}$, and **p.othercan** $_{t-1}$ for the federalism, avoidance, due process, and other miscellaneous canons, respectively. While including all canons may induce some multicollinearity, the literature suggests that these canons are often selectively and inconsistently invoked;[30] and thus, represent different aspects of judicial decision-making. Further, in robustness tests (below) I use principal component analysis to ensure that multicollinearity does not bias the results.

Reliance on the legislative acquiescence doctrine should increase the liberalness of interpretations. The legislative acquiescence doctrine asserts that if the legislature does not legislate against an interpretation or administrative decision, then the legislature implicitly approves of it.[31] This would militate toward deference in general, and deference to dynamic interpretations in specific. Thus, the models include **p.legaqui** $_{t-1}$, the portion of judgments in the last term that cited legislative acquiescence in their reasoning.

The use of legislative history should increase the likelihood of a dynamic or dynamic interpretation.[32] The rationale is that use of legislative histories correlates with reliance on legislative intent. And, reliance on legislative intent

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[26] See generally on the function of canons: C.R. Sunstein, 'Nondelegation Canons' (2000) 67(2) *University of Chicago Law Review* 315.

[27] J. Copeland Nagle, 'Delaware & Hudson Revisited' (1997) 72 *Notre Dame Law Review* 1495; P.P. Frickey, 'Getting from Joe to Gene (McCarthy): The Avoidance Canon, Legal Process Theory, and Narrowing Statutory Interpretation in the Early Warren Court' (2005) 93 *California Law Review* 397.

[28] L. Obhof, 'Federalism, I Presume: A Look at the Enforcement of Federalism Principles through Presumptions and Clear Statement Rules' [2004] *Michigan State Law Review* 123; K.A. Bamberger, 'Normative Canons in the Review of Administrative Policymaking' (2008) 118 *Yale Law Journal* 64.

[29] S. Newland, 'Mercy of Scalia: Statutory Construction and the Rule of Lenity' (1994) 29 *Harvard Civil Rights-Civil Liberties Law Review* 197; Z. Price, 'The Rule of Lenity as a Rule of Structure' (2004) 72 *Fordham Law Review* 885.

[30] K.N. Llewellyn, 'Remarks on the Theory of Appellate Decision and the Rules or Canons about How Statutes Are to Be Construed' (1950) 3 *Vanderbilt Law Review* 395; N.S. Zeppos, 'Legislative History and the Interpretation of Statutes: Toward a Fact-Finding Model of Statutory Interpretation' (1990) 76 *Vanderbilt Law Review* 1295.

[31] J.C. Grabow, 'Congressional Silence and the Search for Legislative Intent: A Venture into Speculative Unrealities' (1984) 64 *Boston University Law Review* 737.

[32] W.N. Eskridge and P.P. Frickey, 'Statutory Interpretation as Practical Reasoning' (1990) 42(2) *Stanford Law Review* 321.

correlates with rendering a dynamic or dynamic interpretation.[33] Thus, the paper includes **p.legintent** $_{t-1}$, the proportion of judgments in the last judicial term that relied on legislative intent.

References to the 'act as a whole' should reduce the liberalness of the court's decision. Courts may refer to the 'act as a whole' when interpreting a statute (*Palgo Holdings v. Gowans*).[34] The notion is that (i) words 'harmoniously' within each section, and (ii) the sections of the act should work 'harmoniously' with each other. This should motivate toward a dynamic interpretation since it quadrates with a search for legislative intent. Thus, the models include **p.wact** $_{t-1}$, the proportion of interpretations that rely on the 'act as a whole' in interpreting the legislation.

References to a legislative-code or the 'whole code' should reduce the liberalness of the interpretation. When a court interprets a statute, it may interpret the legislation in the context of other acts within a 'legislative scheme'. Codification should reduce the liberalness of interpretations since codification evinces a clear intention to limit the role of courts.[35] Thus, the models include the variable **p.wcode** $_{t-1}$, the proportion of interpretations that rely on the 'whole code' when interpreting the legislation.

Reliance on 'separation of powers' notions should limit the court's liberalness. This is because courts often invoke 'separation of powers' notions in order to limit agencies' abilities to dynamically or broadly interpret law.[36] Alternatively, courts may use 'separation of powers' doctrines of canons, and presume that legislation should not violate separation of powers notions.[37] This should restrict the liberalness of the court's interpretation. Thus, the models include **p.seppow** $_{t-1}$, the proportion of judgments that relied on separation of powers notions in the past judicial term.

C. ANALYSIS AND RESULTS

The goal is to examine if any element of the deference approaches (**DefAny**, **DefLow**, **DefMed**, or **DefHigh**) increase the probability that a judgment is purposive (i.e. increase p(**Purp**)) and is purposive-dynamic (i.e. increase

[33] C. Tiefer, 'The Reconceptualization of Legislative History in the Supreme Court' [2000] *Wisconsin Law Review* 205.
[34] *Palgo Holdings v. Gowans* (2005) 221 C.L.R. 249 [37] (Kirby J.).
[35] M. McGowan, 'Do as I Do, Not as I Say: An Empirical Investigation of Justice Scalia's Ordinary Meaning Method of Statutory Interpretation' (2008) 78 *Mississippi Law Journal* 129.
[36] J.F. Manning, 'Constitutional Structure and Judicial Deference to Agency Interpretation of Agency Rules' (1996) 96 *Columbia Law Review* 612; W.N. Eskridge and L.E Baer, 'The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations from Chevron to Hamdan' (2008) 96 *Georgetown Law Journal* 1083.
[37] W.N. Eskridge, 'Public Values in Statutory Interpretation' (1989) 137(4) *University of Pennsylvania Law Review* 1007.

p(**PurpDyn**)), but decrease the probability that a judgment is non-purposive dynamic (i.e. decrease *p*(**NonPurpDyn**)). The analysis has four key sections. First I present the univariate results. Second, I run multivariate tests to ensure that any results are not due to spurious correlation. Third I examine whether whether there is a causal relationship between deference and chance of a purposive-dynamic judgment, and fourth, I ensure the results are robust to other econometric issues. Overall, the analysis shows that low-level deference promotes purposive interpretations and purposive interpretations that are dynamic.

1. Univariate Analysis

The first issue is whether any deference type correlates with the decision to issue a judgment that is (i) purposive and (ii) the purposive and dynamic.

Summary statistics by year are in Table 1. The break-down shows that high-level deference is uncommon, especially at the beginning of the sample. Low-level deference is the most common form of deference. This may reflect judges' desire to avoid ceding interpretive control to agencies. Interestingly, only around 1/3 of judgments explicitly refer to legislative purpose in their reasoning. Of the dynamic judgments, more are non-purposive (233) than are purposive (197). The summary statistics also show some clustering by year, which justifies the use of clustered standard errors.

Table 1. Statistics by year. This table contains frequencies by year. ***All*** *is the number of total judgments;* ***DefAny****,* ***DefLow****,* ***DefMed****, and* ***DefHigh*** *represent the number of judgments that apply any form of deference, low-level, medium-level, and high-level deference, respectively. The columns* ***Purp****,* ***PurpDyn****, and* ***NonPurpDyn*** *represent the number of judgments that are purposive, purposive-dynamic, or non-purposive-dynamic, respectively.*

Year	All	DefAny	DefLow	DefMed	DefHigh	Purp	PurpDyn	NonPurpD
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1983	16	7	4	3	0	8	5	4
1984	66	24	11	13	0	29	17	13
1985	56	13	6	7	0	31	14	8
1986	57	15	10	5	0	23	14	15
1987	57	17	8	5	0	16	10	17
1988	49	16	12	3	4	17	7	10
1989	47	12	6	5	1	23	16	7
1990	51	17	10	6	1	22	13	14
1991	46	17	12	5	1	9	5	12
1992	61	14	8	3	0	21	9	11
1993	41	7	4	2	3	10	8	10
1994	35	11	6	4	1	15	5	9

continu	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1995	36	9	2	6	1	14	7	9
1996	41	14	12	2	1	18	10	8
1997	49	15	10	5	0	18	12	12
1998	43	16	9	6	0	13	7	13
1999	31	10	6	2	1	12	2	8
2000	36	9	7	1	2	12	5	9
2001	42	17	9	8	1	13	4	9
2002	38	13	9	4	0	16	7	13
2003	42	22	17	4	0	22	8	3
2004	35	8	6	1	1	15	5	11
2005	39	11	11	0	1	17	7	8
Total	**1014**	**314**	**195**	**100**	**19**	**394**	**197**	**233**

The univariate results are in Table 2. The key finding is that low-level deference and medium-level deference increase the chance of a purposive or a purposive-dynamic judgment. The univariate correlations are in Table 3. There is a significant positive correlation between (i) low-level deference and medium defference, and (ii) purposive and purposive-dynamic judgments.

