interpretation."[1] Although this conclusion seems entirely in line with the experience of most law students, academics (and, in fact, federal court judges), the Oregon Supreme Court disagrees. As the Court noted as recently as 2009, there *is* a "methodology" that federal courts "have prescribed for interpreting federal statutes."[2]

Before describing this surprising conclusion in more detail, it is worth asking why the Oregon Supreme Court would bother weighing in on the federal approach to statutory interpretation. The answer comes from what are commonly called "reverse-*Erie*" cases.[3] Unlike the standard setup for the application of *Erie RR Co. v. Tompkins*,[4] in which federal courts are reql6[(gon Supremdt)-1006 6n more 0 ɜBDC 5

s in state court is by no means a straightforward proposition. a federal approach to sl autory interpretation binding in state a situation in which Congress enacted a federal st autory t it is not clear Congress could do so (or, at least, TTjidea of j udicial supremacy over sl autory e degree, by the Oregon Supreme Court's decision in State v. n which when faced with ed termine " extent of … story, and the evaluative weight I at

particular law being administered, or contravened some other applicable statute."[12]

The Court then had to assess whether the management plan was consistent with the Act. To do that, it was necessary for the Court "to determine what the Act requires. Consequently . . . review of petitioner's claims generally would involve some interpretation of the Act."[13] And, for present purposes, here is where the Oregon Supreme Court offered the somewhat remarkable statement on which I focus this discussion:

> In interpreting the Act, we follow the methodology that federal courts have prescribed for interpreting federal statutes, just as we would do in interpreting any other federal statute. In general, that means examining the text, context, and legislative history of the statute. However, there is an additional methodological wrinkle when, as in the present case, one of the parties before the court is the agency that has been charged with implementing the statute that is to be interpreted. A long line of federal cases, beginning with Chevron, U.S.A. v. Natural Res. Def. Council, holds that, when a federal agency has been charged by Congress with implementing a federal statute, courts should defer to that agency's interpretation of the statute, treating that interpretation as controlling as long as it is reasonable. Although that sort of deference is foreign to the administrative law of this state, we are bound to apply it in our interpretation of federal statutes if the federal interpretive methodology so demands.[14]

For those of us familiar with Professor Gluck's work, the suggestion that federal courts have "prescribed a methodology" for the interpretation of federal statutes is surprising, to say the least. In support for this proposition, the Court cites its 2005 decision in *Corp. of Presiding Bishop v. City of West Linn*.[15] In that decision, the Court was faced with a challenge under the federal Religious

12. *Id.* at 1171 (citing Planned Parenthood Assn. v. Dept. of Human Res., 687 P.2d 785 (1984) (emphasis and internal quotations omitted)).

13. *Id.*

14. *Id.* at 1172 (emphasis added, internal citations and punctuation omitted). I will return to the issue of *Chevron* and deference in Part II.

15. *Id.* (citing Corp. of Presiding Bishop v. City of West Linn, 111 P.3d 1123 (2005)).

courts as rooted in a fixed methodology. So Professor Gluck is quite correct in her premise: There is no recognized federal interpretive methodology.

So what are we to make of the Oregon opinions noted above? I do not believe that the Court in these cases is intentionally ignoring the substantial debate at the highest levels of the federal judiciary regarding the appropriate methodology for interpreting federal statutes. What is of importance here is the ease with which the Oregon Supreme Court in these reverse-*Erie* cases distills down the complexities of federal interpretive jurisprudence so that it can get to the business of actually figuring out what the statute means.[21] This is remarkable in at least two ways.

First, the great ease with which the Oregon Courts deem the federal system to have a "methodology" for interpretation, even in light of substantial evidence to the contrary, suggests the substantial shift in attitude that occurred after *PGE*. Before that case, the idea of a methodology for statutory interpretation was almost unheard of. Afterwards, the idea permeated Oregon judicial opinions.[22] This shift in thinking was a dramatic linguistic change that spilled over into how Oregon Courts thought about the process of interpretation in the federal courts.

The change was more than linguistic. As Professor Gluck notes, there are very few federal courts that have thought of state interpretive methodology as "s

Courts step away from ambiguity, assuming that it amounts to an implicit delegation of interpretive authority to federal administrative agencies. Once those agencies make a decision, however, the federal courts are intimately involved in reviewing the validity of those administrative decisions for reasonableness. In Oregon, the courts hold firmly to the PGE interpretive process, confident in their ability to resolve ambiguity on their own in an effort to discern legislative intent–which is presumed (in the absence of a clear indication to the contrary) to be hidden somewhere in the statutory language and accompanying legislative process. The agencies have no role in the resolution of that ambiguity. Once the court has defined the scope of permissible agency action under a statute, however, the courts will presume that the agency has appropriately balanced the relevant considerations, and let the agency decision stand in all but the most egregious cases.[36]

What does the contrasting approach reveal about the *PGE* methodology? The Oregon APA preceded *PGE* by many decades, so there may be little connection between the two. Furthermore, the scope of *PGE* is much broader than *Chevron*, since *PGE* applies to statutory interpretation generally, while *Chevron* is limited to cases in which administrative agency decisions are under review.

At the same time, however, *PGE* was an administrative law case. While Oregon law had already developed the sophisticated tiered approach to reviewing agency interpretations of law,[37] the Oregon Supreme Court was certainly aware of the U.S. Supreme Court's decision in *Chevron*, decided just a decade before. *Chevron*, with its methodological approach, caught on like wildfire in the federal system, and rapidly became one of the most-cited cases in federal courts.[38] The emphasis that Step I of the case placed on ambiguity drew particular attention among judges and

36. Under the Oregon APA, a court could find that the agency's decision is so unreasonable that it is outside the scope of statutory authority. This form of review is much narrower than that permitted under the federal APA, however.

37. *See* Springfield Educ. Assn. 621 P.2d at 553-56 (setting out different approaches to agency interpretations of law depending on whether they were "exact terms," "inexact terms," or "delegated terms").

38. Asimow & Levin, FEDERAL & STATE ADMINISTRATIVE LAW 531 (3rd ed. 2009); *see also* Thomas W. Merrill, "The Story of *Chevron*: The Making of an Accidental Landmark." *in* ADMINISTRATIVE LAW STORIES (Peter L. Strauss, ed. 2006).

scholars, and it was in this context that *PGE* came before the Oregon Supreme Court.

In considering the proper resolution of *PGE*, the Oregon Supreme Court would have recognized that the state system is different than the federal system.