

DECIDING TO DELEGATE:
LEGISLATIVE PROFESSIONALISM AND STATUTORY DELEGATION
TO BUREAUCRATIC AGENCIES IN STATE GOVERNMENTS

by

JASON MICHAEL BITZER

(Under the Direction of Susan B. Haire)

ABSTRACT

This dissertation investigates the impact of legislative professionalism on delegated discretion to bureaucracies within state governments in the United States. This project utilizes statutes dealing with welfare policy that were enacted in sixteen states from 1998 to 2000. It finds that increased levels of professionalism within state legislatures decrease delegated discretion to bureaucracies. The findings also suggest that the level of agency professionalism impacts the level of delegated authority, as well as other critical variables.

INDEX WORDS: Legislative professionalism, bureaucracy, discretion, delegation, principal-agent theory, new institutionalism, democratic governance, American state governments

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DEDICATION

This work would not have been successfully completed without the love and support of my entire family. Most importantly, it is due to the support and love of my wife, Andrea Anders, to whom I dedicate this project. Her love and support gave me the confidence and strength to see this project to its completion, and for that I will always be grateful.

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Having completed my coursework and the beginning stages of my dissertation at the University of Georgia, I left Athens for Catawba College in Salisbury, N.C. Knowing that writing a dissertation while teaching at a small liberal-arts college would be a daunting task, I did not fully realize the support and encouragement that I would receive

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CHAPTER I:

INTRODUCTION

When can one leave an “explosive” situation?

On the night of February 9, 1982, Leroy Broom parked his pickup truck in a restaurant parking lot to grab a quick dinner before continuing on his delivery route. His truck was pulling a trailer bearing four decals reading “Explosive A” on the trailer, which contained 485 pounds of dynamite and 15 blasting caps. However, before he went into the restaurant to get his order, Broom reversed two of the four “Explosive” decals to read “Drive Safely” as witnessed by two Louisiana State Police Officers sitting in the restaurant’s parking lot.

When Broom came back out of the restaurant, the two officers arrested him for violating the Louisiana Explosives Code. In that code, the Secretary of Public Safety adopted a series of regulations that held that “(t)he operator of a conveyance transporting explosives shall not leave such vehicle unattended except while actually making deliveries” (Louisiana Administrative Code 17-11:14.6). The regulation was based on provisions, passed by the Louisiana legislature, requiring the Louisiana Secretary of Public Safety to “make, promulgate and enforce regulations setting forth minimum general standards covering manufacture, transportation (including loading and unloading), use, sale, handling and storage of explosives” (La. R.S. 40:1471.9). Using other statutory language, the Secretary also made it a criminal offense to knowingly

violate the Louisiana Explosive Code. It was under these regulations and statutory authority that Broom was ultimately charged. In court, Broom challenged the delegation of authority by the state legislature to the Secretary of Public Safety (a state administrative officer) to issue rules and regulations regarding the transportation of explosives. Broom contended that the legislature had not specified a “sufficient basic standard and rule of action” for the secretary to follow, thereby violating the concept known as the “delegation doctrine.”¹

Who determines where a foot begins and ends?

In 1988, Connecticut’s Board of Examiners in Podiatry issued a ruling that included the ankle as a component of the foot, thereby allowing podiatrists to treat ankle ailments. The Board issued the rule based on their belief that because Connecticut podiatrists had been dealing with ailments such as sprains, strains, and fractures of both the foot and ankle for many years without any questions raised, that the ankle should be covered by the practice of podiatry. The Board relied on its authority as delegated by the Connecticut General Assembly to define the scope of podiatry in the state.

However, the Connecticut State Medical Society objected to the Podiatry Board’s actions, claiming that Connecticut General Statute (20.50) held that “Podiatry is defined to be the diagnosis, prevention, and treatment of foot ailments.” The Medical Society claimed that, based on the definition of the foot, the Podiatry Board had overextended its power to define podiatry by including the ankle. The Medical Society challenged the ruling by the Podiatry Board in court.²

What is “public” when it comes to smoking?

In 1975, the State of New York enacted a law restricting smoking in designated public areas: among these were libraries, museums, theaters, and public transportation facilities. However, other public areas, such as school auditoriums, sports arenas, elevators, and college classrooms, were not specifically mentioned in the legislation. Eleven years later, after continued public controversy regarding the effects of smoking, the New York Public Health Council (PHC), a state agency, published a set of rules and later finalized a set of regulations, which prohibited smoking in a wide variety of indoor areas not addressed by the 1975 legislation. In particular, the new rules affected restaurants with seating of more than 50 people by requiring the establishment to provide an adjoining non-smoking area that would meet customer demand.

In initiating these restrictions, the PHC relied upon Section 225 (5) (a) of the New York Public Health Law authorizing the agency to “deal with any matters affecting the...public health.” Using this section, the PHC contended that since the legislature would not take action to deal directly with the areas left uncovered by the 1975 law, the agency would utilize its delegated authority to deal with matters of the public health. Challenges were quickly brought against the new rules, most notably contending that PHC had overstepped its power as delegated by the statute.³

These cases deal with a variety of issues and public policies that confront both citizens and government officials on a daily basis. Each case raised issues surrounding the exercise of discretionary authority by bureaucratic administrators. Whether regulating the transportation of explosive materials, determining what constitutes medical

activity by licensed individuals, or acting on behalf of the public's health when elected officials are perceived as not addressing public concerns, bureaucratic officials are endowed with the power to make decisions and act to resolve public policy problems. This power, commonly referred to as bureaucratic discretion, enables individuals charged with implementing a set of instructions (laws or statutes) to use their judgment in applying these instructions. Individuals who are charged with executing the law may do so in extreme and arbitrary ways; this is one of the dangers of bureaucratic discretion. Whenever an individual possesses the capacity to pass judgment or impose a restriction on another individual, charges of abuse of power or discretion may be leveled. There lies the crux of bureaucratic discretion: enabling government officials to carry out duties assigned or delegated to them by elected lawmakers, while at the same time ensuring that these non-elected government officials do not abuse their authority.

Often, legislative bodies face this dilemma in democratic-republican forms of government when deciding on the level of administrative authority that is necessary to implement a statute. Why did the Louisiana legislature delegate authority to the Secretary for Public Safety? If the New York legislature would not act, why could not the New York Public Health Council take the necessary steps to ensure the public's health? If Connecticut podiatrists had been previously treating ankle ailments, why did the state's Board of Examiners in Podiatry refuse to incorporate ankles into the definition of podiatry, as seemingly permitted by the state legislature? The core issue centers on whether to give flexibility in the application of the law to a governmental actor charged with implementing the law or whether to constrain the government authority in enacting the law. When a legislature delegates to administrative agencies or other authorities the

power and discretion to regulate certain conduct, the discretion can be wide or narrow. Legislatures may also constrain or restrict the actions of the executive branch by detailing or specifying the permissible actions that administrators may take when executing a law. These decisions to constrain or restrict may be based on the level of knowledge and information available to a law-making body. The level of professionalism of a legislature may determine whether that legislative body is information- and resource-rich. This level of information- and resource-capacity influences the manner in which legislatures delegate authority or constrain the actions of bureaucracies within the executive branch. There is also the concern of the costs of interactions between political actors, most notably in this case, between legislatures and bureaucracies. For example, as Epstein and O'Halloran (1999) note, legislatures "have a much greater degree of control over agencies," particularly through the power to set agency budgets, detail operating procedures, and even "the very existence of the agency" itself (45). This type of "transaction costs" also occurs on the opposite side of the relationship, in that agencies have expertise and knowledge that they may be unwilling to share with legislators when laws are created. Thus bureaucrats may benefit from keeping legislators in the dark about policy implications so that administrators can influence policy implementation to a greater extent. These costs of transacting with each other affect both the legislative and the executive branch in terms of their power to govern.

The concept of "separation of powers" suggests that the legislative branch makes the laws, while the executive branch implements the laws. Often, however, those charged with executing the laws find themselves confronted in one of two realms once the law-making process is completed. First, executors of the law can be handed

seemingly vague and generalized legislative acts, sometimes described as “skeleton legislation” (Cooper 1938, 582). Scholars have recognized that when legislators confront complex and difficult policy issues, they “shift the burden of more precise definition to bureaucrats,” thus creating “opportunities for the exercise of administration discretion” by delegating wide-ranging power (Keefe and Ogul 2001, 428). Legislators can then engage in an “avoidance-blame” game by steering clear of responsibility for a policy, but blaming the agency for not fulfilling the vague intent of the law (Rosenthal 1990, 185).

At the other end of the continuum, legislation may be detailed and precise, leaving little room for maneuvering or adjusting policy initiatives by administrators. The legislation specifies the exact approach that governmental actors will take in executing the law and often constrains actors in doing their job. Thus, flexibility is denied in executing the law to deal with changing circumstances. The key issue for many legislators, then, is to resolve these two extremes and “strike a balance between granting agencies too much leeway and constraining them so tightly that there is no room to incorporate bureaucratic expertise into policy outcomes” (Epstein and O'Halloran 1999, 27).

Understanding the dynamics that shape legislative decisions to delegate authority is important for several reasons. To begin with, as repositories of expertise and longevity, administrative agencies serve as the front lines for enacting and overseeing policy solutions (Kingdon 1995). With complex issues arising on a daily basis, political officials call upon administrators to create the solutions to policy problems. Scholars have found that, at the state level alone, administrators spend one-fourth of their time on policy development and activities (Elling 1992). This influence over policy stems from a

number of bureaucratic characteristics, which have become the center of scholarly debates. For example, some question whether bureaucracies should be guided by characteristics such as expertise, economy, and efficiency or by concerns of accountability and responsiveness to politically elected officials. Operating within an environment characterized by these potentially conflicting standards, bureaucrats often possess “broad authority to develop the procedures and regulations necessary to implement programs” (Elling 1999, 291). Combined, both political officials and administrators can have a significant impact on policy development and implementation.

It is a constitutionally settled principle that administrative agencies cannot go beyond the authority conferred on them by legislative act (or, in some instances, constitutional or executive order authority). Courts have invoked the standard of *ultra vires* (“acts which are in excess of powers granted” (Black 1979, 1365)) if an agency action does exceed its authorized power (Asimow, Bonfield, and Levin 1998, 419). Ultimately, the legislative branch determines the degree to which a bureaucracy’s authority is constrained (Bawn 1997; Epstein and O’Halloran 1999; Macey 1992; McCubbins, Noll, and Weingast 1989).

This project explores delegated power from legislatures to bureaucracies in the United States utilizing a cross-sectional analysis to maximize variation across the states. By using different state governments, this study expands on a developing theoretical approach within political science. As evident by recent research (Epstein and O’Halloran 1999; Huber and McCarty 2004; Huber and Shipan 2002; Huber, Shipan, and Pfahler 2001; Lewis 2003; Lovell 2003; Shipan 2004), scholars have begun to investigate the by-products of the legislative process both to consider different theoretical concepts and to

empirically test theories. Most of these studies focus on the notion of separation of powers between the branches of a democratic-republican governing system. By dividing governmental tasks among different actors, a governing system can seek to ensure that no one branch gains too much power. This is achieved, most notably, through the power of “checks and balances,” or as Neustadt (1960) denotes the concept, “separate institutions sharing power.”

Non-delegation Doctrines at the National and State Level

Crucial to this idea of separation of powers and checks and balances is the non-delegation doctrine. The non-delegation doctrine holds that because branches of government are accorded separate powers (legislating, executing, adjudicating) by a constitution, the powers afforded to one branch of government cannot be given to another branch of government to exercise. At the national level, the non-delegation doctrine received a great deal of attention in the 20th century as the federal government expanded its powers to address policy concerns outside of its enumerated powers. In *Field v. Clark*,⁴ the U.S. Supreme Court addressed the non-delegation doctrine when it held that “Congress cannot delegate legislative power to the President” because of the need to preserve “the integrity and maintenance of the system of government ordained by the Constitution.” Nevertheless, the court upheld the delegation of power by the legislature to the chief executive.

This doctrine came to the forefront during the battle over New Deal programs and the expansion of national governmental power. The U.S. Supreme Court invoked the non-delegation doctrine in two cases: *Panama Refining Co. v. Ryan*⁵ and *A.L.A.*

Schechter Poultry Corp. v. United States.⁶ In both cases, the court held that Congress could not delegate the responsibility for creating codes of conduct to the executive branch—that this was akin to law-making, a power expressly reserved to the legislature. However, with the looming fights over the New Deal between the conservative justices and President Roosevelt, the non-delegation doctrine was soon cast aside and has been paid only lip-service by federal courts in reviewing legislative delegations of power to the executive branch (Asimow, Bonfield, and Levin 1998, 399-401).

Unlike the national level, state governments have utilized the non-delegation doctrine more frequently. As Asimow, Bonfield and Levin state, the “delegation doctrine has *much greater practical significance* at the state level than at the federal level” and that “state courts still insist that a delegation of authority to an agency *may not be upheld* absent adequate safeguards” (1998, 413, 416, emphasis added). This is attributed often to a definitive constitutional acknowledgement of the separation of powers among the branches of government within the state. Many state constitutions have a specific clause in the government document, similar to Article II, section 3 of Florida’s constitution:

The powers of the state government shall be divided into legislative, executive and judicial branches. *No person belonging to one branch shall exercise any powers appertaining to either of the other branches* unless expressly provided herein [emphasis added].

Such statements ensure that a strong standard of non-delegating power and authority is present in the governing document of the states. According to Rossi (1999), thirty-five states have such an explicit statement; five other states have general statements of separation of powers, while the remaining ten have no such statements in their constitutions. Because most states have this explicit statement, the use of the non-

delegation doctrine has been frequently employed in state appellate litigation. Within the fifty states, scholars have noted a variety of uses when it comes to interpreting the non-delegation clause.