*Table 2. Univariate results. This table contains the means for proportion of interpretations that are (a) purposive, (b) dynamic and purposive, and (c) dynamic and non-purposive. It contains means for judgments that do (not) adopt any deference technique, a low-level technique (i.e. Skidmore), a medium-level technique (i.e. Chevron), or a high-level technique (i.e. Curtis-Wright or Seminole). Superscripts **, *, and $^{+}$ significance at 1%, 5%, and 10% using a test for means and a difference in means test for differences between means.*

	Purp	**PurpDyn**	**nonpurlib**
All	0.389**	0.194**	0.230**
DefAny	0.468**	0.255**	0.204**
not_DefAny	0.353**	0.167**	0.241**
diff	0.115**	0.088**	-0.038
DefLow	0.462**	0.256**	0.210**
not_DefLow	0.371**	0.179**	0.234**
diff	0.090*	0.077*	-0.024
DefMed	0.510**	0.290**	0.210**
not_DefMed	0.375**	0.184**	0.232**
diff	0.135**	0.106*	-0.022
DefHigh	0.316**	0.053	0.105
not_DefHigh	0.390**	0.197**	0.232**
diff	-0.074	-0.144	-0.127

*Table 3. Tetrachoric correlations. This table contains tetrachoric correlations. It displays the correlation between (a) judgments that adopt any deference; low-level deference; medium-level deference; or high-level deference and (b) issuing a judgment that is purposive; purposive-dynamic; or, non-purposive-dynamic. Numbers in brackets are p-values. Superscripts **, *, and $^{+}$ denote significance at 1%, 5%, and 10%, respectively.*

	def_all	**DefLow**	**DefMed**	**DefHigh**
Purp	0.179**	0.132*	0.175*	-0.080
	[0.001]	[0.022]	[0.010]	[0.637]
PurpDyn	0.185**	0.150*	0.180*	-0.285
	[0.002]	[0.020]	[0.016]	[0.147]
NonPurpDyn	-0.076	-0.046	-0.038	-0.200
	[0.197]	[0.508]	[0.708]	[0.273]

2. Multivariate Regression Analysis

Deferential judgments are more likely to be purposive and purposive-dynamic. However, it is necessary to ensure that this does not reflect spurious correlation with other characteristics of the judgment. A natural way to test this is a *probit* model. The *probit* model assess the probably of a judgment-type conditional on (i) deference, and (ii) other control variables that might affect the judgment-type.[38] The model controls for heteroscedasticity and clustering by year since the judges on the court change from year-to-year and the composition of the court can influence the propensity to issue purposive, dynamic, or deference-based judgments (following Eskridge and Baer).

The results indicate that deference promotes purposive and purposive-dynamic judgments and does not promote non-purposive-dynamic judgments.

Table 4 examines the relation between deference and purposive judgments. The results indicate that if the court adopts any deference then it is significantly more likely to issue a purposive judgment (at 1 per cent significance). Further, both low-level, and medium-level deference promote purposive judgments (at 10 per cent, and 5 per cent significance, respectively). High-level deference does not promote purposive judgments. Interestingly, the systematic level of deference (**p.DefAny**$_{t-1}$) and the systematic level of low-level deference (**p.DefLow**$_{t-1}$) also encourage purposive interpretations. The results support the hypothesis that deference encourages courts to issue purposive interpretations.

[38] The results are robust to the use of a *logit* model.

Table 4. Legislative Purpose Regressions. This table contains probit regressions that examine the relation between deference and whether the majority cites legislative purpose in its reasoning. The dependent variable is ***legPurp****, an indicator that equals 1 if the majority cites legislative purpose in its reasoning and equals 0 otherwise. The models cluster standard errors by year. Numbers in brackets are p-values. Superscripts **, *, and + denote significance at 1%, 5%, and 10%, respectively.*

	(1)	(2)	(3)	(4)	(5)
DefAny	0.286**				
	[0.000]				
p.DefAny$_{t-1}$	0.591*				
	[0.026]				
DefLow		0.250+			0.291*
		[0.053]			[0.018]
p.DefLow$_{t-1}$		0.630*			0.596
		[0.023]			[0.213]
DefMed			0.280*		0.342**
			[0.046]		[0.007]
p.def.med$_{t-1}$			0.607		0.621
			[0.841]		[0.847]
DefHigh				-0.128	-0.059
				[0.717]	[0.868]
p.DefHigh$_{t-1}$				-1.495	-0.304
				[0.533]	[0.920]
p.aglib$_{t-1}$	0.484	0.774*	0.306	0.495	0.34
	[0.165]	[0.026]	[0.832]	[0.275]	[0.858]
p.legPurp$_{t-1}$	1.673**	1.663**	1.592**	1.541**	1.551**
	[0.000]	[0.000]	[0.000]	[0.000]	[0.000]
p.text$_{t-1}$	-0.669**	-0.712**	-0.686+	-0.732**	-0.594+
	[0.004]	[0.001]	[0.070]	[0.002]	[0.092]
p.wact$_{t-1}$	0.384	0.329	0.353	0.343	0.417
	[0.400]	[0.465]	[0.459]	[0.498]	[0.431]
p.wcode$_{t-1}$	0.286	0.303	0.284	0.214	0.244
	[0.784]	[0.767]	[0.763]	[0.853]	[0.720]
p.leghis$_{t-1}$	1.314**	1.475**	1.197+	1.359**	1.276+
	[0.000]	[0.000]	[0.055]	[0.000]	[0.080]
p.sd$_{t-1}$	-0.449	-0.57	-0.155	-0.222	-0.435
	[0.301]	[0.191]	[0.833]	[0.687]	[0.609]
p.othercan$_{t-1}$	1.502**	1.532**	1.542**	1.530**	1.422**
	[0.000]	[0.000]	[0.000]	[0.001]	[0.000]
p.acqcan$_{t-1}$	-2.853**	-2.783**	-2.876	-2.914**	-2.9
	[0.000]	[0.000]	[0.124]	[0.001]	[0.170]
p.comlaw$_{t-1}$	4.436**	4.667**	4.067*	4.388**	4.408*
	[0.003]	[0.001]	[0.031]	[0.004]	[0.038]
p.fedcan$_{t-1}$	3.719**	3.600**	3.644*	3.587**	3.535+
	[0.002]	[0.003]	[0.028]	[0.002]	[0.059]
p.avcan$_{t-1}$	-2.745**	-2.744**	-2.259*	-2.064*	-2.511+
	[0.008]	[0.005]	[0.018]	[0.045]	[0.061]

(continued)	(1)	(2)	(3)	(4)	(5)
p.dpcan $_{t-1}$	2.352	2.647	2.162	2.509	2.295
	[0.204]	[0.128]	[0.272]	[0.166]	[0.192]
p.seppow $_{t-1}$	8.355*	9.502**	8.687	9.915**	7.988
	[0.023]	[0.009]	[0.234]	[0.006]	[0.234]
constant	-2.216**	-2.242**	-1.992**	-1.971**	-2.109**
	[0.000]	[0.000]	[0.000]	[0.000]	[0.002]
Observations	998	998	998	998	998
Pseudo R2	2.52%	2.17%	2.00%	1.71%	2.63%
Wald Chi2	2560.62	795.22	381.16	665.34	4834.27

The control variables are consistent with expectations. Specifically, purposive interpretations are significantly more likely if the court previously relied on legislative purpose (**p.Purp**$_{t-1}$), legislative histories (**p.hist**$_{t-1}$) or common law doctrines (**p.comlaw** $_{t-1}$). And unsurprisingly, a purposive interpretation is less likely if the court has relied on plain meaning or textualist approaches (**p.text** $_{t-1}$) or relied on the notion of legislative acquiescence (**p.legacq** $_{t-1}$). Surprisingly, purposive interpretations are more likely if the court has relied on the federalism cannon in the past (viz. **p.fedcan**$_{t-1}$). However, use of avoidance canons (**p.avcan**$_{t-1}$) significantly reduces the chance of a purposive interpretation.

Table 5 examines the relation between deference and purposive-dynamic judgments. The results indicate that adopting some deference regime (**DefAny**) significantly promotes a purposive-dynamic judgment (at 1 per cent significance). And, adopting a low-level regime (**DefLow**) promotes purposive-dynamic judgments (at 10 per cent significance). Medium-level deference (**DefMed**) promotes purposive-dynamic judgments, but this result is not significant. This weakly supports the purposive-dynamic hypothesis.