There are generally perceived to be three distinct categories regarding state use of the non-delegation doctrine (Rossi 1999). The first classification is based on the strongest possible use of the doctrine, typically called the “strict standards and safeguards” category. Approximately twenty states utilize this rigorous approach by requiring that the legislature expressly define the standards and procedures that an administrator must follow in order to execute a delegated power. On the other end of the spectrum, six states utilize a weak version of delegation, in which only procedural safeguards are necessary in order for the legislature to delegate power to the executive branch. In the middle of this spectrum, the remaining half of the states employ what are described as “loose standards and safeguards.” In these states, the legislature makes a general statement regarding the policy or includes a general rule to instruct the recipient of the policy with respect to carrying out that power. Within this classification, substantial variation characterizes legislative decisions to delegate authority. This variety among states and statutes allows the opportunity to explore research questions and test theories regarding governing structures and their interactions with one another (Greco 1994; McGovern 2004; Rossi 1999). Variety also characterizes institutional features of state legislatures. Several characteristics would be expected to shape legislative decisions to delegate, such as length of legislators meeting in session, the level of staff personnel to assist legislators, and the compensation for legislators. In the cases described above, are there differences between a legislature that meets for 198 days (New York) and a

legislature that meets for only 68 days (Louisiana) when it comes to writing legislation for bureaucratic implementation? For example, one might expect that a longer stay in the state capitol would afford more time to a legislature to scrutinize the bureaucracy's performance, whereas one whose time is limited in session might delegate less (or perhaps more) responsibility, knowing that the legislators will not be around to monitor bureaucratic activities.

Studying the States

Much of the theoretical work in American politics has been done utilizing the national government. For example, a recent work focuses on the political insulation of the bureaucracy by Congress when the legislature differs with the chief executive (Lewis 2003), while another work centers on the impact of Congress passing vague statutes and subsequent judicial policymaking (Lovell 2003). While the attention of the public and political scientists is often directed at Washington, D.C., the increased recognition of the role of state governments has become evident since the early 1970s with increased demands on states as a result of "devolution" and shifts in funding of national programs (Jenks and Wright 1993). By using fifty different governments within one nation, scholars can utilize a variety of governing structures, socioeconomic factors, cultural environments, and political and legal environments. In this respect, this study takes advantage of a comparative approach that will lead to a broader understanding of institutional interactions than currently offered by scholarship that focuses on the national government.

In a larger sense, then, this study extends research by political scientists to understand the actions and activities of the fifty states *and* to evaluate critical theories of governance. Many studies within political science have developed theories of understanding the governing process. These studies often focus on one institution, be it the Congress, the presidency, or the U.S. Supreme Court; recent scholarship has integrated two or more institutions into their studies (see Lewis 2003; Lovell 2003). By utilizing the fifty states as “laboratories,” however, political scientists can find the differences “both fascinating and intriguing to analyze” (Gray and Hanson 2004, 3). Scholars can utilize these diverse settings to confirm, contradict, or expand the concepts and theoretical ideas in political science. As state governments continue to face new and increasingly important challenges in public policy (Gray and Hanson 2004), understanding their basic structure and processes leads to further insight into a host of areas of interest for political scientists.

This study utilizes theoretical perspectives to form the basis for this research inquiry into legislative decisions to delegate authority to administrators. Chapter two presents an overview of these theories: new institutionalism, principal-agent model, and transaction cost analysis. By gaining a sense of the contributions these theories make to investigating the political world, the context of this particular study will be better understood. Chapter three presents an overview of the research on state legislatures and bureaucracies, with particular attention to the development of professionalism in these two governing institutions, and how each institution interacts with the other. In addition, chapter three will bring the theoretical concepts, as presented in chapter two, into the contextual setting of state governments and will present key hypotheses for this study.

Chapter four discusses the data and measures utilized to test these hypotheses. Chapter five presents the results of these tests with the final chapter presenting the implications for understanding legislative decisions to delegate authority.

CHAPTER II:
THEORETICAL FOUNDATIONS FOR EXPLORING
LEGISLATIVE DELEGATION OF DISCRETION TO BUREAUCRACIES

Within the context of American politics, this study is based on the renewed approach to understanding politics through an institutional lens, in conjunction with other theoretical perspectives, including principal-agent models and transaction cost analysis. Scholarship in this area would be expected to extend numerous debates, outlined below, on the role of institutions in democratic governance.

Democratic governance is concerned with ensuring accountability to both citizens and their elected representatives. Yet, as Gormley and Balla (2004) contend, a second fundamental standard is called upon when it comes to democratic governance: performance. The balance between ensuring accountability, usually by restricting bureaucratic agents through established standards and guidelines, and ensuring performance, usually by giving discretionary authority to those same agents, is of critical importance to understanding modern governmental activities in the United States.

Democratic Governance Theory

Within any democratic-republican system of government, there is a chain of command, with the pinnacle being that entity that holds sovereign power within the governing system. Within the United States, that pinnacle of sovereign power rests with

the people. Through a republican form of government, the people delegate decision-making authority to their elected representatives. However, in this world of growing and expanding government involvement in a multitude of policy areas, the role of the bureaucracy as the executor of public policy has added a complicating layer to government operations. The question raised most often is, how much authority can be transferred by those who hold sovereign power and their representatives, to those not directly elected or accountable? This often centers on separation of powers and the delegation of discretionary authority.

Separation of Powers. Through the concept of separate institutions, republican governing structures are delegated different responsibilities in law making, law executing, and legal interpretation. This is done to fragment government power to protect liberty and keep tyranny at bay. In dividing government power, each structure, or branch, should be independent of the others; at the same time, however, each branch should have sufficient power to check the others to ensure no one branch assumes too much power. As Neustadt (1960) describes, the system is not necessarily a “checks and balances” approach, but rather a system in which different branches are forced to share the making, executing, and interpreting powers of government.

Often this defused power arrangement leads to the construction of an institution designed to forge these responsibilities together, namely, a bureaucracy. While bureaucracies are expected to execute the laws written by the legislature and abide by the decisions when courts interpret laws, scholars have repeatedly advanced the notion that bureaucracies are examples of the combined branches of government within one

institution, earning the designation as the “fourth branch of government” (Meier 2000; Rohr 1986). By arranging defused power within one institution, however, the two branches that do not contain the bulk of administrative agencies within them are characterized as “limited” leaders when it comes to overseeing administrators’ actions and activities (Bianco and Bates 1990). As a result of limitations (for example, time, energy, resources, knowledge), legislators delegate authority to bureaucrats; legislators also are limited in terms of monitoring bureaucrats. This delegation of responsibilities, and often the accompanying discretion, serves as a center point for controversies within a democratic system of government.

Delegated Government Authority. Because law making and law executing are housed within separate governmental institutions in a republic, modern government has found it necessary at times to find ways of circumventing the explicit division of power. Some scholars (Rohr 1986) contend that the explicit division was never intended to be sacrosanct—that the United States Senate was an example of legislative, executive, and judicial functions bound within one government body. In regards to the bureaucracy, this circumvention is due to the greater complexities found in modern-day public policy problems, and often the bureaucracy is utilized to combine these separate powers. In order to execute public policies, bureaucracies are called upon to act as both executors of the law and makers of the law. This is accomplished by delegating some law-making powers to bureaucratic agents in the executive branch.

This delegation of law-making power raises a host of questions (Meier 1997). For example, how much of the “consent of the governed” should guide the day-to-day

decision making of administrators? Scholarly debates within both political science and public administration have centered on the issue of bureaucratic control within a democratic polity, and ultimately the issue of separation of power (Finer 1941; Friedrich 1940; Lowi 1979). Structuring the delegation of bureaucratic power to implement, while at the same time controlling that implementation power, is seen as a cornerstone of bureaucratic politics in a democratic governing system (Aberbach 1990; Balla 2000; Bawn 1997; Brehm and Gates 1997; Calvert, McCubbins, and Weingast 1989; Hammond and Knott 1996; Huber and Shipan 2000; Kischel 1994; McCubbins 1985; Shipan and Huber 2000; Spence 1999; Volden 2001; Williams 2000; Wood and Waterman 1994). Whenever a law-making institution transfers, or allocates, its power to an administrative agency, the agency “gains power and discretion to shape ... policy” (Greco 1994, 568). The agency is thus transformed into a “quasi-legislative” entity, yet without the “checks and balances” inherent within the democratic-republican system of governance. This is at the heart of the debate for and against delegation.

Arguments For and Against Delegation. Arguments for and against the “delegation” doctrine have shaped normative works and empirical studies in political science, public administration, and law (see Aranson, Gellhorn, and Robinson 1982; Mashaw 1997; Schoenbrod 1993; Steward 1975). An integral part of the debate is the issue of administrative discretion. A leading scholar in the field of public administration and public law described discretion as meaning “the power...to make significant decisions that have the force of law, directly or indirectly, and that are not specifically mandated by the Constitution, statutes, or other sources of black letter law” (Cooper 2000, 20).

Kenneth Culp Davis (1969a), another recognized expert, characterized discretion as being “whenever the effective limits on [an official’s] power leave him free to make a choice among possible courses of action or inaction.” For Davis, the key aspect of this definition was the “effective limits,” because arbitrary use of discretionary power is “illegal or of questionable legality” (4).

This balancing act over discretionary power has, according to one scholar, been evident since 600 A.D. (Samaha 1979). Yet even with its long history of controversy, the debate over discretionary power—whether in the hands of judges or administrators—has centered on two opposing viewpoints. Those arguing against the expansion of discretion contend that only through a systematic and unbiased application of the laws will equality be ensured for all. On the other hand, those favoring discretionary power contend that laws need to be flexible in order to be enforced with sensitivity to individual cases. Samaha (1979) argues that, at the heart of the debate, lies the issue of the rule of law versus the rule of men—and the inherent trappings that go along with both. While the rule of law assures equal and fair treatment of all, the inability to adjust to differing circumstances and needs makes the “one-size-fits-all” approach draconian in nature. Conversely, the rule of individuals, while giving a sense of balance in applying the law, can be seen as promoting favoritism, arbitrariness, and bias that may border on dictatorial whims. Throughout history, from the imposition of criminal fines in old England to religious penitentials prior to the Reformation, discretionary actions by those in power have plagued both ancient and modern man (Warren 1996). For modern bureaucratic behavior, however, the power of discretion can have a far greater impact than just determining the severity of sins—it can impact the very rights celebrated by free citizens.

The modern-day normative arguments surrounding the issue of bureaucratic discretion, and the delegated power that is associated with it, have been captured by several different scholars. Most notably, the arguments usually come down to the idea of administrators' self-regulating their own behavior and actions as a justification for delegating authority, while the opposing view believes this justification allows administrators to become the "fox guarding the henhouse." These views are best captured in the debate between two public administration scholars from the 1940s.

The "self-regulating" view was most clearly articulated by Carl Frederick (1940), who advances a "discretionist" approach (Spicer 1995, 55). Noting that delegated discretion is unavoidable in implementing public policy, Frederick contends that legislative oversight is "largely ineffectual," and that confronting "novel and complex" public policies requires "creative solutions" that only expert administrators with discretionary authority can advance. Frederick argues that by advancing these creative solutions, however, administrators will bind themselves to a "dual standard of administrative responsibility:" a technical knowledge and the sentiment of the citizenry. Along with these "inner checks," Frederick believed that administrators can be held accountable by the very nature of their duties, most notably through the direct citizen contact within agency implementation, the polling of citizens by agencies, and the promotional activities of agency programs (Spicer 1995, 57). Ultimately, Frederick argued that administrators will abide by a code of serving the public's interests and thereby curtailing any desire to abuse their authority.

Davis and other scholars have advanced Frederick's argument that authority can be delegated, but only with standards to ensure that unelected administrators do not overreach their boundaries of power. Davis contends:

what is needed is not simply a substitution of a requirement of safeguards for a requirement of standards but a consideration of both safeguards and standards in order to determine whether the total protection against arbitrary power is adequate (1969b, 732).

He goes on to explore the importance of administrative discretion and determined that informal discretionary action is the lifeblood of the administrator. Among the various activities associated with informal discretionary action are "initiating, prosecuting, negotiating, settling, contracting, dealing, advising, threatening, publicizing, concealing, planning, recommending, and supervising" (Warren 1996, 362). Among the most influential discretionary powers that administrators possess is the "omnipresent power to do nothing" (Warren 1996, 362). The authority to use one's decision in the implementation of a public policy can determine the effectiveness of a program.

Pressman and Wildavsky, in their classic work *Implementation* (1973), noted that the life or death of public programs may be in the hands of administrators when they decide to allow policies to pass critical "clearance points." These clearance points may occur at various stages, from recognizing (or not recognizing) a problem which deserves administrative attention, to determining the relevant facts, to applying statutory authority and rules in resolving the problem (Warren 1996, 364). Within this exercise of discretionary power lie various conditions that may conflict with the administrator's responsibilities: "past experiences, present environmental circumstances and pressures, politics, and personal values" (Warren 1996, 364).

Davis contends that the arbitrary use of discretion (what he labels as “discretionary justice”) impacts the fundamental rights and liberties of citizens, most notably the guarantees of procedural due process (Davis 1969a; Davis and Pierce 1994). In order to protect citizens from the arbitrary application of the law through discretionary power, Davis (1969a) contends that “we should eliminate [as] much unnecessary discretionary power and that we should do much more than we have been doing to confine, to structure, and to check necessary discretionary power; the goal is to find the optimum degree for each power in each set of circumstances” (3-4). Finding this balance in terms of delegating discretion, Davis contends, requires the acknowledgment of two types of discretion: reasonable and unreasonable. The main difference between the two is found in how legislators construct the statute delegating authority to administrators. Without constructing statutes that handcuff administrators, Davis finds that legislators often co-mingle necessary, or reasonable, discretion with unnecessary, or unreasonable, delegated authority. Unreasonable discretion is delegated whenever, in the words of Freund, a statute

refers (to) an official for the use of his power to beliefs, expectations, or tendencies, instead of facts, or to such terms as ‘adequate,’ ‘advisable,’ ‘appropriate,’ ‘beneficial,’ ‘convenient,’ ‘detrimental,’ ‘expedient,’ ‘equitable,’ ‘fair,’ ‘fit,’ ‘necessary,’ ‘practicable,’ ‘proper,’ ‘reasonable,’ ‘reputable,’ ‘safe,’ ‘sufficient,’ ‘wholesome,’ or their opposites (Warren 1996, 370).

Davis maintains that ultimately, it is an administrator, and not a legislator, who can best confine or constrain his discretionary behavior.

This fear of arbitrary and capricious activity by administrators led to a stinging rebuke of the discretionist’s views by Herman Finer (1941). Labeled by Spicer (1995) as

the “instrumentalist” view of bureaucratic discretion, Finer argued that administrators could not be relied upon to use their own technical and professional sense of responsibility to check their own behavior. Only elected officials, with the popular mandate from those with sovereign power, could properly constrain administrators with the necessary limits and restrictions needed to ensure fair and justiciable exercise of administrative power. It is based on the notion of popular consent that Finer believes administrators must follow in implementing public policy. This “mastership of the public” is the notion that “politicians and employees are working not for the good of the public in the sense of what the public needs, but of the wants of the public as expressed by the public” (Finer 1941, 357). Without this popular consent to control unelected bureaucrats, the temptation to follow one’s own views, and not the views of the elected representatives or the views of the citizenry, can lead to dangerous consequences for government activities. The “will of the people” is best expressed through their elected representatives and unelected (and in many cases unaccountable) administrators cannot be trusted to pursue the citizenry’s best interests. As Spicer notes, this argument follows in the long line of theoretical concepts about bureaucratic behavior in democratic governance, stretching back to Woodrow Wilson’s (2004 (1887)) assertion that politics and administration should be divorced from one another. While later public administration scholars have renounced this dichotomy (Appleby 2000 (1945)), scholars still wrestle with the desire to embody bureaucracies with the ability to shape public policy, while still holding them accountable for their actions through constraints (Burke 1986; Lowi 1979).

This controversy has developed into heated debates among scholars, particularly when judgments are made as to whether legislative delegation is desirable or undesirable. This type of value judgment or normative argument (Monroe 2000) concerning legislative delegation has fallen into the Frederick-Finer camps, most notably through the arguments against delegated authority put forth by Theodore Lowi, James Hart Ely, and Chief Justice of the U.S. William Rehnquist and by Peter Aranson, Ernest Gellhorn, and Glen Robinson for delegated authority (Mashaw 1997). As described by Mashaw, the anti-delegation position argues that broad delegation of policy-making authority leads to severe deficiencies in a governing system: failure to develop consistent policy, failure to live up to the ideals of democratic governance, and the failure to confront difficult policy choices. This system of passing vague statutes that confer expansive authority to unelected agents demonstrates a blundering “into an administrative state that has traded its democratic values for little or no increase in effective governance” (Mashaw 1997, 138).

Conversely, the Aranson/Gellhorn/Robinson side of the argument contends that legislators delegate for two reasons. First, legislators recognize that in each policy decision, there are “winners” and “losers,” and, in order to claim credit from the winners while avoiding taking the blame from the “losers,” they shift the responsibility for making the decision to the bureaucracy. Second, the reason legislators delegate vague authority to bureaucrats is again tied to the concept of blame. Under this argument, legislators may not be able to arrive on a specific policy decision. Therefore, they pass a “skeleton” piece of legislation, and allow the bureaucracy to determine the winners and losers in the ensuing battle. Then, once the bureaucracy sets a course of action,

legislators, if enough public outcry is heard, can return to the policy and publicly chastise the bureaucrat. While legislators engage in this “blame-avoidance” game to benefit themselves at the expense of the bureaucratic agents charged with resolving a dilemma, Aranson, Gellhorn, and Robinson contend that this approach is better than constructing detailed legislation, which would entail tremendous costs to legislating (Mashaw 1997, 141-42). The creation of detailed legislation imposes the costs of not only being an expert in a variety of policy issues (which, if one assumes a bounded rationality of legislators, is impossible to achieve), but also of having to confront and appease a multitude of special interest groups, all of whom are seeking either some good (public or private) or preventing another group from gaining some benefit at their expense. Aranson et al. (Mashaw 1997, 142) contend that, under these circumstances, it is better to allow delegated authority to be made rather than face the loss of policy output in exchange for specific provisions within legislation.

Within this normative approach to understanding delegation, some scholars contend that legislatures delegate authority to executive branch agencies through “broad policymaking discretion so long as they (bureaucrats) do not offend legislative majorities. In turn, politicians are shielded from local political pressures arising from the distributive decisions these agencies make” (Weaver and Rockman 1993c, 452). Others have offered different arguments as to why legislators may delegate authority to agents. Principals may also find it expedient in other ways to defer to their agents. Voigt and Salzberger (2002, 294-298) argue that delegation may be used to increase a politician’s popularity, to realize the politician’s ideal policy point, or to increase a politician’s financial

resources (by alleviating issues to free up time to concentrate on other, more financially rewarding activities).

Because of these differing viewpoints on whether bureaucratic agents should have discretionary power or not, scholars have identified different resources associated with delegated authority. First, agency constituents can be viewed as a critical resource for enhancing administrative power. In working for, and often with, the very people that the agency is designed to assist, agency constituents often become powerful advocates for increasing the power of the bureaucratic organization. There are some who contend that a “too-close” relationship can lead to the constituents of an agency “capturing” the very agency that oversees and regulates those constituents (Fritschler 1975; Merrill 1997). A second factor that is central to bureaucratic power focuses on expertise. With greater knowledge and training within a policy field, bureaucrats are able to determine when, and how much, information will be turned over to an elected official. With the “images of sinister bureaucrats wielding illegitimate power” (Barrilleaux 1999, 99), others argue against delegating authority to administrative agencies (Lowi 1979; Tullock 1970). James Q. Wilson describes several distinct problems with placing power within the grasp of administrative officials. In placing power in bureaucrats’ hands, Wilson argues that agencies could be captured by outside forces and that abuse may occur when “the exercise of that power is not responsive to the public good” (1999, 40).

Other scholars believe that concerns regarding bureaucratic abuse of power are exaggerated and that most discretion exercised by bureaucrats occurs at the street-level (Lipsky 1982). In their study of state administrators, Abney and Lauth (1986) found that bureaucrats were caught between a tension of professional accountability and the

demands of political officials. Due to this tension, administrators characterize their roles as information providers and advocates for policy issues, by offering testimony at legislative hearings and interacting with clients and special interest organizations.

Delegation and Institutionalism

Research on interactions between legislators and bureaucracies has paralleled a renewed scholarly interest in the “rules of the game” in political science. Beginning in the late 1970s, the “new institutionalism” of political science gained theoretical and scholarly credence with the works of several researchers, most notably March and Olsen (1984; 1989), Riker (1980), North (1990), Weaver and Rockman (1993b), and Moe (1984). Drawing on this paradigm, scholars have employed an economic-based approach to understanding political systems, including the dynamics surrounding public administrative agencies. Building on the classic works of Ronald Coase, Herbert Simon, and others, Moe (1984) raises theoretical questions regarding institutions, or what he would describe as organizations, and applies these questions to public agencies. For example, Simon’s theory of bounded rationality (1947) would suggest that legislators, who are unable to explore policy dilemmas, will delegate to those who can more fully explore beyond the limitations that legislators encounter. Using these theoretical foundations, Moe develops the concept of using the “economics of organization” to help understand the governing process.

Other scholars have used a similar economic-based approach that suggests political actors come into the process with “preferences over possible social states, beliefs about the world around [them], and a capability to employ data intelligently” (Shepsle

1989, 134). By basing individual actions on the assumption of self-interested motivation, rational choice uses economic-based arguments to advance a notion of understanding the political world. Individuals seek to maximize preferences within the confines of the collective action dilemma. Actors seek to maximize these preferences by strategic calculations on what other actors will do; institutions help individuals to calculate the response of others and thereby structure the actions of individuals. Most notably, institutions also help to reduce the costs associated with making decisions and enacting those decisions (Hall and Taylor 1996, 944-45). Through this approach, scholars can map out individual “nodes to action,” and thus analytically explain political actions and behavior (Shepsle 1989).

Economic-based theories employing institutionalism also have contributed to scholarship on legislative organizations. Krehbiel (1992) utilizes institutions to develop a theoretical understanding of whether legislative organizations are distributive or informational. Utilizing the Lasswell approach to understanding politics, the distributive perspective characterizes a legislature “as a collective choice body whose principal task is to allocate policy benefits.” Conversely, the informational perspective advances the notion that legislatures, seeking to be information rich in combating the advances of the executive branch (armed with the expertise and knowledge of policy administrators), utilize rules and procedures to act as incentives for legislators to develop expertise, thus benefiting the legislature as a whole (Krehbiel 1992, 3-5). While many observations of legislatures rest on the assumptions of the distributive perspective, Krehbiel (1992) contends that both theories are important to understanding the nature and behavior of legislative institutions and that, in particular, “informational concerns ... are at the heart

of legislative organization” (265). Yet, Krehbiel argues at the end of his study that further study of legislative behavior and institutional structures is needed to advance a more comprehensive understanding and theoretical development within the discipline.

Principal-Agent and Transaction Cost Analysis

Against this backdrop, two important theoretical foundations have been advanced to examine more specifically the interaction between legislators and bureaucrats. First, the framework of a “principal-agent” originated in the study of the management and operation of business firms. Within the market place, principals and agents interact on a continuous basis, whether inside a particular business or within the general marketplace. According to economists (Pratt and Zeckhauser 1985), principals are generally characterized as seeking the most efficient production of a task or product, most notably by utilizing the benefits of specialization of production and the economical use of resources. In order to accomplish these goals, principals must defer to their agents, since no one person can effectively realize all of the above tasks.

Certain tradeoffs are made in this relationship between principals and agents. Agents, because they are closer to the production of goods or services, have two distinct advantages over their supervisors. First, because of time, energy, and resource limitations, principals may not be able to observe all the actions of agents in the execution of a task. Hence, principals are confronted with a moral hazard, or hidden action, by their agents. This is similar to the nature of the doctor-patient relationship. A patient (the principal) goes to the doctor (an agent) because of the doctor’s medical training and knowledge. However, the doctor, because of her expertise, may choose to

recommend certain remedies to the patient, thereby affecting the patient's recuperation. Because the patient/principal cannot know all of the possible remedies or approaches to solving his ailment, the doctor/agent possesses significant influence over the actions of the patient.

A second tradeoff that is associated with the economic view of principal-agent relationships centers on the hidden information, or adverse selection, that the agent has. Because of expertise or knowledge about a situation, agents may not be inclined to reveal their true preferences to principals, and thus agents may hide what their decisions are in dealing with a particular matter. While principals will become aware eventually of the preferences of agents through the outcome produced (Arrow 1985, 37), the advantage that agents have over principals is considerable in the selection of issues delegated to agents. Only after the issue is confronted or dealt with does the principal become aware of potentially different objectives or preferences that the agent had.

One of the main controversies with using the principal-agent model to describe relationships are the problems inherent in such a relationship. How do principals ensure that agents will carry out the orders and wishes? Can agents simply avoid the responsibilities and charges given to them by principals, without consequences? What kind of inducements or incentives do principals use to ensure that agents will follow the mandates given to them? Do agents utilize hidden information, knowledge, or self-interest to get what they want from the principal? As Brehm and Gates (1997) note, the "central problem examined in the model...is that a principal is unable to monitor an agent's information and actions" (25). Through their formal model approach, Brehm and Gates undertake a different approach to principal-agent, namely by investigating "why

and how agents respond to supervision” (28). This study, however, takes a different approach from their work and investigates the first step in the process, that of delegating authority, or granting discretionary power and imposing control and restraints by the principals (legislatures) on the agents (bureaucrats).

If one of the main questions involving principal-agent and issues of delegation centers on the principal’s lack of constant supervision of an agent (the moral hazard issue), then principals may decide to invest limited discretionary power to agents to fulfill their tasks. However, this decision-making process may be somewhat relaxed when principals have resources and knowledge akin to the agents. Principals with resources and knowledge may choose, however, to limit bureaucrats’ actions as well. This may minimize the transaction costs between the two actors. Another critical question raised within the principal-agent model is the agent’s preferences and how those preferences may be hidden or utilized to gain an advantage over the principal. Again, if the principal has the ability to invest the time and resources to investigate and supervise the agent, does the agent wish to incur the antagonism of the principal by not disclosing the agent’s true preferences, when the principal may indeed be able to find out those preferences? These questions are also raised within the context of transaction cost analysis, most notably the hidden information, or transaction costs, associated with the relationship between a principal and an agent.

More recently, scholars have begun to employ a new approach to understanding the legislator-bureaucrat relationship: transaction cost analysis. Like principal-agent theory, transaction cost analysis utilizes an economic analysis of firm operations to understand how organizations develop. Utilizing Coase’s (1937) principle of keeping

activity within an organization, thereby limiting the external costs to the operations, transaction cost analysis developed within political science to understand what is “politically most expedient from [the] legislator’s point of view—that is, in a manner that minimizes the costs of producing policy” (Epstein and O’Halloran 1999, 43).