Table 5. Purposive-dynamic regressions. This table contains regressions that examine the relation between deference and the issuance of a purposive interpretation that is also dynamic or dynamic. The dependent variable is ***PurpDyn****, an indicator that equals 1 if both (a) the majority cites legislative purpose in its reasoning and (b) the interpretation is 'dynamic', but equals 0 otherwise. The models cluster standard errors by year. Numbers in brackets are p-values. Superscripts ***, **, and* $^{+}$ *denote significance at 1%, 5%, and 10%, respectively.*

	(1)	(2)	(3)	(4)	(5)
DefAny	0.289**				
	[0.003]				
p.DefAny$_{t-1}$	-0.303				
	[0.657]				
DefLow		0.294^{+}			0.340*
		[0.057]			[0.022]
p.DefLow $_{t-1}$		0.017			-1.609**
		[0.980]			[0.005]

(continued)	(1)	(2)	(3)	(4)	(5)
DefMed			0.253		0.329*
			[0.133]		[0.034]
p.def.med $_{t-1}$			-0.548		7.138**
			[0.829]		[0.003]
DefHigh				-0.712	-0.624
				[0.169]	[0.246]
p.DefHigh $_{t-1}$				-4.840*	-12.782**
				[0.017]	[0.000]
p.aglib $_{t-1}$	-0.09	-0.017	0.12	-0.583	-5.028**
	[0.855]	[0.967]	[0.923]	[0.207]	[0.001]
p.legPurp $_{t-1}$	2.033**	2.013**	2.021**	1.625**	0.810+
	[0.000]	[0.000]	[0.000]	[0.000]	[0.083]
p.text $_{t-1}$	-1.478**	-1.369**	-1.366**	-1.157**	-0.698*
	[0.000]	[0.000]	[0.002]	[0.001]	[0.038]
p.wact $_{t-1}$	1.236+	1.222+	1.311+	1.530**	2.286**
	[0.086]	[0.058]	[0.060]	[0.002]	[0.001]
p.wcode $_{t-1}$	-0.989	-1.018	-0.912	-1.466+	-3.436**
	[0.292]	[0.277]	[0.374]	[0.094]	[0.000]
p.leghis $_{t-1}$	1.301**	1.358**	1.396*	1.340**	-0.258
	[0.002]	[0.001]	[0.016]	[0.000]	[0.614]
p.sd $_{t-1}$	0.696	0.6	0.746	1.103**	3.319**
	[0.248]	[0.358]	[0.375]	[0.004]	[0.000]
p.othercan $_{t-1}$	0.881	0.886+	0.928+	0.703*	0.248
	[0.135]	[0.095]	[0.090]	[0.022]	[0.570]
p.legacqu $_{t-1}$	-2.397+	-2.662*	-2.163	-3.111**	-7.600**
	[0.073]	[0.027]	[0.153]	[0.003]	[0.000]
p.comlaw $_{t-1}$	4.077**	4.125**	4.112**	4.317**	2.150+
	[0.001]	[0.002]	[0.001]	[0.000]	[0.096]
p.fedcan $_{t-1}$	4.590*	4.633**	4.063*	4.088**	6.731**
	[0.013]	[0.005]	[0.016]	[0.001]	[0.000]
p.avcan $_{t-1}$	-3.447**	-3.750**	-3.570**	-2.670**	-0.247
	[0.001]	[0.000]	[0.000]	[0.003]	[0.778]
p.dpcan $_{t-1}$	2.870*	3.072*	2.726*	3.196**	3.188**
	[0.026]	[0.014]	[0.031]	[0.001]	[0.004]
p.seppow $_{t-1}$	5.176	3.922	4.625	2.76	-10.921
	[0.377]	[0.462]	[0.593]	[0.549]	[0.152]
constant	-2.348**	-2.437**	-2.557**	-2.229**	-0.54
	[0.000]	[0.000]	[0.000]	[0.000]	[0.321]
Observations	998	998	998	998	998
Pseudo R2	2.66%	2.44%	2.07%	2.20%	3.56%
Wald Chi2	135.96	82.35	82.62	137.34	98655.48

Table 6 examines the relation between deference and non-purposive-dynamic judgments. No deference regime promotes non-purposive-dynamic judgments. All deference regimes reduce the probability of a non-purposive-dynamic judgment; however, the result is not statistically significant. This is consistent with the hypothesis that deference does not promote unprincipled dynamic interpretations.

Table 6. Non-Purposive-dynamic regressions. This table contains regressions that examine the relation between deference and the issuance of a non-purposive interpretation that is dynamic or dynamic. The dependent variable is ***NonPurpDyn****, an indicator that equals 1 if both (a) the majority does not cite legislative purpose in its reasoning but (b) the interpretation is 'dynamic', and equals 0 otherwise. The models cluster standard errors by year. Numbers in brackets are p-values. Superscripts **, *, and + denote significance at 1%, 5%, and 10%, respectively.*

	(1)	(2)	(3)	(4)	(5)
DefAny	-0.079				
	[0.364]				
p.DefAny$_{t-1}$	0.296				
	[0.473]				
DefLow		-0.042			-0.056
		[0.759]			[0.669]
p.DefLow$_{t-1}$		0.463			0.881**
		[0.201]			[0.010]
DefMed			-0.023		-0.043
			[0.875]		[0.766]
p.def.med$_{t-1}$			-3.192		-4.822*
			[0.121]		[0.018]
DefHigh				-0.564	-0.573
				[0.177]	[0.159]
p.DefHigh$_{t-1}$				-1.822	2.715
				[0.354]	[0.279]
p.aglib$_{t-1}$	0.212	0.306	1.638+	0.019	2.780*
	[0.586]	[0.363]	[0.093]	[0.968]	[0.021]
p.legPurp$_{t-1}$	-0.522*	-0.539*	-0.413	-0.720*	-0.233
	[0.049]	[0.037]	[0.145]	[0.028]	[0.505]
p.text$_{t-1}$	0.843**	0.856**	0.469*	0.841**	0.473*
	[0.000]	[0.000]	[0.049]	[0.000]	[0.032]
p.wact$_{t-1}$	0.321	0.363	-0.076	0.311	-0.209
	[0.536]	[0.475]	[0.861]	[0.517]	[0.716]
p.wcode$_{t-1}$	0.021	0.076	0.741	-0.004	1.293*
	[0.982]	[0.930]	[0.306]	[0.997]	[0.012]
p.leghis$_{t-1}$	-1.008**	-0.947**	-0.532	-1.086**	-0.095
	[0.001]	[0.003]	[0.238]	[0.000]	[0.839]
p.sd$_{t-1}$	-0.57	-0.668+	-1.461**	-0.621	-2.146**
	[0.150]	[0.087]	[0.004]	[0.129]	[0.001]
p.othercan$_{t-1}$	-2.276**	-2.317**	-2.358**	-2.444**	-2.250**
	[0.000]	[0.000]	[0.000]	[0.000]	[0.000]
p.legacqu$_{t-1}$	3.829**	3.999**	5.703**	3.852**	6.888**
	[0.000]	[0.000]	[0.000]	[0.000]	[0.000]

(continued)	(1)	(2)	(3)	(4)	(5)
p.comlaw $_{t-1}$	-1.67	-1.503	-0.834	-1.704	-0.296
	[0.143]	[0.178]	[0.496]	[0.134]	[0.796]
p.fedcan $_{t-1}$	-3.831**	-3.984**	-4.716**	-3.990**	-5.599**
	[0.009]	[0.007]	[0.000]	[0.003]	[0.000]
p.avcan $_{t-1}$	1.08	1.111	1.364+	1.743*	0.362
	[0.212]	[0.166]	[0.052]	[0.023]	[0.600]
p.dpcan $_{t-1}$	0.298	0.234	0.281	0.291	0.229
	[0.820]	[0.858]	[0.828]	[0.823]	[0.855]
p.seppow $_{t-1}$	-8.047+	-7.726*	0.904	-6.771+	2.974
	[0.074]	[0.039]	[0.879]	[0.069]	[0.630]
constant	0.011	-0.051	0.002	0.353	-0.565
	[0.976]	[0.888]	[0.994]	[0.321]	[0.194]
Observations	998	998	998	998	998
Pseudo R2	1.55%	1.53%	1.54%	1.72%	1.84%
Wald Chi2	491.61	629.08	423.6	369.36	2490.53

Table 7 contains the marginal effects for the *probit* regression. The marginal effect of deference is the incremental impact that deference has on the probability of a purposive, purposive-dynamic, or non-purposive-dynamic judgment. The results indicate that adopting some form of deference (**DefAny**) or low-level deference (**DefLow**) significantly increases the likelihood of a purposive judgment and of a purposive-dynamic judgment. Adopting medium-level deference (**DefMed**) only significantly increases the probability of a purposive judgment. No deference variable significantly increases the chance of a non-purposive-dynamic interpretation. Thus, the marginal effects support the theory that deference increases the likelihood of purposive, and purposive-dynamic judgments.