As defined in a recent article (Huber and Shipan 2000), transaction cost research has certain attributes. First, the approach views political actors as rational optimizers; for example, legislators adopt strategies that maximize their preferences. Second, political actors are constrained by informational problems, or are “boundedly rational in a narrow sense” (Huber and Shipan 2000, 26), in which their ability to achieve ideal outcomes is limited due to a lack of complete information. The transaction cost approach also views political actors as policy-oriented, with a focus on achieving the best policy outcome possible. These three characteristics of the transaction cost approach may seem similar to the rational choice approach, and the two theoretical frameworks do share these characteristics. However, the transaction cost approach differs in two separate regards. First, politicians will “face particular types of transaction costs” in their relationship with bureaucrats. These specific costs usually come in the form of problems in gaining information. Huber and Shipan identify different forms of informational problems, mostly grounded in the recognition that bureaucrats have greater expertise and knowledge over legislators. In addition, legislators may not have the resources or the time to devote as a bureaucrat would. The second trait that differentiates transaction cost to rational choice is that political actors choose institutions and procedures that maximize their preferences, given the fact that they must engage in a “trade-off” between policy

and transaction costs (Huber and Shipan 2000, 27). By utilizing the transaction cost approach, Huber and Shipan make a convincing case that

political scientists need to turn attention away from whether or not control actually exists, and instead should examine factors underlying variation in institutional choices for political control (Huber and Shipan 2000, 26).

As such, the use of transaction cost theory serves as a “means of gauging the flow of information and subsequent behavior of relevant actors” as well as being “quite useful for understanding how [bureaucracies] operate in a larger political environment” (Meier and Krause 2003, 11-12).

New Institutionalism and the Study of State Politics

In their “rediscovery” of institutions, March and Olsen contend that the renewed study of institutions develops the idea that the “state is not only affected by society but also affects it” (1984, 738). Whether a governmental institution is based on fused power arrangements (such as a parliamentary system in the United Kingdom) or a defused power arrangement (such as the United States’ separation-of-power system), scholarship suggests a wide variety of institutional effects. Weaver and Rockman (1993a, 33) note that aspects of institutions, such as bicameralism and committee structures and procedures, may not only impact the legislative branch, but the governing system as a whole.

As suggested above, neo-institutionalists frequently emphasize a macro-level approach. By shifting the focus away from individuals, this perspective examines the “formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or political economy” (Hall and Taylor 1996, 938).

According to historians who embrace this perspective, two different approaches help to understand institutional impacts on politics (Hall and Taylor 1996). The “calculus” approach posits that institutions affect strategically acting individuals, who seek maximum benefits, because institutions affect an individual’s certainty when interacting with other strategic actors. Conversely, the second approach emphasizes the “culture” of the individual, by focusing on individuals not as benefit maximizers, but as individuals who will utilize standard operating procedures and choose a solution when the individual is satisfied and has reached the limit of knowledge on a situation. Applying this perspective to the study of delegation in the states, this approach would focus on explaining power among actors, and in particular, the way that state-level governing structures may favor one group of actors (bureaucrats with knowledge and expertise) over others (legislators who are not necessarily policy experts).

Drawing on sociology, recent developments associated with the institutional approach suggest that culture influences the development of institutions. In fact, sociological institutionalism advances the theoretical concept that, institutions go well beyond organizational processes and structures and embrace networks of “routines, symbols or scripts” (Hall and Taylor 1996, 947-48). Through this revised definition of institutionalism, political actors, including bureaucrats and legislatures, are not guided solely by structures and routines, but that each actor’s identification is wrapped within the confines of an institution. Whenever one confronts a situation, institutions not only help that individual to determine a response, but to recognize the very nature of the situation within the confines of “socially appropriate ways” (Hall and Taylor 1996, 949).

The new institutionalism, principal-agent and transaction costs models detailed above highlight the dynamics that shape interactions between legislators and bureaucrats. In addition, these approaches suggest the need to study delegation at the state level where variation characterizes institutional arrangements. Historical approaches would suggest that legislators elected in states that are traditionally more professional in nature will adopt methods and controls over the bureaucracy that are different from those in amateur legislative chambers. Economic-based theories of institutionalism also point to potential differences among states. States characterized by high levels of legislative professionalism yield legislators who have the resources and institutional capabilities to calculate the responses of bureaucratic agents when delegated authority. Professional legislatures, then, are more likely to structure statutes that delegate authority *differently* than those legislatures that do not operate with comparable resources. One way that professional legislatures may structure statutes is to grant greater levels of discretion, since they have the resources to better check the bureaucracy. They would delegate discretion more, in this light, in order to engage in the “blame-avoidance” game by delegating and thus avoid making a specific policy commitment, and then using legislative oversight resources to blame the bureaucracy when agencies overstep their boundaries. Amateur legislators, recognizing that they lack constant oversight capabilities, may decide to limit their bureaucracies actions in the first place, thus they can go home with the assurance that bureaucrats will not overstep their boundaries. Conversely, professional legislatures may structure statutes that delegate less, because of their superior resources of oversight. Amateur legislatures would then be more likely to delegate discretion because it is too costly for them to engage in constant oversight of

administrators. Sociological institutionalism would suggest incorporating cultural aspects of the state governing system (such as Elazar's three subcultures) to explain legislation action. By utilizing these aspects of new institutionalism, this study can further advance our understanding of how institutions impact the governing process and system in the context of legislative-bureaucratic interactions.

After reviewing the scholarly debates surrounding delegation, this chapter has reviewed the use of new institutionalism, with particular emphasis on the principal-agent model, and transaction cost analysis theories. By integrating these theoretical perspectives, this study establishes a foundation for analyzing the factors underlying state legislative institutions and tests whether varying levels of professionalism influences bureaucratic discretion. By analyzing these theories within the context of cross-sectional state-level analysis, this research may expand, or perhaps revise, current theoretical thinking regarding institutions and principal-agent relationships. The following chapter lays out the usefulness of state-level analysis for answering these questions.

CHAPTER III:

STATE LEGISLATURES AND BUREAUCRACIES

Within the context of American politics, the study of subnational governments, particularly state legislatures, provides a wealth of opportunities to study political phenomena. As scholars have recently noted, states have become “arguably, the world’s most advantageous venue in which to test general propositions about political behavior and policymaking” (Mooney 2001, 1). From investigating innovations in policy issues to political behavior and structures, the study of state politics provides multiple avenues to further the discipline’s exploration. As noted in Chapter II, institutional arrangements are critical to understanding the political process, and with the diversity of institutional arrangements in the states, the study of delegation can be studied further. States provide scholars fertile and diverse grounds to till empirical investigations. This chapter will outline the various practical facets of the relationships between legislatures and bureaucracies. First, an overview of recent historical trends in state legislatures and bureaucracies will be presented. Following this discussion, this chapter will examine interactions between the two institutional actors and draw upon empirical studies of this relationship. This section concludes by outlining the hypotheses to be tested in this study.

During the post-World War II era, state legislatures and bureaucracies have become more involved in policy development and characterized by increasing

professionalism. These trends spurred a noticeable increase in scholarship regarding state politics; yet, as Jewell noted in 1986, the study of state politics was a “barren one in terms of theoretical development” (651). Since Jewell’s admonition, scholars have increasingly undertaken research on state politics. From 1990 to 2003, two hundred articles have been published in leading political science journals focusing just on state legislatures. Yet twenty years later, “there are still major areas of state ... politics that remain largely unstudied” (Clucas 2003, 387), including legislative politics. Theoretical understanding regarding state legislative politics still relies heavily on the theories developed regarding the U.S. Congress. Even with the explosion of research on state legislative politics, “there has been little effort to develop and apply rigorous and integrative theories of legislative behavior to explain state legislative politics and place these narrow questions in a broader context” (Clucas 2003, 388). Building on theoretical perspectives described in Chapter II, this study examines legislative-bureaucratic interactions.

Legislative and Bureaucratic Institutions in State Governments

As the first branch of government, legislatures in the United States serve as the focal point of the political process. As one scholar has described them, state legislatures are “the guts of democracy, where battle is waged and ultimately where consensus gets built” (Rosenthal 1988, 1). Yet, within this arena of political conflict, exist wide differences among the fifty states. This is also true of the branch of government that implements the legislature’s work products. The role of the executive branch, and more specifically the bureaucracy, as implementor may be the site of the final conflict, where

“one deals not with the forest but with the trees—plus the bushes, shrubs, thorns, rocks and blades of grass” (Goodsell 1992, 246). Therefore, legislatures may grant bureaucrats discretion to resolve these conflicts.

With this discretion may come charges of “unelected individuals” creating law without approval from the public’s representatives. As civil servants receive the bulk of their power to implement and execute from statutes, bureaucrats may find themselves either given latitude to exercise discretion in implementing public programs or strapped to specific directives. Some scholars believe that administrators are given “wide discretion in interpreting such terms as ‘reasonable,’ ‘adequate,’ or ‘reputable’ in the statute” (Berman 2000, 180), most notably due to the bureaucratic characteristics of expertise and knowledge within the specific policy area. Since the 1970s, state government bureaucracies have seen their level of importance rise due to the increasing complexity of policy issues (Jenks and Wright 1993). With this increased specialization may come greater political acceptance for allowing bureaucrats to devise the detailed solutions to policy issues.

Other scholars have noted that bureaucracies are beginning to pay a price for this increased power, “and that price is a loss of discretion” (Gormley 1999, 161). With greater calls for accountability, public officials are meeting multidimensional constraints on their actions, including legislative vetoes, sunset provisions, judicial oversight, and managerial reform movements. Bureaucrats are facing these growing forms of control on their daily operations. As explored below, increased oversight may be due to the rise of professionalism in state legislatures.

The Professional Rise (and Decline?) of State Legislatures. As scholars have noted, state legislatures in the United States have experienced dramatic increases in the level of institutional professionalism since the mid-20th century. Legislative professionalism can be defined in several different contexts, including assessments of legislators' salaries, resources and services for legislators, and the number of days that a legislature is in session. In general, most scholars characterize professionalism as "the enhancement of the capacity of the legislature to perform its role in the policymaking process with an expertise, seriousness, and effort comparable to that of other actors" (Mooney 1994, 70-71). This equates to an institution with "substantial capability to oversee and influence the bureaucracies of the executive branch in a way that the amateurs never can" (Price 1975, 3). For most of the 20th century, state legislatures were considered amateur in their activities. For example, only four state legislatures met on an annual basis in 1940 (Sabato 1983). Thomas R. Dye, writing in 1965, compared the legislatures of California and Tennessee:

California—In both demands and compensation the legislator's job is larger than most other states, but he may still suffer because in time and pay it is too much for a part-time job and not enough for a full-time one. The legislature meets five days a week from January to May in odd years and during March in even years, roughly 59 working days per year. Every member gets a modern two-room office suite and a full-time secretary. He can call on a legislative council with a large staff of lawyers and clerks to draft his bills and a large staff of the joint budget committee to review the two-billion-dollar executive budget. Every day he is supplied with copies of every bill with its latest amendments, an up-to-date agenda for both houses, yesterday's journal, and a 'history' showing the current progress of all bills.

Tennessee—A legislator receives a paltry \$600 per year. He meets 4 to 5 days a week January through March in odd years only. He puts in about 28 working days per year. He must work at his desk or hotel room and he can only borrow on occasion a secretary from a state administrative agency. A legislative reference service is available for bill drafting. He

can obtain copies only of general bills and the floor proceedings are not published until after the session is over (174-175).

Ironically, Dye also noted that, in just a ten-year time period, state legislatures “have never functioned so well” as in 1965. In comparing the outputs of the various state legislatures, Dye observed that eleven states produced more than one thousand enactments in 1960-1961, while 23 states produced less than five hundred enactments. Dye attributed the differences between the states to urbanization and industrialization. Surprisingly, though, those states that wrote fewer statutes had higher median school year completion rates and roughly equal median family income levels to those states that wrote more statutes (Dye 1965, 152). During this same period, others found that few legislators believed that their job was that of policy innovator. A 1962 study, entitled *The Legislative System*, found that legislative policy inventors are “probably frustrated men, since seldom does the legislature do anything but respond to the inventiveness of the governor or civil servants or active pressure groups.” The authors noted that a central finding within the study of legislatures during the 1960s is that the first branch of government often “plays the role of referee or broker” and that its primary job is “to balance, to compromise, and to arbitrate between conflicting interests” (Wahlke et al. 1962, 245-266).

Legislators in the 1960s, along with their counterparts in the gubernatorial office, were often seen as “Good-Time Charlies” (Sabato 1983). But, just as governors underwent a transformation (Morehouse 1998), state legislatures experienced a “virtual explosion of reform” in how they operate and are perceived within their governing systems (Dometrius 1999; Sabato 1983). From the midpoint of the 20th century onward,

state legislatures have experienced a strengthening of institutional powers and enhancement of resources (Teaford 2002). Scholars have attributed this renaissance to a number of factors: court-ordered reapportionment that broke the back of rural-dominated delegations and strengthened urban areas in the chambers; strengthened gubernatorial offices (Sabato 1983), which forced the legislative branch to play “catch-up” so as to avoid giving ground to their main institutional rival; and reforms initiated by public interest groups, such as the Citizens’ Conference on State Legislatures (CCSL).

Yet, even before the CCSL issued its challenge, state government leaders recognized the need for updating and changing their legislative bodies. Teaford (2002) notes that the focus of reforms in the 1940s and 1950s was to build a “momentum toward expertise and a career legislature,” while the “tradition of the amateur, citizen legislatures was slowly eroding” (162). Reformers in state legislatures recognized that members had to “meet more often, receive better pay, focus their attention on fewer committees, and benefit from expert assistance” to meet the growing societal demands of the nation (Teaford 2002, 162). Legislative salaries were among the first areas to see a noticeable increase. Fixed salaries, instead of per diem salaries, were used by twenty-six states in 1946; that number grew to thirty-four in 1959. Legislatures also augmented their institutional resources by increasing their staff capabilities and expertise. In 1940, only nine states had legislative research councils; in 1956, thirty-nine legislatures had staff councils to aid in bill drafting and research (Teaford 2002, 165). In addition, most states lightened their legislator’s workload. Between 1946 and 1959, “the median number of house standing committees fell from 39 to 23, and the figure for senate committees dropped from 31 to 20” (Teaford 2002, 164).

It was not until the 1960s that both practitioners and scholars called for greater reforms within state government. One such group, the Council of State Governments (1969), remarked that legislatures were dealing with the following proposals: modernizing the deliberative setting by removing antiquated restrictions on the process of legislating, incorporating new technologies, increasing compensation, and improving the legislators' working environment. In 1971, the CCSL issued a laundry list of reforms that challenged state legislators to enter a new era. These reforms proposed that legislatures should determine their "own procedures, programs, expenditures, and apportionment," in order to be a "separate and co-equal branch of government" to the governor. The CCSL also called for legislatures to "oversee and evaluate" public programs that they instituted.

In response to these open calls for reforms and the desire to keep up with governors and their rise in professionalism, state legislatures instituted several changes. In 1960, nineteen states had annual sessions of their legislature (Teaford 2002). By 1980, three-quarters of state legislative bodies met in annual sessions, with the remaining 14 states regularly holding some type of session each year (Sabato 1983); in 2000-2001, forty states held a session every year (Council of State Governments 2000). Committee responsibilities and resources also changed. With members generally assigned to fewer committees, legislators were able to focus their attention and develop expertise in certain policy areas.

Compensation for legislators also increased, as did institutional resources for the members, including office space, staff, and computerization of the bill process (from drafting to bill information). In 1959, only 15 states provided office space for their legislators. By 1972, over half of the states provided some form of dedicated work space

for legislators (Council of State Governments 1973). In 2002, all states provided some form of office space for both legislators and their committees. Committees hired staff to aid in bill research and drafting, conducting oversight, and assisting with constituency response to administrative actions. Technology use also expanded. In 1966, the number of computers in state governments increased 25-30 percent in just one year. By the late 1970s, computers were used to track legislative histories, to retrieve statutes, and to provide budgetary status reports of pending enactments. Nowadays, it is common for legislators to have computers on their chamber-floor desks.

The Council of State Governments (1973) observed in 1972 that “‘legislative modernization’ is not occurring in isolation, but will be a continuing and inherent necessity as State Legislatures strive to resolve the difficult issues of public policy confronting them” (47). By the early 1980s, observers noted that it was not just in the above-mentioned areas that legislatures sought improvements and modernization; legislatures also improved their own constitutional authority in the law-making process (Council of State Governments 1981). As a result of this modernization period, these reinvigorated and revitalized legislatures sought, and found, a greater voice in state government (Sabato 1983).

Today, scholars frequently categorize legislatures as professional, hybrid, and citizen (2000). Legislatures classified as professional generally pay their legislators anywhere from \$49,000 to \$114,700 a year, meet in session 135 to 361 days out of the calendar year, and have anywhere from 550 to 3,460 staff members working for the institution. The most professional legislative states include California, Michigan, and New York, with the least professional, or “citizen” or amateur legislatures, including

New Hampshire, New Mexico, and Wyoming. These citizen legislatures may not even pay their members (as is the case in New Mexico) or compensate up to \$27,300 (Indiana). These legislatures meet in session 45 to 258 days and have only 20 to 510 staff working for them. The legislatures classified as hybrid, such as Washington, Oregon, and South Carolina, pay between \$10,400 and \$45,200 a year, meet in session 50 to 173 days, and have 60 to 1,960 staff.

Increases in professionalism impact several facets of state legislatures, most notably members themselves. Professional legislatures tend to allow their members greater opportunities to pursue higher office by providing a training ground for statewide and federal office. Legislators in amateur legislative bodies, on the other hand, tend to find fewer opportunities to politically advance themselves (Squire 1988). The rise of professional legislatures has brought about a new generation of legislators and made continued legislative service more practical (Rosenthal 1998).

In addition to opportunities to pursue higher office, professionalization may also aid legislators in fulfilling their motivations for being elected officials. Much has been written on the motivations of elected officials. Perhaps the best known are works on Congress by Kingdon (1989), Mayhew (1974), Fenno (1973; 1978), and Fiorina (1989). In recognizing that all elected officials are goal seekers, each of these four scholars contends that elected officials act in a purposive manner. Kingdon and Fenno argue that members of the U.S. House of Representatives have three basic goals: reelection, influence within the chamber, and good public policy (Fenno 1973, 1; Kingdon 1989, 246). In his work, Mayhew (1974) writes that members of the U.S. Congress are “single-minded seekers of reelection” (5) and that their resulting activities are based on the need

to win at the ballot box. Through such activities as advertising, credit claiming, and position taking, legislators can secure their reelection bids by acting conservatively and pursuing these goals for their constituents. The most beneficial of the three activities, Mayhew contends, is a “judicious mixture of advertising and position taking” (76) while making sure that voters know who is bringing home the bacon. Therefore, legislators engage in activities that will enhance their reelection bids, and lawmakers therefore create and “maintain institutional arrangements which facilitate their electoral activities” (39). This focus on self-interested goals (reelection to office) would be a critical factor in professionalization within the chamber. When perceiving motivations of state legislators, most scholars adopt the “goal-seeking behavior” model, as developed regarding national legislators, for understanding the actions of state legislators.

Beyond the self-interest of elected officials, professionalization has aided legislatures in handling a growing public policy agenda. As time spent in the capitol expanded, the volume of legislation increased significantly. In the 1998-1999 regular sessions, over 39,000 bills were enacted (Council of State Governments 2000, 108-109). Professionalization has also shaped the institutional character of legislatures. As defined by Polsby (1968) in his classic work on the U.S. House of Representatives, institutionalization impacts legislative tasks, specialization, and “the general increase in the provision of various emoluments and auxiliary aids to members” (145). According to Polsby, institutionalization was linked to increased responsibilities, and subsequent workload, of the national government in policy matters, particularly economic policies (1969, 164-165). The same phenomenon can be attributed to state government institutions since the mid-20th century.

Membership stability is also influenced by professionalization. In the 1930s, the average turnover in state legislatures was over fifty percent; by the 1960s, that figure had fallen to around forty percent. By the 1990s, the average turnover in state houses was at twenty-five percent, with state senates experiencing an average turnover rate of twenty-three percent (Hamm and Moncrief 2003). The increased capabilities of the institution and the increased benefits to serving have contributed to the stabilization of state legislatures (Rosenthal 1998). Ultimately, the “incentive structure” may be greater for those in professional legislatures than in amateur legislatures; however, those in professional legislatures face greater demands on their public and private careers (Hamm and Moncrief 2003).

While the perks and opportunities have increased for state legislators, public attitudes of these elected officials have declined. Rosenthal argues that while legislative professionalization and power increased in recent decades, public reaction has grown more negative to the legislative branch. With gubernatorial institutional power rising as well, Rosenthal contends that the public’s perceptions of both institutions often result in conflict, with the singular chief executive claiming victory over a divided bicameral legislature. While the chief executive can often rally public opinion around his or her policy initiatives by using the bully pulpit, legislators are often viewed as divided and bickering individuals, thus earning the public’s disgust. Along with institutional characteristics, other factors can work against legislators and fuel the public’s backlash. First, the differences in constituencies (statewide for the governor versus district-based for the legislators) and constituent needs force different perspectives for each type of elected official. This difference in constituents leads to legislators serving “parochial and

special interests” (Rosenthal 1990, 52), while governors take a comprehensive view of public policy. Finally, unlike governors, who must assume the responsibility and are accountable for all of their actions, legislators can share responsibility and blame within a complicated process. Rosenthal points to three aspects that demonstrate that state legislatures are increasingly becoming like their national counterpart: the decrease in the numbers of committees; greater specialization and policy responsibility; and an increase of parochial interests for their districts. These factors lead Rosenthal (1990) to contend that state legislatures are becoming “congressionalized” (62-63) and thus losing power to chief executives.

Since Rosenthal’s study, other studies have demonstrated the drop in public opinion regarding state legislatures. In 1968, the National Conference of State Legislators found that 50 percent of respondents had a positive view of their legislators. By 1991, that same number had dropped to 28 percent (Ehrenhalt 1992). The most notable expression to date of this antipolitics feeling has been the imposition of term limits on state legislatures. As of 1998, twenty-one states had enacted some form of limitations on service within the state legislature. While research into term limits has begun (Carey, Niemi, and Powell 2001; Carroll and Jenkins 2001; Farmer, Rausch, and Green 2002; Francis and Kenny 1999), the impact is not yet fully understood. Nevertheless, critics of term limits contend that with shortened career opportunities, legislators will not invest the time and energy to become specialists within policy areas. Others argue that legislators may be more prone to pursue specialization within a policy field because they wish to achieve “good public policy” before their service is ended (Brace and Ward 1999, 89-90). As state legislatures have expanded and developed into

more professionally capable organizations, they may have been victims of their own success in the public's eyes.

The Development of State Bureaucracies. As legislatures expanded their resources and capabilities to handle increasingly complex public policies, state bureaucracies grew in size and scope to meet the demands of implementing new policies. Kearney and Sinha (1988) observed that “dual streams of professionalism have developed—the invasion of public administration by the professions, and the professionalization of the vocation of public administration” (572). Jenks and Wright (1993) have labeled state bureaucratic development over the past fifty years as generational development, which reflects on the public policy demands and development over the past forty years. Scholars have documented the wide-ranging approaches of state-level administrative reforms and developments in bureaucratic professionalism (Bowling and Wright 1998; Brudney, Hebert, and Wright 1999; Burke and Wright 2002; Durning 1995).

Similar to their counterparts in the legislative branch, individuals in the executive branch experienced increased levels of professionalization over the past fifty years. One such area is salaries. In October 1956, the Council of State Governments reported that state government payrolls totaled \$367 million. Over forty years later, state government payrolls amounted to \$70.7 billion (inflation-adjusted to 1956). Another area is the level of individuals employed in state governments. In 1966, 2.2 million individuals worked for state governments; thirty-four years later, full-time and part-time state employees numbered 5 million (Council of State Governments 2000). Whereas state bureaucracies have assumed more responsibilities with more professional employees, the 1990s

witnessed a slowing in state employment growth (6.3 percent) when compared to the booming 1980s (24 percent) (Elling 2004, 263).

Scholars have noted that the quality of state bureaucracies has increased as well. Beginning with Sigelman's research in the mid-1970s, measurements have been developed to quantify bureaucratic professionalism. Sigelman (1976) sought to quantify professional characteristics such as expertise, information processing, innovation, and efficiency and combine them with political characteristics such as the integrity of the bureaucracy, political neutrality, and the overall representativeness of agencies. While Sigelman found measures for five out of the seven characteristics, subsequent research was hampered by the lack of consistent data to quantify these characteristics over time. This lack of data leads scholars to construct two measures that capture both state government professionalism and productivity. Barrilleaux (1999) operationalized professionalism as the "ratio of average state employee wages to average private sector wages within a state," while productivity is measured as "the ratio of state government salaries to state government gross domestic product" (107). Interestingly, in the period 1977-1992, overall government professionalism within the fifty states rose, while state government productivity hit a high in 1984 and trended slightly downward afterwards (Barrilleaux 1999).

Beyond the statistical evidence of evolving state bureaucratic professionalism lie the issues of unelected administrators serving as implementors and policymakers. With the federal government devolving power to the states during the 1990s, state bureaucracies are the focal points for determining how programs are administered, solutions are developed, and when programs are considered successful or failures. Elling

(2003) points out that state bureaucrats are more than just merely implementers of public policy; they also shape public policy. Barrilleaux characterizes bureaucracies as having two competing duties, as implementers and policymakers. Whereas citizens accept the former role, most have difficulty with the latter, “even though most observers view it as an empirical reality” (Barrilleaux 1999, 110). Implementation by the bureaucracy often results from the assignment of authority through legislative enactment, with the recognition that the legislature will oversee the agency’s actions. With the growing responsibilities of government, however, and the expanding complexities of public policy issues, state administrators are being called upon to make the policy or fill in the blanks left by legislatures. To ensure a bill’s passage, legislators may delegate policymaking to bureaucracies for a variety of reasons, including political compromises, the recognition of the expertise and information resources that bureaucrats possess, or the attempt to move controversial issues to another actor’s plate.

Issues surrounding discretion accompany discussions of bureaucratic expertise. Because legislatures cannot anticipate every aspect of a public policy issue, some latitude is built into statutory authorization. While some may argue that the only difference between the words “may” and “shall” are three letters compared to five letters, the difference in allowing flexible authority (“may”) versus constraining administrative actions (“shall”) is at the heart of issues regarding discretion. Determining whether an administrative agency “may” have the flexibility or “shall” be required to follow strict orders defines the borders of administrative interaction within the policy-making process. While few studies have been conducted on this question (Barrilleaux and Miller 1988; Schneider 1988), it appears that where public policy is complex in nature, bureaucratic

influences tend to expand in the policy-making arena. In addition, where public policy issues are not ideologically salient to the state's citizenry, bureaucratic influence is more prominent (Barrilleaux 1999).

As legislatures have experienced an "antipolitics era," state bureaucracies also have encountered a backlash in public opinion. State bureaucracies have become "more permeable, more vulnerable, and more manipulable" (Gormley 1999, 140). In addition to increased legislative scrutiny, bureaucracies must contend with managerial and political control by the chief executive, judicially-imposed due process requirements, and regulatory federalism.

Interactions Between State Legislatures and Bureaucracies

From popular measures, such as Proposition 13 in California, to calls by elected officials to "reinvent" government, state bureaucracies have been inundated with attempts to "streamline" their activities. With respect to legislative controls, as professionalism in state legislatures increased, oversight and control of the bureaucracy also increased. Gormley (1999) notes that during the 1970s, legislative bodies "established regular mechanisms for...review" of state agencies, including adopting sunset laws, upgrading legislative audit bureaus, and instituting legislative veto processes of administrative rule making (141-142). More and more, state bureaucracies are faced with having to produce and deliver more services, while facing shrinking budgets, skeptical citizens, and cynical elected officials.