*Table 7. Marginal effects regressions. This table contains the marginal effects for the probit regressions in Equation 1. The first row contains the dependent variable. Numbers in ordinary font are marginal effects; numbers in brackets are p-values. The models control for clustering by year. Table 12 contains the variable definitions. Superscripts **, *, and + denote significance at 1%, 5%, and 10%, respectively.*

	Purp	**Purp**	**Purp**	**Purp**	**PurpDyn**	**PurpDyn**
	(1)	(2)	(3)	(4)	(5)	(6)
DefAny	0.110**				0.081**	
	[0.000]				[0.003]	
p.DefAny$_{t-1}$	0.226*				-0.081	
	[0.026]				[0.657]	
DefLow		0.097+				0.085+
		[0.053]				[0.057]

(continued)	**Purp** (1)	**Purp** (2)	**Purp** (3)	**Purp** (4)	**PurpDyn** (5)	**PurpDyn** (6)
p.DefLow$_{t-1}$		0.241*				0.004
		[0.023]				[0.980]
DefMed			0.110*			
			[0.046]			
p.DefMed$_{t-1}$			0.232			
			[0.841]			
DefHigh				-0.048		
				[0.717]		
p.DefHigh$_{t-1}$				-0.571		
				[0.533]		
p.aglib$_{t-1}$	0.185	0.296*	0.117	0.189	-0.024	-0.005
	[0.165]	[0.026]	[0.832]	[0.275]	[0.855]	[0.967]
p.legPurp $_{t-1}$	0.639**	0.635**	0.608**	0.589**	0.544**	0.540**
	[0.000]	[0.000]	[0.000]	[0.000]	[0.000]	[0.000]
p.text $_{t-1}$	-0.255**	-0.272**	-0.262^{+}	-0.280**	-0.395**	-0.367**
	[0.004]	[0.001]	[0.070]	[0.002]	[0.000]	[0.000]
p.wact $_{t-1}$	0.147	0.126	0.135	0.131	0.331^{+}	0.328^{+}
	[0.400]	[0.465]	[0.459]	[0.498]	[0.086]	[0.058]
p.wcode $_{t-1}$	0.109	0.116	0.108	0.082	-0.265	-0.273
	[0.784]	[0.767]	[0.763]	[0.853]	[0.292]	[0.277]
p.leghis $_{t-1}$	0.502**	0.563**	0.457^{+}	0.519**	0.348**	0.364**
	[0.000]	[0.000]	[0.055]	[0.000]	[0.002]	[0.001]
p.sd $_{t-1}$	-0.172	-0.218	-0.059	-0.085	0.186	0.161
	[0.301]	[0.191]	[0.833]	[0.687]	[0.248]	[0.358]
p.othercan $_{t-1}$	0.574**	0.585**	0.589**	0.585**	0.236	0.238^{+}
	[0.000]	[0.000]	[0.000]	[0.001]	[0.135]	[0.095]
p.legacqu $_{t-1}$	-1.090**	-1.063**	-1.099	-1.113**	-0.641^{+}	-0.714*
	[0.000]	[0.000]	[0.124]	[0.001]	[0.073]	[0.027]
p.comlaw $_{t-1}$	1.694**	1.783**	1.554*	1.677**	1.091**	1.106**
	[0.003]	[0.001]	[0.031]	[0.004]	[0.001]	[0.002]
p.fedcan $_{t-1}$	1.420**	1.375**	1.392*	1.371**	1.228*	1.242**
	[0.002]	[0.003]	[0.028]	[0.002]	[0.013]	[0.005]
p.avcan $_{t-1}$	-1.048**	-1.048**	-0.863*	-0.789*	-0.922**	-1.005**
	[0.008]	[0.005]	[0.018]	[0.045]	[0.001]	[0.000]
p.dpcan $_{t-1}$	0.898	1.011	0.826	0.959	0.768*	0.824*
	[0.204]	[0.128]	[0.272]	[0.166]	[0.026]	[0.014]
p.seppow $_{t-1}$	3.191*	3.630**	3.319	3.789**	1.385	1.052
	[0.023]	[0.009]	[0.234]	[0.006]	[0.377]	[0.462]
Observations	998	998	998	998	998	998
Wald Chi2	2560.62	795.22	381.16	665.35	135.96	82.35
Pseudo R2	2.50%	2.20%	2.00%	1.70%	2.70%	2.40%

(continues)

	PurpDyn (7)	**PurpDyn** (8)	**NonPurp** (9)	**NonPurp** (10)	**NonPurpD** (11)	**NonPurpD** (12)
DefAny			-0.023			
			[0.364]			
p.DefAny$_{t-1}$			0.089			
			[0.473]			
DefLow				-0.012		
				[0.759]		
p.DefMed$_{t-1}$				0.139		
				[0.201]		
DefMed	0.074				-0.007	
	[0.133]				[0.875]	
p.DefMed$_{t-1}$	-0.147				-0.958	
	[0.829]				[0.121]	
DefHigh		-0.134				-0.133
		[0.169]				[0.177]
p.DefHigh$_{t-1}$		-1.297*				-0.546
		[0.017]				[0.354]
p.aglib$_{t-1}$	0.032	-0.156	0.064	0.092	0.492^{+}	0.006
	[0.923]	[0.207]	[0.586]	[0.363]	[0.093]	[0.968]
p.legPurp $_{t-1}$	0.543**	0.435**	-0.157*	-0.162*	-0.124	-0.216*
	[0.000]	[0.000]	[0.049]	[0.037]	[0.145]	[0.028]
p.text $_{t-1}$	-0.367**	-0.310**	0.253**	0.257**	0.141*	0.252**
	[0.002]	[0.001]	[0.000]	[0.000]	[0.049]	[0.000]
p.wact $_{t-1}$	0.352^{+}	0.410**	0.096	0.109	-0.023	0.093
	[0.060]	[0.002]	[0.536]	[0.475]	[0.861]	[0.517]
p.wcode $_{t-1}$	-0.245	-0.393^{+}	0.006	0.023	0.222	-0.001
	[0.374]	[0.094]	[0.982]	[0.930]	[0.306]	[0.997]
p.leghis $_{t-1}$	0.375*	0.359**	-0.303**	-0.284**	-0.16	-0.326**
	[0.016]	[0.000]	[0.001]	[0.003]	[0.238]	[0.000]
p.sd $_{t-1}$	0.201	0.296**	-0.171	-0.201^{+}	-0.438**	-0.186
	[0.375]	[0.004]	[0.150]	[0.087]	[0.004]	[0.129]
p.othercan $_{t-1}$	0.249^{+}	0.188*	-0.683**	-0.696**	-0.707**	-0.733**
	[0.090]	[0.022]	[0.000]	[0.000]	[0.000]	[0.000]
p.legacqu $_{t-1}$	-0.581	-0.834**	1.149**	1.201**	1.711**	1.154**
	[0.153]	[0.003]	[0.000]	[0.000]	[0.000]	[0.000]
p.comlaw $_{t-1}$	1.105**	1.157**	-0.501	-0.451	-0.25	-0.511
	[0.001]	[0.000]	[0.143]	[0.178]	[0.496]	[0.134]
p.fedcan $_{t-1}$	1.092*	1.096**	-1.150**	-1.196**	-1.415**	-1.196**
	[0.016]	[0.001]	[0.009]	[0.007]	[0.000]	[0.003]
p.avcan $_{t-1}$	-0.959**	-0.715**	0.324	0.334	0.409^{+}	0.522*
	[0.000]	[0.003]	[0.212]	[0.166]	[0.052]	[0.023]
p.dpcan $_{t-1}$	0.733*	0.856**	0.09	0.07	0.084	0.087
	[0.031]	[0.001]	[0.820]	[0.858]	[0.828]	[0.823]
p.seppow $_{t-1}$	1.243	0.74	-2.416^{+}	-2.320*	0.271	-2.029^{+}
	[0.593]	[0.549]	[0.074]	[0.039]	[0.879]	[0.069]
Observations	998	998	998	998	998	998
Wald Chi2	82.62	137.34	491.61	629.08	423.60	369.36
Pseudo R2	2.10%	2.20%	1.60%	1.50%	1.50%	1.70%

The *probit* results strongly indicate that deference promotes purposive interpretations and promotes dynamic interpretations that are purposive. This quadrates with the purposive-dynamic hypothesis. However, these results merely establish a correlation between deference and purposive/purposive-dynamic interpretations. They do not establish that deference causes purposive or purposive-dynamic interpretations. Thus, I next examine the issue of causation.

3. Causality Analysis

Deferential judgments are more likely to be purposive and purposive-dynamic. However, the above results reflect correlation between (i) deferring, and (ii) issuing a purposive/purposive-dynamic judgment. They do not show that deferring causes the judge to issue a purposive/purposive-dynamic judgment. This section ensures that deference causes purposive and purposive-dynamic judgments.