With the simultaneous rise of legislative and bureaucratic professionalism, conflicts have naturally arisen as to the relationship between these institutions. While the

legislature is generally recognized as the dominant of the two (the creator and funder of policy programs), administrative agencies are reluctant to be completely subservient to legislatures due to their power to execute, their expertise and knowledge, and interaction with the public and agency clients on a daily basis. With the demands of complex and wide-ranging policies on everyday activities of citizens, bureaucrats are seen as the front lines of modern government operations. Bureaucratic agencies are specialized entities, with individuals who spend their working hours focused on detailed problems and issues. Usually these individuals are professionally educated and trained for their careers. These individuals expect their technical expertise to be acknowledged by handling complex policy issues for the general public. Conversely, elected officials are loath to hand over complete power once they authorize an agency to implement a policy. “State agencies make too much difference in the lives of constituents for elected officials to allow them to function in splendid isolation” (Elling 2004, 283). In addition, legislative power is often diffused among various institutional actors so that power must be shared, or confiscated, by internal players within the branch of government that initiates the policy-making process (Baumgartner and Jones 1993; King 1997). This is the classic example of the principal-agent model, which characterizes the interaction between two actors. Both actors have sufficient resources (namely formal and informal powers) to countermand the other. For legislatures, the resources that guide their relationship with bureaucracies can be extensive, but at the same time limited by political, structural, and environmental circumstances.

Legislative Powers over Bureaucracies. In addition to creating or destroying an administrative agency through statutory law, legislatures possess formal and informal powers that may be used to influence bureaucracies. The power to amend statutory authorizations, with either restrictive or expansive provisions regarding the agency's jurisdiction and programs, can be an important formal power. In addition, financial authorizations, through appropriations, may determine whether or not an agency can fully implement a program. When exercised by the legislature, this budgetary power can shape agency staffing and personnel. Beyond these formal statutory powers, legislatures have informal powers at their disposal when interacting with bureaucracies. With respect to oversight, legislators can either publicly praise or criticize public administrators, usually with sufficient media attention and scrutiny.

As Elling (2004) notes, "not all (legislatures are) equally well prepared" for oversight of their bureaucracies (283). For example, Georgia's state legislature, meeting only three to four months out of the year and having few staff, may be less willing to delegate broad authority to bureaucratic agencies than a more professional legislature, such as California. Because Georgia legislators are not in town to oversee and monitor the agency's actions throughout the year, they may choose not to delegate authority as widely as California legislators. This relationship may be dictated by differing factors, such as the type of policy area involved. However, little research has been conducted on this particular aspect (Clucas 2003). In state clean air policy, agency influence on policy development decreased significantly when bureaucrats had to contend with a professional legislature (Potoski and Woods 2001). Legislators also possess informal powers when

dealing with bureaucratic agents, such as casework activities for their constituents and media investigations of bureaucratic actions.

Bureaucratic Powers over Legislatures. On the other side, bureaucratic agents also possess sufficient formal and informal powers that can level the playing field when it comes to interacting with the legislative branch. In particular, agencies may undertake policies and initiate activities that potentially benefit or harm legislative constituents. For example, bureaucratic agents devise regulatory structures within a policy field. This is done primarily through agency rulemaking, which is a power granted by the legislature. Rulemaking, at the state level, “means the process for formulation and adoption of a rule,” which is defined as “the whole or a part of an agency statement of general applicability that implements, interprets, or prescribes ... law or policy, or ... the organization, procedure, or practice requirements of an agency” (Asimow, Bonfield, and Levin 1998, 732). These rules and regulations are often described as carrying the weight of law, but just as law making, rulemaking is subject to both internal and external forces (Kerwin 2003, 4). Therefore, agency rulemaking is of great concern to many legislators.

Bureaucrats also possess several other informal resources at their disposal. As Rourke (1984) points out, the informal power of sheer “deference” to senators and representatives aids in the enhancement of a legislator’s standing and reputation. Bureaucrats recognize legislative power, and therefore defer to the wishes and desires of their principals in some circumstances. Secondly, bureaucrats can use their expertise and knowledge to work with legislators and their staff in drafting and preparing legislation, to benefit both the elected official and the administrator (Rourke 1984, 50).

Empirically Studying Legislative-Bureaucratic Interactions

Empirical studies have focused on this relationship in a variety of ways. Drawing heavily on principal-agent models, scholars have examined the relationship between legislative actors and bureaucratic agents. Overall, these studies suggest that structures and constraints imposed by a legislature (most notably the Congress) are designed to address problems with agency behavior, generally regarding hidden information and action. By utilizing monitoring devices and developing ex-ante sanctions, legislators can affect the behavior of administrative agents when acting with delegated authority (Weingast and Moran 1983). By incorporating structures and incentives within statutory delegations of authority, legislators can assure a relationship between what bureaucratic agents do with their delegated authority and how those actions ultimately match the legislator's preferences and goals for the statute (McCubbins 1985). Although studies report different findings (McCubbins and Schwartz 1984; Wood and Waterman 1991), scholars have utilized the principal-agent framework to understand legislative decisions to delegate. For example, Corder (2003), in his study of congressional interaction with federal credit programs, finds that structural control over a bureaucratic agency by Congress has substantial impact on policy. This finding fits with Peters and Hogwood's (1988) conclusions that federal bureaucratic agencies are often unstable in their lifespans, and that legislative action is often an important factor in understanding evolving bureaucratic actors.

Most recently, Epstein & O'Halloran (1999) and Huber and Shipan (2002) extended this line of scholarship on delegating authority. In their national-level study, Epstein and O'Halloran examined major U.S. policy initiatives to determine those factors

that predict when Congress delegates broad authority to agencies or narrowly constrains executive discretion. The U.S. Congress is a model of legislative professionalism: large staffs, high salaries, and nearly yearlong sessions (Mayhew 1974). Congress delegates to federal administrative agencies through two avenues: writing “detailed legislation that leaves the executive with little latitude in implementation or [by writing] vague laws that leave executive actors with broad discretionary powers” (Epstein and O'Halloran 1999, 7).

With their resources, congressmen are often described as being rational in their approach as a singular actor: the collective members allow their preferences to drive their behavior, most notably in an attempt to “maximize” the benefits of delegation to suit their needs, namely reelection (Bianco 2001). One aspect that forces Congress (or any legislative institution) to act (often) as a unitary actor⁷ is the structural flaws of the institution itself, as well as the workload legislators must handle. McCubbins and Schwartz (1984) utilized this unitary approach by exploring when legislators install fire-alarms in agency oversight (thus triggering the institution, whether it be both chambers or just the committees, to investigate) rather than individual legislators serving on police patrols to oversee agencies. McCubbins and Schwartz argue that prior to their theoretical approach, most scholars held that members of Congress neglected their institutional responsibility to oversee bureaucratic activities. Congressmen typically engaged in police patrols, which were both time- and resource-consuming. Police patrols, according to McCubbins and Schwartz, are “comparatively centralized, active, and direct ... with the aim of detecting and remedying any violations of legislative goals and, by its surveillance, discouraging such violations” by the executive branch (166). McCubbins

and Schwartz argued that instead of going on patrol, members of Congress may elect to utilize fire alarms to signal problems within the bureaucracy. Within this method, fire-alarm oversight is “less centralized and involves less active and direct invention” (166). Instead of legislators engaging themselves in oversight, they enable outside actors (interest groups, for example) to investigate agency actions. If outside actors find agency decisions that violate congressional goals, those outside entities can seek remedies “from agencies, court, and Congress itself” (166). Giving outside actors the opportunity to signal a problem reduces the time and resource commitment that congressmen may need to allocate, while at the same time still holding to their oversight responsibilities. Therefore, Congress acts as a singular actor when it comes to oversight activities.

This unitary action may also be due to bicameralism, which (along with the inclusion of the president in the law-making process) often leads to gridlock. Individual legislators are incapable of resolving policy differences; therefore, legislators (through a majority vote) delegate the problem to another institutional actor, namely the bureaucracy (Huntington 1965). This has led to the theory of “abdication,” in that legislatures “repeatedly forfeited the central policy-making role that they might otherwise have played by turning the job over to others” (Kiewiet and McCubbins 1991, 3). However, legislatures are able, by turning the job over, to avoid potentially destructive gridlock that will cause the entire institution to come to a standstill. This being said, in instances where delegation affords advantages aimed at securing reelection that exceed the costs of assigning discretion to unelected agents, Congress would be expected to delegate to administrators. Conversely, when the costs exceed the advantages, Congress is more likely to constrain administrators’ discretion.

After outlining a formal model and an empirical test, Epstein and O'Halloran's analysis suggests that discretion and delegation depend on the costs and benefits to the legislature. When policy areas require high levels of information and expertise, Congress (again, by majority vote) delegates more authority to bureaucratic agencies. In addition, legislative institutions and their interaction with the executive branch affect delegated authority. Whenever different parties control the government, delegation by congressional committees is affected: conservative chief executives beget liberal committees, which constrain delegated authority. In addition, sometimes legislatures seek to by-pass their own institutional actors. Epstein and O'Halloran found that "power not reserved to committees can instead be delegated to the executive, to experts within executive branch agencies with considerable technical knowledge of their own" (1999, 236).

With these results, Epstein and O'Halloran present a "sophisticated and compelling argument" regarding the use of delegation by legislatures to bureaucratic agents (Dietz 2000, 104) and the empirical approach to understanding this phenomenon. Their focus is solely on national-level institutions; they make a brief reference to different governing systems in their afterword, in a comparative sense, but make little reference to existing systems within the United States that could be used to further test their theories, such as state governments.

Epstein and O'Halloran's study represents a new approach: transaction cost analysis. Another set of scholars have used this approach to understand legislative-bureaucratic interaction as well. Huber and Shipan (2000) used transaction cost analysis in analyzing both presidential and parliamentary systems of government when it comes

to delegating authority. Their three models—a “parliamentary” model, a “veto” model (based on a presidential system), and a “bicameral” model—describe the differences among various nations and state governments in the United States. Using the motivation of policy consideration, Huber and Shipan focus on how various actors operate within the three models when it comes to delegating authority by legislative entities. Much like other political scientists (Gill 1995; Moe 1984), Huber and Shipan utilize a formal-model framework in their comparative analysis to describe relationships between elected officials and administrators and apply the assumptions of the transaction cost approach to these relationships.

Huber and Shipan’s works (2002; Huber, Shipan, and Pfahler 2001) used state legislatures to theorize about the conditions under which legislators utilize detailed legislation to limit bureaucratic power. Their research focused on state acts dealing with Medicaid enacted during a two-year period in forty-eight states. Their approach utilized a word count of statutes to determine delegation of authority (greater length of the statute results in greater restriction of authority). They conclude that legislatures with unified political control of both chambers that are opposite of the governor’s party tend to have greater restrictions on delegation. They also found that the higher the legislative compensation, the lower the level of discretion (Huber, Shipan, and Pfahler 2001, 339-340). In their analysis, state professionalism (as measured by the annual salary of the department head, the average pay for all noneducational state employees, and average state employee pay in the health care area) was not statistically significant (Huber, Shipan, and Pfahler 2001, 342). Their data were limited, however, in that they cover only a two-year period and only one narrow policy area. In addition, by simply conducting a

word count on the statutes, Huber et al. may have missed sections of statutes that did, or did not, delegate authority. This study seeks to expand the empirical analysis by Huber and Shipan to cover a slightly wider policy area, as well as differentiate within the statutory language those sections that do or do not delegate discretion, as well as sections that constrain bureaucratic agents' actions.

Hypotheses:

Using the existing literature and theoretical considerations, this study now presents a set of hypotheses that focus on state legislative-bureaucratic interactions.

Internal Dynamics: Characteristics of Legislatures and Bureaucracies.

Hypothesis 1—Legislative Professionalism:

One of the main questions of this study is whether delegation of authority and discretion by legislatures to administrative agencies, within the broader context of welfare policy statutes, depends on the professionalism of the legislature. Following the reformist calls of the 1960s, most state legislatures underwent a comprehensive renovation. From increasing their time in session to employing more legislative staff to restructuring the chambers (both physically and constitutionally), legislatures have witnessed an increased capacity. With increased levels of professionalization, however, dramatic differences still remain among the fifty legislative institutions at the state level. For example, Table 3.1 demonstrates the polar extremes when it comes to legislative professionalism. California's legislature is generally regarded as the most professional

state legislature in the nation, while New Hampshire is characterized as having the most “amateur,” or “citizen” legislature.

Table 3.1
Polar Extremes of Legislative Professionalism

State	Potential Compensation	Calendar Session	Legislative Session	Permanent Staff
#1. California	\$114,700	257	128	2,510
#2. Michigan	\$79,600	337	87	1,360
#49. N. Mexico	\$0	48	--	50
#50. N. Hampshire	\$100	312	24	140

Source: Hamm and Moncrief (2004), 158.

When it comes to drafting legislation and delegating responsibility for policy issues to bureaucratic agents, legislative professionalism would have a profound impact on the institution’s decisions. As Waterman and Meier (1998) explain, the ability of legislators to monitor bureaucratic actors is at the heart of information asymmetry. As is often described in principal-agent relationships, the agent has an advantage over the principal when it comes to information and expertise. However, this relationship may not be so disadvantageous when the principal is a professional institution. When an institution is rich in resources, time, and capacity, that institution may decide that it has the proper means to be considered equal to its bureaucratic counterparts. In the principal-agent relationship, the principal envisions itself as capable as the agent is in committing resources and energy to solving public policy issues. Therefore, professional legislatures may choose to delegate discretion to bureaucratic agents because legislators have the

institutional capacity to check bureaucratic actions when they are devising programmatic initiatives. This would fit with the notion, as described by McCubbins and Schwartz (1984), of “police patrols” by legislatures over their bureaucracies.