(a) Methodology

The prior models examine if deference correlates with purposive-dynamic interpretations. But, the models do not prove that deference causes purposive-dynamic judgments. Instead, for two reasons, it is possible that a court's tendency towards purposive/purposive-dynamic interpretations may cause it to defer for. First, the literature indicates dynamic courts defer at a higher rate than conservative courts do.[39] Thus, the tendency to be dynamic may cause the tendency to defer. Second, agencies gain efficiency, cost, and reputational benefits if courts defer to their decisions.[40] Thus, if the agency believes that the court will tend to purposive/purposive-dynamic interpretations, then the agency may structure its interpretation accordingly.

The paper ensures consistent estimators by using an instrumental variable *probit* (*ivprobit*) regression. The *ivprobit* model uses simultaneous equations. The *ivprobit* model yields unbiased and consistent estimators.[41] The instrumented variable is the deference type (variously, **DefAny**, **DefLow**, **DefMed**, or

[39] L.R. Cohen and M.L. Spitzer, 'Judicial Deference to Agency Action: A Rational Choice Theory and an Empirical Test' (1996) 69 *Southern California Law Review* 431; W.N. Eskridge and L.E Baer, 'The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations from Chevron to Hamdan' (2008) 96 *Georgetown Law Journal* 1083; W.N. Eskridge and C. Raso, *Chevron as a Canon, not a Precedent: An Empirical Test of what Motivates Judges in Agency Deference Cases* (Center for Empirical Legal Studies 2009).

[40] J.T. O'Reilly, 'Losing Deference in the FDA's Second Century: Judicial Review, Politics, and a Diminished Legacy of Expertise' (2008) 93 *Cornell Law Review* 939.

[41] T. Amemiya, 'Bivariate Probit Analysis: Minimum Chi-Square Methods' (1974) 69(348) *Journal of the American Statistical Association* 940; J.M. Wooldridge, *Econometric Analysis of Cross Section and Panel Data* (MIT Press 2002).

DefHigh). The instruments are nine exogenous variables that might influence the type of deference.

The nine instruments are the proportion of agency interpretations in the last judicial term that were 'dynamic' (**p.aglib** $_{t-1}$); the expertness of the agency (**expert**); the accountability of the agency (**accountability**); whether the interpretation is in a strict rule (**rule**) or an adjudication (**adjudication**); whether the President (**president**), House of Representatives (**house**) or Senate (**senate)** are dynamic; and if the agency's interpretation is longstanding (**old**) or evolving (**evolve**). The rationale is as follows:

The liberalness of the agency's interpretation may influence the court's decision to defer. The literature indicates that if the court is primarily dynamic/ conservative then it may support more agency interpretations that are dynamic/conservative.[42] The paper examines the lagged proportion of dynamic agency-interpretations (**p.aglib** $_{t-1}$) rather than the liberalness of an interpretation in the given case. This is for two reasons. First, the factor of interest is the systematic level of liberalness rather than the liberalness in the subject-case per se. And second, the liberalness in the subject-case is likely endogenous with the deference decision. This is because agencies may structure their decisions in order to promote deference.[43] And, prior literature indicates that if the agency's interpretation is dynamic, then the court is more likely to accept it.[44] Thus, the agency may impose a dynamic interpretation in order to increase the chances of deference.

The expertise of the agency may influence its liberalness and decision to defer to it. If the agency has a reputation for expertise in the subject-area, then the court is more likely to defer to its expert judgment.[45] This quadrates with the notion that legislators enact vague legislation precisely to avail of the administrator's expertise in the subject-area.[46] Thus, the paper uses an indicator variable **expert** that equals 1 if the judge cites agency expertise in his/her decisions and equals 0 otherwise.

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[42] W.N. Eskridge and L.E Baer, 'The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations from Chevron to Hamdan' (2008) 96 *Georgetown Law Journal* 1083.

[43] J.T. O'Reilly, 'Losing Deference in the FDA's Second Century: Judicial Review, Politics, and a Diminished Legacy of Expertise' (2008) 93 *Cornell Law Review* 939.

[44] W.N. Eskridge and L.E Baer, 'The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations from Chevron to Hamdan' (2008) 96 *Georgetown Law Journal* 1083.

[45] On the relevance of the FDA's expertise to deference to its opinions, see J.T. O'Reilly, 'Losing Deference in the FDA's Second Century: Judicial Review, Politics, and a Diminished Legacy of Expertise' (2008) 93 *Cornell Law Review* 939. On the expertise of the FAA and deference, see W.B. Davis and R. Clarke, 'Hot Air: Undue Judicial Deference to Federal Aviation Administration Expertise in Assessing the Environmental Impacts of Aviation' (2004) 69 *Journal of Air Law and Commerce* 709.

[46] On the Australian Corporate regulator, see S. Bottomley, 'A Framework for Understanding the Interpretation of Corporate Law in Australia' in S. Corcoran and S. Bottomley (eds.), *Interpreting Statutes* (Federation Press 2005) 147.

The supposed democratic accountability of the agency may influence the deference decision. However, there are two conflicting predictions. The first prediction is that accountability should encourage deference. The argument runs that a judicial decision has more legitimacy if it is more accountable to the public. Agencies are often accountable to the parliament, congress, or an elected member of the executive. Thus, agencies are more accountable than courts are. Thus, deference to agencies' decisions increases judicial legitimacies.[47] However, the second and converse argument is that judicial independence enables courts to effectively review government actions; and thus, administrative-accountability militates against deference.[48] Since accountability may influence deference, the models include the indicator variable **accountability** that equals 1 if the judge cites administrative accountability in his/her decisions and equals 0 otherwise.

The format in which the administrator presents the interpretation should influence the deference decision and the liberalness of the interpretation. Administrators may place their interpretations in (i) formal rules that have binding force, (ii) administrative adjudications, or (iii) informal policy documents that lack legislative force.[49] The format is important because under the *Chevron*/*Skidmore* dichotomy, if the interpretation is in a formal rule, then courts should strictly defer to; but, if the interpretation is in an informal policy document, then courts need only assign it some weight in interpreting the act themselves it.[50] Thus, the models include two indicator variables; **rule** which equals 1 if the interpretation is a strict rule and equals 0 otherwise; and, **adjudication**, which equals 1 if the interpretation is an adjudication and equals 0 otherwise. The papers omit an indicator for policy documents in order to avoid multicollinearity.

The politics of the President, the House of Representatives, and the Senate may influence the agency's decision. Arguably, if the agency is accountable to one or more of these bodies, then these bodies can influence the agency's decisions by (*inter alia*) controlling administrators' budgets.[51] Therefore, administrators' interpretations may reflect the politics or policy of the executive body (or bodies) to which it is accountable.[52]This should influence the liberalness

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[47] D.W. Kmiec, 'Judicial Deference to Executive Agencies and the Decline of the Nondelegation Doctrine' (1988) 2 *Administrative Law Journal* 269.

[48] For the argument that deference may grand the government excess power, see T.W. Merrill, 'Judicial Deference to Executive Precedent' (1992) 101 *Yale Law Journal* 969.

[49] W.N. Eskridge and L.E Baer, 'The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations from Chevron to Hamdan' (2008) 96 *Georgetown Law Journal* 1083.

[50] *Skidmore v. Swift & Co.* (323 U.S. 134 (Stevens J) [1944]; *United States v. Mead Corp*. (533 U.S. 218, 226-7) [2001]; R. Pierce, 'Reconciling Chevron and Stare Decisis' (1997) 85 *Georgetown Law Journal* 2225.

[51] J. Mashaw, 'Agency Statutory Interpretation' (2002) 3 *Issues in Legal Scholarship* 9.

[52] E. Rubin, 'Law and Legislation in the Administrative State' (1981) 89 *Columbia Law Review* 369; E. Rubin, 'Dynamic Statutory Interpretation in the Administrative State' (2002) 3(2) *Issues in Legal Scholarship* 1.

of the agency's interpretation. And, if it clashes with the politics of the court, then it may influence the deference decision. Thus, the models include three indicator variables **president**, **house**, and **senate**, which equal 1 if the respective body has 'dynamic' politics and equal 0 otherwise.[53]

The continuity of the agency's interpretation should influence both the agency's liberalness and the deference decision. The agency's interpretation can be 'longstanding', 'recent' or 'evolving'.[54] If the interpretation is evolving (or less continuous), then it indicates that the agency's interpretation is more dynamic or time-changing; and thus, more dynamic. However, this has conflicting implications for deference. Arguably, agencies are best suited to melding interpretations to changing social circumstances; and thus, courts should defer to administrators' evolving interpretations.[55] Alternatively, administrators may evolve statutory interpretations in ways that the legislature did not intend, which should militate against deferring to evolving interpretations.[56] Thus, the paper uses two indicator variables: **old** and **evolve**, which equal 1 if the agency's interpretation is 'longstanding', or is 'evolving', respectively, and equal 0 otherwise.

(b) Results

The results indicate that deference does cause purposive and purposive-dynamic interpretations. The *ivprobit* results are reported in table 8, Table 9, and Table 10.

The results in Table 8 examine the relation between deference and the use of purposive reasoning. They indicate that the use of deference-techniques per se (**DefAny**), and especially the use of low-level deference (**DefLow**), increases the probability of a purposive interpretation (at 5 per cent, and 1 per cent significance, respectively). Further, the court is more likely to adopt a purposive interpretation if it has deferred in general in the past (viz. $\mathbf{p.DefAny}_{t-1}$), or has used low-level deference in the past (viz. $\mathbf{p.DefLow}_{t-1}$).

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[52] W.N. Eskridge and L.E Baer, 'The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations from Chevron to Hamdan' (2008) 96 *Georgetown Law Journal* 1083.

[53] The results are the same in models (unreported) that replace the three variables **president**, **house**, and **senate**, with one variable **pres_house_senate** that equals 1 if all three are dynamic and equals 0 otherwise.

[54] Following the data-description in W.N. Eskridge and L.E Baer, 'The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations from Chevron to Hamdan' (2008) 96 *Georgetown Law Journal* 1083.

[55] R. Graham, "A Unified Theory of Statutory Interpretation" (2002) 23(1) *Statute Law Review* 91; L. Schulz Bresman, 'How Mead Has Muddled Judicial Review of Agency Action' (2005) 58 *Vanderbilt Law Review* 1443.

[56] M.L. Humphery-Jenner, 'Should Common Law Doctrines Dynamically Guide the Interpretation of Statutes?' (2009) 3(2) *Legisprudence* 171.

Table 8. Legislative Purpose IV regressions. This table contains ivprobit regressions that examine the relation between deference and whether the majority cites legislative purpose in its reasoning. The dependent variable is ***legPurp****, an indicator that equals 1 if the majority cites legislative purpose in its reasoning and equals 0 otherwise. The models cluster standard errors by year. Numbers in brackets are p-values. Superscripts **, *, and + denote significance at 1%, 5%, and 10%, respectively.*

	(1)	(2)	(3)	(4)
DefAny	0.462*			
	[0.049]			
p.DefAny$_{t-1}$	0.681*			
	[0.014]			
DefLow		2.077**		
		[0.000]		
p.DefLow $_{t-1}$		0.450+		
		[0.096]		
DefMed			0.400	
			[0.135]	
p.def.med $_{t-1}$			1.141	
			[0.121]	
DefHigh				0.511
				[0.698]
p.DefHigh $_{t-1}$				-2.643
				[0.166]
p.legPurp $_{t-1}$	1.629**	1.229**	0.117+	-0.130**
	[0.000]	[0.000]	[0.085]	[0.000]
p.text $_{t-1}$	-0.705**	-1.015**	-0.014	-0.785*
	[0.007]	[0.008]	[0.020]	[0.620]
p.wact $_{t-1}$	0.488	0.228**	0.421	-0.101*
	[0.288]	[0.564]	[0.375]	[0.279]
p.wcode $_{t-1}$	0.534	0.533	-0.093	0.297
	[0.567]	[0.337]	[0.727]	[0.795]
p.leghis $_{t-1}$	1.194**	-0.222*	1.072**	1.316**
	[0.000]	[0.014]	[0.000]	[0.967]
p.sd $_{t-1}$	-0.462	-1.758**	0.238*	0.015
	[0.224]	[0.000]	[0.019]	[0.978]
p.othercan $_{t-1}$	1.377**	0.651	1.500**	1.455**
	[0.000]	[0.146]	[0.000]	[0.001]
p.legacqu $_{t-1}$	-2.877**	0.272+	-0.620*	-3.142**
	[0.000]	[0.001]	[0.002]	[0.500]
p.comlaw $_{t-1}$	4.219**	3.444**	3.858**	4.329**
	[0.002]	[0.000]	[0.827]	[0.715]
p.fedcan $_{t-1}$	3.866**	4.082**	3.700**	-0.382**
	[0.001]	[0.000]	[0.003]	[0.009]
p.avcan $_{t-1}$	-2.692**	-0.17	-0.437**	-1.721+
	[0.005]	[0.000]	[0.002]	[0.934]
p.dpcan $_{t-1}$	1.557	-1.045**	0.708*	-0.054
	[0.369]	[0.046]	[0.030]	[0.583]

(continued)	(1)	(2)	(3)	(4)
p.seppow $_{t-1}$	7.236*	-1.405	7.282*	8.939*
	[0.030]	[0.000]	[0.048]	[0.011]
constant	-1.998**	-0.123	-0.041	-2.048**
	[0.000]	[0.031]	[0.560]	[0.000]
observations	998	998	998	998

The results in Table 9 examine if deference causes dynamic interpretations that are purposive. The results strongly indicate that deference does so. Specifically, **DefAny**, **DefLow**, and **DefMed** significantly increase the probability of a purposive-dynamic interpretation (all at 1 per cent significance). This strongly supports the hypothesis that deference causes principled dynamic interpretations.

Table 9. Purposive-Dynamic IV Regressions. This table contains ivprobit regressions that examine the relation between deference and the issuance of a purposive interpretation that is also dynamic or dynamic. The dependent variable is ***PurpDyn****, an indicator that equals 1 if both (a) the majority cites legislative purpose in its reasoning and (b) the interpretation is 'dynamic', but equals 0 otherwise. The models cluster standard errors by year. Numbers in brackets are p-values. Superscripts **, *, and* $^{+}$ *denote significance at 1%, 5%, and 10%, respectively.*

	(1)	(2)	(3)	(4)
DefAny	0.656**			
	[0.001]			
p.DefAny $_{t-1}$	-0.356			
	[0.592]			
DefLow		2.382**		
		[0.001]		
p.DefLow $_{t-1}$		0.163		
		[0.773]		
DefMed			0.787**	
			[0.002]	
p.def.med $_{t-1}$			-0.643	
			[0.512]	
DefHigh				0.673
				[0.620]
p.DefHigh $_{t-1}$				-3.215*
				[0.044]
p.legPurp $_{t-1}$	2.016**	1.158	0.123^{+}	1.932**
	[0.000]	[0.337]	[0.062]	[0.000]
p.text $_{t-1}$	-1.486**	0.398**	-1.205**	-1.252**
	[0.000]	[0.122]	[0.006]	[0.528]

(continued)	(1)	(2)	(3)	(4)
p.wact $_{t-1}$	1.109	0.012	1.303*	1.436**
	[0.145]	[0.992]	[0.789]	[0.004]
p.wcode $_{t-1}$	-0.988	-0.054	-0.114	-1.487
	[0.311]	[0.769]	[0.658]	[0.110]
p.leghis $_{t-1}$	1.204*	0.534	0.133	0
	[0.010]	[0.568]	[0.146]	[0.998]
p.sd $_{t-1}$	0.379	0.847**	0.264**	1.018*
	[0.524]	[0.000]	[0.203]	[0.000]
p.othercan $_{t-1}$	0.738	0.037	0.729	-0.058
	[0.263]	[0.847]	[0.430]	[0.225]
p.legaqui $_{t-1}$	-2.148	-1.853	-1.628	0.076
	[0.135]	[0.348]	[0.042]	[0.457]
p.comlaw $_{t-1}$	4.153**	-0.244	3.858**	4.505**
	[0.003]	[0.275]	[0.004]	[0.000]
p.fedcan $_{t-1}$	4.553*	3.916	3.441^{+}	4.504**
	[0.024]	[0.155]	[0.061]	[0.005]
p.avcan $_{t-1}$	-3.362**	0.323	-0.407**	0.02
	[0.006]	[0.183]	[0.003]	[0.774]
p.dpcan $_{t-1}$	2.959*	2.6	0.749*	3.586**
	[0.015]	[0.273]	[0.113]	[0.003]
p.seppow $_{t-1}$	6.578	-2.545	4.367	-0.199
	[0.273]	[0.105]	[0.456]	[0.390]
constant	-2.231**	-0.374	-2.445**	-2.628**
	[0.001]	[0.359]	[0.011]	[0.000]
observations	998	998	998	998

The results in Table 10 assess if deference causes non-purposive dynamic interpretations; *i.e.* dynamic interpretations that are non-purposive. The results indicate that deference reduces the probability of a non-purposive dynamic interpretation. Thus, the variables **DefAny**, **DefLow**, and **DefMed** are significant and negative (at 10 per cent, 1 per cent, and 10 per cent significance, respectively).