Conversely, legislatures that are classified as amateur may, out of a collective self-interest, decide not to delegate broad discretionary powers to their bureaucratic agencies because legislators know that they will not be able to constantly check up on their agents. Amateur legislatures also recognize that their institutional capabilities are limited, such as having expert staff and resources to draft legislation that balances discretion with necessary constraints. Therefore, amateur legislatures may narrow the discretionary delegation to bureaucrats in developing programming and policy initiatives in order to limit bureaucratic drift and shirking of responsibilities. Therefore, a prospective hypothesis would be:

H₁: The higher the level of legislative professionalism, the greater the discretion granted to administrative agencies.

Hypothesis 2—Agency Professionalism:

Legislators may look to bureaucratic professionalism in determining whether to award discretion in policy matters. Many states have seen not only their legislatures become more professional, but their bureaucratic agencies as well. Even though most interaction between citizens and bureaucrats occurs at the state and local levels, scholars have noted that even “contemporary state government decisions ... are often of low interest or visibility to the public” (Barrilleaux 1999, 97). Yet, state bureaucracies have considerable influence and power over modern-day public policy through their roles as

policy implementers, policymakers, and repositories of knowledge and information.

Whether professional, hybrid, or amateur, legislatures may recognize this level of expertise and be more likely to delegate authority to professional bureaucrats. Therefore, this study tests the proposition that:

H₂: The higher the level of professionalization within a state bureaucracy, the greater the discretion granted by the state's legislature to the bureaucracy.

Hypothesis 3—Agency Leadership:

Along with legislative and bureaucratic professionalism, the leadership of administrative agencies may influence legislative decisions to delegate. Agency leadership may be either appointed or elected within state governments. Some states include the legislature in the selection of agency leaders, while other states grant this power solely to either the governor or to a board or commission overseeing the agency. Because appointed leaders may be subject to legislative confirmation, legislatures will be more willing to delegate authority to an agency whose director is subject to their approval. The power of confirming appointments gives the legislature “its initial grip on the administration of government” (Rosenthal 1990, 171) and chief executives must take into account legislative demands and desires that go along with their implicit power to reject. As more governors gain power to appoint cabinet-level officials, they are sharing this power with the legislature, typically the upper chamber.

Conversely, agencies with elected officials will be held to the same standard as governors, particularly when agency leaders are from the opposite political party that

controls the legislature. However, as Keefe and Ogul (2001) observed, the power of confirming appointees in the states are “so varied as almost to defy description” (436). Little scholarship has investigated the appointment and confirmation process within the states or how legislatures react to gubernatorial appointments. Similar to theoretical assumptions regarding members of Congress and the president (Krutz, Fleisher, and Bond 1998; McCarty and Razaghian 1999; McCarty and Razaghian forthcoming), state legislators may be motivated by similar goals: “policy, personalities, legislative prerogatives, and building one’s electoral fortunes” (Keefe and Ogul 2001, 437). Having a voice in the selection of agency leadership may allow legislators to achieve various goals. Therefore,

H₃: State legislatures are more likely to grant discretion to agencies with appointed leaders who are subject to legislative confirmation.

Hypothesis 4—State Size

The size of the state may have an impact on the delegation of discretionary power and authority to the bureaucracy. While not empirically testing this notion, Voigt and Salzberger (2002) contend that “one might expect a positive correlation between the size of the polity and the width of internal delegation,” and that “bigger countries, usually with bigger legislatures, may suffer more from collective decision-making problems and hence will seek more delegation” (301). While their approach looked at nations interacting with each other within international bodies, this concept may also apply to state legislatures and bureaucratic agencies within the United States. For example, California may delegate greater amounts of discretion because of its relative size (in both

governmental entity and population), over a state such as Montana, which has a smaller population size and thus a smaller need for governmental activities. Therefore,

H₄: The greater the population of a state, the greater the discretion granted by the state's legislature to the bureaucracy.

External Dynamics: State Environment and Characteristics.

Hypothesis 5—Divided Government:

Given that theoretical development and empirical tests of delegated authority have centered on the U.S. Congress, an initial question arises: can theories and findings regarding national political institutions be applied to state political institutions? One important theoretical supposition of national level findings concerns the impact of divided government (Bond and Fleisher 2000; Fiorina 1996; Mayhew 1991). Divided government served as a critical factor in Epstein and O'Halloran's work at the national level. Divided government tends to bring about less delegation, particularly when one party controls the legislature and the opposition party controls the executive branch. While divided government has recently become the standard rather than the exception at the national level, state governments have experienced divided government more frequently in the post-World War II era (Fiorina 1994). However, at the state level, party control is not simply dichotomous. For example, a Republican governor who faces a legislature with 55 percent of the seats controlled by Democrats will have a different experience than a Republican chief executive facing a 75 percent Democratically-controlled legislative branch. Whenever divided government is presented, nevertheless, the legislature will be less likely to grant discretion to the executive branch.

H₅: As partisan differences decreases between the legislative and executive branches, the greater the discretion granted by the state's legislature to the bureaucracy.

Hypothesis 6—Policy Liberalism of the State:

Other factors influence the choices made by state governments in delegating authority. For example, the culture of an individual state may exert an influence on the type of social policy and extent to which a state involves itself in welfare activities. Political culture is seen as one factor that may influence governmental policy. Daniel Elazar's work on the three strands of political culture within the United States is still considered among the leading works that explore political culture. Under a moralistic political culture, social policy may be emphasized more heavily than in the other cultures (individualistic and traditional), due to the moralistic emphasis on the government's role in advancing public interest. By focusing on the common good, governments in moralistic states may view health and welfare policy as being the tools to advance the common good of its citizens. Conversely, states with individualistic or traditionalistic political cultures tend to view government in a limited or suspect manner, and therefore social policy may not have high priority in policy choices (Elazar 1984).

Political culture, therefore, may serve as an important factor in determining the overall delegated authority given to bureaucracies by the legislature. With a state that is more liberal in its policies and ideology, state legislatures may delegate more authority to their bureaucracies to oversee these expanded governmental programs. Conversely, a state that is more conservative in ideological behavior would seek to reduce government

and its administrative activities. As Erikson, Wright and McIver (1993, 136) discovered (with some hesitation as to the statistical impact), Democrats elected to state legislatures tend to enact more liberal policies. Conversely, when a state is more conservative in both policy and ideology, delegated authority may be less to administrative agencies. This study proposes, therefore, that:

H₆: The more liberal a state's policy environment, the greater the discretion granted by the state's legislature to the bureaucracy.

Hypothesis 7—Delegation Type

With the strictness of the constitutional separation of powers found in many states, delegation may be based on the type of non-delegation standard in each state. Rossi's classification (1999) is based on three categories: "strict standards and safeguards," a "loose standards and safeguards," and a "weak" version of delegation. States with a "strict" approach to delegation will most likely be ones to delegate little discretion to their bureaucracy, due to the fact that their courts have strictly implemented the non-delegation doctrine. Conversely, those states at the opposite end of the spectrum (a "weak" standard) may make a general statement and delegate broad authority to their legislatures without fear of judicial retribution. Therefore,

H₇: States classified as "strict" will delegate less discretion than states classified as "loose" or "weak."

Hypotheses 8 & 9—Partisan Competition within the State

Beyond a state's political culture and ideological orientation, policy decisions may be influenced by other wide-ranging factors, most notably ones that focus on political characteristics and socioeconomic factors (Gray, Hamm, and Jacob 1999, 5). Within these two broad categories, states constitute a spectrum of differences. States offer diverse political characteristics that may influence policy decisions (e.g., the influence of political parties and interest groups, the formal and informal powers allocated to government institutions, the impact of public and elite opinions, as well as other concepts). In addition, socioeconomic factors affect state policy making. These factors include the size and composition of its population, the level of urbanization, the availability of physical and natural resources, the workforce, and economic activities. When modeling decisions concerning social policies, both political and socioeconomic factors should be considered and evaluated. In regards to political characteristics, it is expected that:

H₈: As competition between political parties decreases, the greater the discretion by the state's legislature to the bureaucracy.

In addition, states under Democratic control would be expected to delegate more authority to bureaucrats, while states with two-party and Republican control will delegate less authority. Democrats would delegate authority because, in general, Democrats trust government to deal with public policy issues, whereas Republicans, distrustful of government activities, would seek to limit bureaucratic power. As Republican President George W. Bush has declared, welfare programs should have a focus on "compassionate

conservatism” in which government agencies turn their welfare program responsibilities over to private, sometimes faith-based, initiatives. This would mean that government should be limited in terms of developing and administering welfare programs. As Keiser (2003) notes of state government activities regarding SSI payments, “Democrats have been more supportive of the program, while Republicans have been more concerned with reducing the rolls and federal involvement” (220). It would seem unlikely that modern-day Republicans would *actively grant* broad discretionary powers to government agencies to create and administer welfare programs. Barrilleaux and Brace (1999) find that “Republican party control of state government produces policy changes that *reduce the scope of government*, while Democratic Party control produces policy changes that *expand the scope of government*, all other things equal” (272). In states with a competitive two-party system, Democrats would have to compromise with their Republican counterparts to pass legislative measure; they would be less likely, then, to achieve whole scale delegation of authority to administrative agencies. Therefore,

H₉: The higher the Ranney Party Control Index (i.e., more Democratic than Republican), the greater the discretion granted by the state’s legislature to the bureaucracy.

Hypothesis 10—Urbanization of State

Greater urbanization of a state will call for greater services by state government, according to Wagner’s Law (1877). Wagner suggested that government grows due to the influence of industrialization and urbanization. While recent empirical analysis of Wagner’s Law exhibits mixed results (Boix 2001; Garand 1988; Lowery and Berry

1983), Kapeluck (2001) does find support for the notion that highly urbanized states have larger public sectors. With larger public sectors, legislatures will need to delegate more authority to bureaucratic agents. Therefore, in terms of socioeconomic characteristics, it is expected that:

H₁₀: As urbanization increases, the greater the discretion granted by the state's legislature to the bureaucracy.

Table 3.1 lists the hypotheses, based on whether the factors that would have a higher or lower affect on delegated discretion:

Table 3.2
Hypotheses and Expected Effects

Independent Variables:	Expected Effect on Delegated Discretion:
Legislative Professionalism	Positive
Agency Professionalism	Positive
Agency Leadership Appointed with Legislative Confirmation	Positive
Population Size of the State	Positive
Level of Partisan Division With Legislature	Negative
Level of Partisan Division between Legislature and Governor	Negative
Policy Liberalism	Positive
Presence of "strict" non-delegation judicial interpretation	Negative
Level of Party Competition within State	Negative
Level of Democratic-Party Control	Positive
Level of urbanization	Positive

All of these hypotheses are specifying a directional effect, therefore a one-tail test will be utilized in determining statistical significance. In addition, multicollinearity may be an issue, considering that hypotheses eight and nine include the presence of Democrats in the legislature. This will be analyzed in The next chapter outlines the quantification of these hypotheses, as well as an explanation of the data source, coding methods, and statistical analysis used to test these hypotheses.

CHAPTER IV:

DATA AND METHODS FOR STUDYING THE RELATIONSHIP BETWEEN STATE LEGISLATURES AND BUREAUCRACIES

Having discussed the relationship between the state legislatures and bureaucracies and advanced several hypotheses regarding the delegation of discretion, this study now discusses the data used to empirically test these hypotheses. The data were collected within the context of welfare policy, which has been called one of the “most important state programs” of recent time (Rom 2003, 318). A brief overview of welfare policy will be presented, followed by a discussion of the observation strategy, including measures.

Delegation and Welfare Policy

State governments are responsible for a multitude of policy areas that affect their citizens on a daily basis. From education to criminal justice, from health programs to transportation, from economic regulation to economic development, state governments have seen their responsibilities over policy areas increase rapidly since the 1960s. New responsibilities, along with revitalized traditional ones, have transformed state governments. For example, with the replacement of the Aid to Families with Dependent Children (AFDC) by the Temporary Assistance for Needy Families (TANF) program in 1996, states have been granted more freedom by the national government to experiment and institute new programs in welfare policy (Rom 2004). This is based on the idea that

states serve as “laboratories of democracy” to experiment with novel and different approaches to public policy issues.

Within the venue of social policy, state governments have become increasingly important to the administration of programs geared towards the welfare of their citizens. Welfare policies encompass a wide range of activities at the state government level and are often tightly connected within the broad concept of “social policy.” As observed by some scholars, these programs are less closely coordinated (Rom 1999), thus reflecting on the diversity of innovation within the states. For both the federal and state governments, social policy is a significant financial investment. In 1993, federal, state, and local governments spent more than \$1.5 trillion dollars on social programs, with state and local governments accounting for nearly 40 percent of health and welfare activities (Rom 1999). By 1998, “American governments spent nearly \$400 billion” on these programs, with state and local governments providing “nearly 30 percent of these welfare expenditures” (Rom 2004, 319). Indirectly, most government programs affect the health and welfare of their citizens. With the expansion of the national government under the New Deal and the Great Society, state governments were often used as the administrative arms of these federal programs (Walker 2000). Since the 1980s, however, with the federal government withdrawing from continued expansion of social policy, state governments have served as the primary vehicle for dispensing social welfare. These social programs are designed to “either transfer income or provide services to individuals to improve the quality of their lives” (Rom 1999, 350). As one scholar notes, state governments tend to take the lead in developing and expanding policy initiatives during periods of “conservative (retrenchment and contractive) periods,” while the national

government has been the center of attention during “liberal (prospending and expansive) periods” in American history (Nathan 1990, 241). This description fits the era following the election of Ronald Reagan as president.