Table 10 (next page). Non-Purposive-dynamic IV Regressions. This table contains ivprobit regressions that examine the relation between deference and the issuance of a non-purposive interpretation that is dynamic or dynamic. The dependent variable is ***NonPurpDyn****, an indicator that equals 1 if both (a) the majority does not cite legislative purpose in its reasoning but (b) the interpretation is 'dynamic', and equals 0 otherwise. The models cluster standard errors by year. Numbers in brackets are p-values. Superscripts **, *, and* $^{+}$ *denote significance at 1%, 5%, and 10%, respectively.*

	(1)	(2)	(3)	(4)
DefAny	-0.395^{+}			
	[0.092]			
p.DefAny$_{t-1}$	0.355			
	[0.370]			
DefLow		-1.767**		
		[0.002]		
p.DefLow$_{t-1}$		0.185		
		[0.644]		
DefMed			-0.430^{+}	
			[0.097]	
p.def.med$_{t-1}$			0.295	
			[0.697]	
DefHigh				0.608
				[0.604]
p.DefHigh$_{t-1}$				-1.748
				[0.264]
p.legPurp$_{t-1}$	-0.549*	-0.567*	0.116^{+}	-0.120**
	[0.036]	[0.027]	[0.057]	[0.098]
p.text$_{t-1}$	0.872**	0.321**	0.668**	0.006
	[0.000]	[0.001]	[0.001]	[0.890]
p.wact$_{t-1}$	0.45	0.759	0.274	0.408
	[0.394]	[0.133]	[0.806]	[0.011]
p.wcode$_{t-1}$	0.165	0.208	-0.103	0.015
	[0.847]	[0.732]	[0.699]	[0.991]
p.leghis$_{t-1}$	-0.966**	-0.204**	0.126	-1.031**
	[0.002]	[0.000]	[0.000]	[0.692]
p.sd$_{t-1}$	-0.31	0.875	0.251*	-0.449
	[0.524]	[0.000]	[0.285]	[0.000]
p.othercan$_{t-1}$	-2.178**	-1.475*	0.074	-2.335**
	[0.000]	[0.047]	[0.000]	[0.000]
p.legaqui$_{t-1}$	3.590**	3.374**	-0.617*	0.062
	[0.000]	[0.199]	[0.000]	[0.000]
p.comlaw$_{t-1}$	-1.890^{+}	-0.300*	0.078	-1.529
	[0.089]	[0.046]	[0.118]	[0.161]

continued	(1)	(2)	(3)	(4)
p.fedcan $_{t-1}$	-3.834*	-4.160**	0.587^{+}	-0.369**
	[0.024]	[0.000]	[0.035]	[0.008]
p.avcan $_{t-1}$	1.066	1.680*	-0.436**	1.730*
	[0.260]	[0.689]	[0.172]	[0.810]
p.dpcan $_{t-1}$	-0.047	-1.066	0.722*	0.172
	[0.961]	[0.105]	[0.828]	[0.861]
p.seppow $_{t-1}$	-9.528*	-9.969**	-7.365^{+}	-0.119
	[0.044]	[0.004]	[0.203]	[0.097]
constant	0.012	-0.173	-1.395**	-2.048**
	[0.978]	[0.000]	[0.000]	[0.000]
observations	998	998	998	998

The results overall strongly support the hypothesis that deference promotes principled dynamic interpretations. That is, it promotes purposive interpretations in general; and dynamic-purposive interpretations in specific. Further, these results indicate that deference may reduce the chance of unprincipled dynamic interpretations. That is, deference reduces the chance of a dynamic interpretation that deviates from legislative purpose.

4. Robustness

This paper ensures that the results are robust. First, the paper ensures robustness to model-specification. Plots of the standard errors (unreported) indicate some evidence of non-normality. Non-normality may bias *probit* results. Thus, the model replaces *probit* models with *logit* models and finds qualitatively similar results.

Second, the paper ensures that multicollinearity does not bias the results. The models could exhibit multicollinearity since there may be correlation between the interpretative techniques; that is, courts may use some interpretative techniques in groups.[57] A solution is principal component analysis (PCA). PCA transforms a set of correlated variables into a smaller set of uncorrelated variables.[58] Since the principal components are uncorrelated, they do not exhibit multicollinearity.

The PCA results confirm the previous findings. Here, PCA condenses the interpretative and canon variables into four variables that represent interpretative factors and two variables that represent interpretative canons. Thereafter, the paper computes *probit* models that replace the interpretation/canon variables with the six principal components. Table 11 contains the PCA results. The results

[57] C.R. Sunstein, 'Interpreting Statutes in the Regulatory State' (1989) 103(2) *Harvard Law Review* 405.

[58] For uses of PCA, see R. Raskin and H. Terry, 'A Principal-Components Analysis of the Narcissistic Personality Inventory and Further Evidence of Its Construct Validity' (1988) 54(5) *Journal of Personality and Social Psychology* 890.

indicate that deference in general, and low-level deference specifically, increase the likelihood of a purposive and purposive-dynamic judgments, but decrease the probability of a non-purposive-dynamic judgment.

*Table 11: PCA Regressions. This table contains principal component regressions. The models are probit models that use principal components as control variables. The first row is the dependent variable. Table 12 contains the variable definitions, and defines the principal components in more detail. Numbers in brackets are p-values. Superscripts **, *, and $^{+}$ denote significance at 1%, 5%, and 10%, respectively.*

	Purp (1)	**Purp** (2)	**Purp** (3)	**Purp** (4)	**PurpDyn** (5)	**PurpDyn** (6)
DefAny	0.280**				0.279**	
	[0.000]				[0.004]	
p.DefAny$_{t-1}$	0.425				-0.476	
	[0.233]				[0.266]	
DefLow		0.224+				0.274+
		[0.073]				[0.073]
p.DefLow$_{t-1}$		-0.032				-0.468
		[0.946]				[0.349]
DefMed			0.295*			
			[0.032]			
p.DefMed$_{t-1}$			1.617+			
			[0.053]			
DefHigh				-0.137		
				[0.701]		
p.DefHigh$_{t-1}$				-1.602		
				[0.328]		
canon_comp_1	0.043	0.043	0.061	0.041	0.071	0.083+
	[0.262]	[0.278]	[0.161]	[0.284]	[0.177]	[0.092]
canon_comp_2	-0.02	-0.018	-0.033	-0.009	0.008	-0.005
	[0.541]	[0.601]	[0.382]	[0.814]	[0.800]	[0.880]
interp_comp1	0.073**	0.077**	0.073*	0.076**	0.052*	0.050+
	[0.007]	[0.006]	[0.010]	[0.009]	[0.042]	[0.060]
interp_comp2	0.060+	0.068+	0.046	0.058	0.120**	0.120**
	[0.086]	[0.065]	[0.135]	[0.125]	[0.000]	[0.000]
interp_comp3	0.022	0.016	0.026	0.029	0.026	0.019
	[0.446]	[0.596]	[0.221]	[0.323]	[0.285]	[0.472]
interp_comp4	0.03	0.027	-0.003	0.022	0.012	-0.004
	[0.543]	[0.593]	[0.940]	[0.668]	[0.708]	[0.907]
constant	-0.513**	-0.328**	-0.491**	-0.259**	-0.819**	-0.844**
	[0.000]	[0.004]	[0.000]	[0.000]	[0.000]	[0.000]
Observations	998	998	998	998	998	998
Wald Chi2	40.733	16.09	29.145	14.429	40.333	32.734
Pseudo R2	1.50%	1.10%	1.30%	0.70%	1.70%	1.50%

(continues)

	PurpDyn (7)	**PurpDyn** (8)	**NonPurpD** (9)	**NonPurpD** (10)	**NonPurpD** (11)	**NonPurpDyn** (12)
DefAny			-0.09			
			[0.285]			
p.DefAny$_{t-1}$			-0.063			
			[0.892]			
DefLow				-0.049		
				[0.708]		
p.DefLow$_{t-1}$				0.16		
				[0.755]		
DefMed	0.264				-0.037	
	[0.107]				[0.801]	
p.DefMed$_{t-1}$	0.269		-0.284			
	[0.752]				[0.771]	
DefHigh		-0.712				-0.535
		[0.162]				[0.184]
p.DefHigh$_{t-1}$			-3.319^{+}			-2.325
		[0.060]				[0.226]
canon_comp_1	0.071	0.077	-0.003	-0.004	-0.007	0
	[0.149]	[0.117]	[0.948]	[0.918]	[0.894]	[1.000]
canon_comp_2	-0.007	0.008	0.055	0.056	0.058	0.066
	[0.835]	[0.809]	[0.276]	[0.275]	[0.255]	[0.246]
interp_comp1	0.049*	0.04	-0.045	-0.047	-0.045	-0.058^{+}
	[0.038]	[0.103]	[0.112]	[0.107]	[0.123]	[0.085]
interp_comp2	0.111**	0.098**	-0.018	-0.021	-0.016	-0.034
	[0.002]	[0.003]	[0.587]	[0.541]	[0.635]	[0.377]
interp_comp3	0.033	0.045	0.02	0.022	0.02	0.033
	[0.203]	[0.128]	[0.532]	[0.481]	[0.520]	[0.371]
interp_comp4	-0.001	-0.01	0.034	0.037	0.041	0.029
	[0.984]	[0.762]	[0.419]	[0.392]	[0.266]	[0.464]
constant	-0.934**	-0.810**	-0.697**	-0.765**	-0.710**	-0.695**
	[0.000]	[0.000]	[0.000]	[0.000]	[0.000]	[0.000]
Observations	998	998	998	998	998	998
Wald Chi2	46.628	22.281	4.05	3.836	4.452	5.732
Pseudo R2	1.10%	1.20%	0.40%	0.04%	0.04%	0.06%

Third, the paper ensures that the results are not due to agency-specific factors. Heretofore, the models have clustered standard errors by year. However, the literature indicates that deference may concentrate in specific agencies that demonstrate especial expertise.[59] Thus, unobserved agency-effects may bias the

[59] On the FDA, see J.T. O'Reilly, 'Losing Deference in the FDA's Second Century: Judicial Review, Politics, and a Diminished Legacy of Expertise' (2008) 93 *Cornell Law Review* 939.

results. The paper resolves this by clustering standard errors by year and by agency.[60] The *probit* and *ivprobit* results are qualitatively the same.

Fourth, the paper ensures that the results do not reflect judge-specific factors. The literature indicates that different judges have different propensities to defer or to issue dynamic judgments.[61] These judge-specific factors may influence the results. Thus, the paper re-estimates the models but includes a dummy variable to represent particular judges being on the court.[62] The *probit* and *ivprobit* results are qualitatively the same.

Overall, the robustness tests confirm the prior results that deference encourages purposive, and purposive-dynamic judgments.

D. CONCLUSION

This paper examines if the doctrine of judicial deference induces principled dynamic interpretations. The paper defines a principled dynamic interpretation as one that is both dynamic and bases itself on doctrines of legislative purpose. This bases itself on the premise that statutory interpretations should quadrate with the legislature's purpose for the statute, and should remain flexible to contemporary circumstances.

The paper examines the relationship between statutory interpretation and the decision to issue rely on low-level deference (viz. Skidmore, or Consultative deference); medium-level deference (Chevron, or Beth-Israel deference) or high-level deference (Seminole, or Curtis-Wright deference).

The results strongly indicate that deference promotes purposive dynamic interpretations. Low-level deference is the most effective at promoting purposive dynamic interpretations. However, medium-level deference weakly promotes them. Strong-level deference does not clearly promote purposive dynamic interpretations, and may induce results that deviate from the legislative purpose.

These results have key implications for the relation between courts and administrators. The literature has developed theoretical hypotheses about the desirability of deference *per se*, and various types of deference in specific. However, the literature has not systematically tested these hypotheses. The results from this paper strongly support deference in general, but most strongly support low-level Skidmore-type deference. That is, courts should interpret statutes themselves, employing the administrator's interpretation as a useful guide.

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[60] For an extended description of controlling for unobserved effects, see M.A. Petersen, 'Estimating Standard Errors in Finance Panel Data Sets: Comparing Approaches' (2009) 22(1) *Review of Financial Studies* 435.

[61] W.N. Eskridge and L.E Baer, 'The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations from Chevron to Hamdan' (2008) 96 *Georgetown Law Journal* 1083.

[62] The particular judges are Brennan, White, Marshall, Burger, Powell, Blackmun, Rehnquist, Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsberg, Breyer, Roberts, Alito, and Lenity.

APPENDIX: VARIABLE DEFINITIONS

Table 12. Variable definitions.

Variable	**Definition**
Dependent Variables	
Purp	A dummy variable that equals 1 if the majority cites legislative purpose as a basis for its reasoning
PurpDyn	A dummy variable that equals 1 if both (a) the interpretation is 'dynamic' or 'dynamic' in nature and (b) the majority cites legislative purpose as a basis for its reasoning
NonPurpDyn	A dummy variable that equals 1 if (a) the interpretation is 'dynamic' or 'dynamic' in nature but (b) the majority does not cite legislative purpose in its reasoning
Deference Variables	
DefAny	A dummy variable that equals 1 if the court adopts any deference technique and equals 0 otherwise
p.DefAny $_{t-1}$	The proportion of judgments in the prior judicial term that adopt any deference technique
DefLow	A dummy variable that equals 1 if the court adopts a low-level deference technique (Skidmore or Consultative deference) and equals 0 otherwise
p.DefLow $_{t-1}$	The proportion of judgments in the prior judicial term that adopt a low-level deference technique
DefMed	A dummy variable that equals 1 if the court adopts a medium-level deference technique (Chevron or Beth-Israel) and equals 0 otherwise
p.def.med $_{t-1}$	The proportion of judgments in the prior judicial term that adopt a medium-level deference technique
DefHigh	A dummy variable that equals 1 if the court adopts any high-level deference technique (Curtis-Wright or Seminole) and equals 0 otherwise
p.DefHigh $_{t-1}$	The proportion of judgments in the prior judicial term that adopt a high-level deference technique
Control Variables	
p.legpurp $_{t-1}$	The proportion of judgments in the prior judicial term that cited legislative purpose in the reasoning
p.text $_{t-1}$	The proportion of judgments in the prior judicial term that cited textualism or plain meaning in the reasoning
p.wact $_{t-1}$	The proportion of judgments in the prior judicial term that referred to the 'whole act' or the 'act as a whole' in the reasoning
p.wcode $_{t-1}$	The proportion of judgments in the prior judicial term

	that cited the 'whole code' or the 'code as a whole' purpose in the reasoning
p.leghist $_{t-1}$	The proportion of judgments in the prior judicial term that referred to legislative history in the reasoning
p.sd $_{t-1}$	The proportion of judgments in the prior judicial term that deferred to stare decisis or used it as a major contributing factor in the reasoning
p.othercan $_{t-1}$	The proportion of judgments in the prior judicial term that relied on miscellaneous other canons in the reasoning
p.legaqui $_{t-1}$	The proportion of judgments in the prior judicial term that cited the legislative acquiescence in the reasoning
p.comlaw $_{t-1}$	The proportion of judgments in the prior judicial term that utilised common law doctrines in the reasoning
p.fedcan $_{t-1}$	The proportion of judgments in the prior judicial term that cited the federalism canon in the reasoning
p.avcan $_{t-1}$	The proportion of judgments in the prior judicial term that cited avoidance canon in the reasoning
p.dpcan $_{t-1}$	The proportion of judgments in the prior judicial term that referred to the due process canon in the reasoning
p.seppow $_{t-1}$	The proportion of judgments in the prior judicial term that cited separation of powers in the reasoning
Instrumental Variables	
expert	A dummy variable that equals 1 if the court cites the agency's 'expertise' in its reasoning
accountability	A dummy variable that equals 1 if the court cites the accountability of the agency to the executive or the legislature in its reasoning
rule	A dummy variable that equals 1 if the agency's interpretation was in a 'rule' that has legislative force
adj	A dummy variable that equals 1 if the agency's interpretation was in the form of an adjudication
inf	A dummy variable that equals 1 if the agency's interpretation was in an informal policy document
president	A dummy variable that equals 1 if the President is 'conservative' and equals 0 if the president is 'dynamic'
house	A dummy variable that equals 1 if the House of Representatives is predominantly 'conservative' and equals 0 if the president is 'dynamic'
senate	A dummy variable that equals 1 if the Senate is predominantly 'conservative' and equals 0 if the president is 'dynamic'
old	A dummy variable that equals 1 if the agency's

	interpretation is old or longstanding
evo	A dummy variable that equals 1 if the agency's interpretation is evolving or time-changing
new	A dummy variable that equals 1 if the agency's interpretation is new
Principal Components	
interp_comp1	A principal component that mainly reflects the interpretative factors **p.wcode** $_{t-1}$ and **p.sd** $_{t-1}$
interp_comp2	A principal component that mainly reflects the interpretative factors **p.legpurp** $_{t-1}$ and **p.leghist** $_{t-1}$
interp_comp3	A principal component that mainly reflects the interpretative factors **p.text** $_{t-1}$, p.wact$_{t-1}$ and **p.seppow** $_{t-1}$
interp_comp4	A principal component that mainly reflects the interpretative factor **p.legaqui** $_{t-1}$
canon_comp1	A principal component that mainly reflects the canon variables **p.fedcan** $_{t-1}$ and **p.dpcan** $_{t-1}$
canon_comp2	A principal component that mainly reflects the canon variable **p.avcan** $_{t-1}$