With the advent of the Reagan revolution of 1980 and his call for a second “New Federalism,” state governments have enjoyed a revival in policy innovation. Along with Reagan’s call for less government at the national level, most states enacted important shifts in several policy areas, particularly within social policy. With reforms ranging from initiatives that control the costs of medical care to experimenting with “new-style workfare,” state governments led the way with bringing about important policy developments, well before the “devolution” era of the 1990s. It was the 1990s, however, that saw radical changes in many welfare programs. With the advent of the Temporary Assistance for Needy Families (TANF) program by the federal government and other reform measures mandated by the federal government, state governments were impacted directly by federal government initiatives to, as President Clinton declared, “end welfare as we now know it” along with the 1995 Republican takeover of Congress based on the “Contract with America.” These changes at the federal level had a dramatic impact on welfare policy making in the states. As Rom notes, welfare policy is shared amongst the states and the federal government (thus another example of the principal-agent relationship). Along with being constrained by federal laws, states “must provide certain services and follow specific rules” while also recognizing that they “cannot adopt proposals they prefer if these conflict with federal law” (Rom 2004, 324). With the new rules regarding TANF, the federal government’s influence on state welfare programs is substantial. During the late 1990s, TANF allowed state governments more flexibility in

their welfare programs, most notably in not characterizing TANF as an entitlement. While states were granted flexibility in the block grant format, the federal government did impose requirements on spending the money. Nevertheless, states found greater freedom to structure their welfare programs, and caseloads declined “substantially” during the late 1990s (Rom 2004, 329). Other impacts on state welfare policies during the 1990s came from interstate competition, in which states sought to become distinctive in their welfare programs (Rom 2004, 325). Along with the demands by the federal government and the competitive nature of states, welfare programs were affected by the increase in managerial and technical capacity of states to expand and adopt innovative approaches (Leichter 1997; Nathan 1990).

State governments have found themselves to be the center of attention when it comes to welfare policies and programs. With the shifting of responsibility for domestic programs from the federal to state governments, state governments have “developed widely varying approaches” to select policy arenas such as welfare (Winston 2002, 9). Welfare programs were created to provide financial and income support for those meeting basic requirements. The most notable, and costly, are cash assistance programs, which include TANF; foster care; supplemental benefits and the administrative costs of Supplementary Security Income (SSI) (Rom 2004, 324); and other general assistance programs. In addition, states allocate financial resources for food benefits, housing, social services, jobs and training, and energy assistance (Rom 1999, 351). In designing and administering social welfare programs, state governments have numerous choices and venues to pursue their policy initiatives. This policy area serves as an ideal contextual field to empirically test the relationship between various state legislatures and

their bureaucracies. In defining welfare policies for coding purposes, this study uses Rom's general definition of welfare programs: "[s]ocial welfare programs either transfer income or provide services to individuals to improve the quality of their lives" (2003, 319).

Political scientists have used these programs as policy areas for empirical studies and analyses (for example, see Allard and Danziger 2000; Berry, Fording, and Hanson 2003; Blank 1998; Brown 1995; Carmines 1974; Dawson and Robinson 1963; Figlio, Kolpin, and Reid 1999; Jennings 1979; Levine and Zimmerman 1999; Lieberman and Shaw 2000; Moffitt 1992; Peterson and Rom 1989; Winston 2002). These studies, and others, utilize welfare policies to empirically test and investigate different institutional, policy, and political behavior questions. The use of one specific policy may limit, however, the generalizability of the findings across other policy areas. For example, in some policy areas such as education, legislators may want bureaucrats to specifically implement programs without using bureaucratic expertise to develop the programs. In the early 1990s, Republican legislatures and governors adopted educational reform acts that required charter schools to be implemented (Wong 2004). In other policies such as welfare, legislators may wish to utilize bureaucratic knowledge and expertise.

This study only seeks to understand delegated discretion within the specific context of welfare policy. Following Rom (2003), this study will focus on a select segment of welfare policy: those programs that deal with cash assistance, food benefits, housing benefits, social services, jobs and training, and energy assistance. Health programs are not included in this analysis to focus on one exclusive policy domain. Recognizing that legislators may utilize other measures, such as appropriations acts, to

delegating discretionary authority, this study focuses exclusively on welfare policy-specific statutes enacted into law. By focusing on legislation enacted across sixteen states, this study will broaden the focus of Huber and Shipan's work.

Data Collection and Coding

Using Epstein and O'Halloran's coding structure, this project focuses on the amount of delegation and discretion found within provisions of enacted legislation (unit of analysis: legislative enactments ("acts" or "statutes")). Using the Squire index of legislative professionalism (1992a) and a ranking as compiled by Hamm and Moncrief (1999), the states were ranked by the degree of Squire's professionalism index and divided into regions (Northeast, South, Midwest, and West) to ensure an adequate sample across the nation; every third state was selected. While it would have been analytically superior to use all fifty states, the amount of legislation to code would have been prohibitive in terms of resources. By selecting every third state within regions, the opportunity to select states that represent the "most professional" against the "most amateurish" of legislatures is beneficial to study. If the "most" professional and amateur legislatures are selected, scholars can then gain a sense that if delegated discretion occurs in one or the other, then it can be assumed that the other states in that particular category would behave as their counterparts would. Out of these sixteen states selected, three states represent the professional state legislatures: California, Illinois, and Massachusetts. Nine of the states represent hybrid legislatures: Alabama, Iowa, Kansas, Connecticut, Florida, Maryland, South Carolina, Colorado, and Oregon. Finally, four states are often classified as amateur legislatures: South Dakota, Rhode Island, Georgia, and New

Mexico. To illustrate the diversity within these states selected, Table 4.1 presents the various factors that Squire uses in arriving at his professionalism index.

TABLE 4.1 HERE

The years selected represent an era when legislative politics were coming under fire from citizens, who began imposing restrictions on state legislators (Brace and Ward 1999). According to the National Conference of State Legislatures, between 1968 and 1991 those respondents who rated the work of their state legislators positively dropped from 50 percent to 28 percent. At the same time, however, the federal government expanded the devolution movement to allow more policy freedom at the state level. This project will focus on a time period when both limitations and expanded opportunities affected state legislative politics, and possibly the delegated authority to administrators.

The enacted legislation was gained through Westlaw's State Legislative Enactments Database for three years (1998-2000). Within this three-year period, the states selected enacted over 20,000 different statutes in a wide number of policy areas. In order to manage this load effectively, welfare policy was selected to ensure a manageable time for coding and analysis. Each states' statutes were downloaded into Microsoft Word and then sorted for statutes pertaining to welfare policy. As one scholar has described it, social welfare policy is "concerned with allocating social resources in order to improve individual and community well-being" (Dobelstein 2003, 31). Within this context, Dobelstein classifies the following as social welfare policy: income maintenance, housing, child welfare, and older adults (see Chapters 5, 7-9). The choice of welfare policy was made with the recognition that this policy area was heavily debated during the late 1990s. Utilizing these areas, plus the ones identified by Rom (Rom 2003), statutes

within the sixteen states were selected for coding purposes. A citations list was created from the statutes enacted for each state in each year, and the Westlaw Statute Name citation was used to select the welfare statutes. Table 4.2 lists the numbers of social welfare statutes enacted in the three-year period under consideration.

TABLE 4.2 HERE

Coding of Statutes. Once the statutes were identified, a coding system was created to classify each section within the statute. Three broad classifications were developed, utilizing Epstein and O'Halloran's (1999) approach: "discretionary," "non-discretionary," and "constraining." Each category is defined by classifying certain language or statutory policies within the categories. Within each category, the different types are equally weighted; for example, the authority to create demonstration projects and the ability to issue waivers (both considered discretionary language) are equal in weighting in the coding scheme. To attempt to give different weights and assume qualitative differences among the various types within each of the three categories is beyond the scope of this project. Further analysis and development would be warranted before making decisions regarding which of the various types warrant greater emphasis in empirical analysis.

The discretionary classification was used whenever the statutory language creates a new program or allows the bureaucracy to utilize its own judgment in exercising its authority. Most notably, the language of the statute uses the word "may" or fails to enumerate conditions or restrictions on bureaucracy. For example, in California's "Child Support—Administration and Implementation" act (Chapter 480) of 1999,

The director *may* delay implementation of any of these regulations in any county for such time as the director deems necessary for the smooth

transition and efficient operation of a local child support agency [emphasis added].

By stipulating that the agency may utilize its discretion in implementing regulations, the California legislature recognized that there may be circumstances that require the expertise and knowledge of the bureaucracy to handle. Among these discretionary powers that are often delegated to bureaucrats are: authorization of adjudicatory power; ability to create or change decision-making criteria; leasing authority; the right to bring legal action; rule making authority; or the ability to issue waivers or enter into contracts.

Other forms of discretionary powers include the following:

- granting authority to prescribe forms and agreements;
- giving appointment power to the bureaucratic agent;
- granting the power to borrow;
- granting power to designate;
- extending discretionary authority that was subject to expiration;
- authorizing bureaucrats to create/revise demonstration projects;
- granting power to grant easements or utilize eminent domain;
- authorizing the power to hire individuals;
- granting the power to establish fees or charges for bureaucratic services;
- allowing bureaucrats the power to conduct hearings;
- granting bureaucrats the authority to grant immunity;
- authorizing the power to conduct investigations or inspections;
- establishing grants and loans where the agency determines the size of the award and/or the recipients;

- granting the right to legal action, such as issuing subpoenas, bringing suit or intervening in an existing suit, or the setting of penalties and fines;
- granting the ability to issue waivers or enter into contracts; or,
- establishing the creation of a new commission, board, or agency.

Within the “non-discretionary” classification, the statutory language often stipulates requirements or conditions on the bureaucracy when exercising authority. Most notably, the statutory language uses the term “shall” whenever it delineates the authority to act by a bureaucratic agent. For example, the New Mexico legislature passed the “New Mexico Works Act” in 1998. In this act, the legislature reformed the welfare process in the state. Part of the act mandated that

The department *shall* meet semi-annually with a participant to review and revise his individual responsibility plan [emphasis added].

Within this language, the department is required to carry out the legislature’s wishes. Among the types of statutory language that are included in the non-discretionary category are requirements on contracting power; definitions of terms used when the statute; new programs subject to baseline requirements; rulemaking authority with baseline requirements; adoption of standards with base-line requirements, and record-keeping requirements. Based on Epstein and O’Halloran’s coding approach, delegation is *not* considered to be any of the following:

- authorizing appropriations or funds for a program;
- requiring agency reports, studies, or information;
- constraining or restricting appointment power;
- specifying criminal violations;

- establishing demonstration project requirements;
- delineating employee duties and reporting requirements;
- establishment and requirements of funds;
- requiring hearings on appeal of bureaucratic decision;
- writing introductory sections, preambles, legislative findings, and purpose sections;
- establishing information requirements;
- specifying legal action;
- creating legislative commissions/committees to oversee or interact with agency;
- granting legal immunity extension to non-bureaucratic actors within the policy field;
- establishing licensing power requirements;
- listing procedures for commission members (selection, compensation, vacancy);
- requiring legislative notification;
- detailing payment requirements;
- specifying permit requirements;
- detailing fines and penalties;
- requiring rate-making with baseline conditions;
- establishing severability requirements;
- transferring authority from one executive branch actor to another without increasing the authority;
- requiring evaluations, recommendations, assessments, or audits; or,

- enacting legislation approved under the “local delegation rule” (acts in which the law affects a specific local political subdivision, and where the representatives from that subdivision all agree, the act is generally adopted without opposition).

“Constraints” are classified as restrictions on bureaucratic authority or actions (Epstein and O’Halloran 1999, 102-105). For example, the legislature may require “cost-benefit analysis” on the bureaucracy prior to implementing a program or project.

Another type of constraint may center on legislative approval prior to implementation or the use of a legislative veto. Other forms of constraint may include the following:

- appeals procedure requirements (the agency must follow explicit appeals procedure outlined within the act);
- appointment power (limits on whom the governor can appoint);
- burden of proof standard (the requirement that an agency meet a “burden of proof” regarding an agency action or regulation (McCubbins 1999, 35));
- compensation (the agency may compensate for adverse impact of an agency action);
- consultation requirement (agency must consult with other agencies or private interests prior to agency action);
- direct oversight (use of legislative oversight audits, ombudsmans, or joint legislative committees (Asimow, Bonfield and Levin 1998, 461-462));
- executive action required (separate agency or gubernatorial approval prior to agency action);

- exemptions (group(s) or class(es) of individual(s) may be exempted from the regulation by the act);
- judicial oversight (the use of the judicial branch to oversee and review agency actions (McCubbins 1999, 36));
- legislative action required (legislature must approve prior to agency action);
- legislative veto (either the entire legislature or a single legislative committee may exercise veto authority over agency actions or regulations (Asimow, Bonfield and Levin 1998, 453));
- public hearings requirement (the act may call for specific public hearings, other than those called for in the state's administrative procedures act (APA));
- reporting requirement (agency must report to legislature following agency action);
- requirement for adoption of future federal laws within the policy area (Asimow, Bonfield and Levin 1998, 418);
- rule-making/reference to state administrative procedures act (additional detailed procedures may be included that go beyond the APA);
- spending limit (maximum amount an agency can allocate for a project);
- suspensive veto (a legislature or legislative committee can suspend a rule for limited period of time (Asimow, Bonfield and Levin 1998, 458)); or,
- time limit (sunset laws or amount of time a regulation can be in place).

With these three classifications, each statute was read, and each section of a statute was coded into one of the three classifications. Then, a word count was done of each section coded representing the various categories. This approach captured all

aspects of the statute allowing for a comprehensive understanding of the statute through wordcount and creating percentages (described later), without having to search or devise other ways of searching for the key words within the discretionary, non-discretionary, and constraining categories. This information was then used to create the dependent variables, as explained next.

Constructing the Dependent Variables

In attempting to analyze discretion quantitatively, this study uses the approach developed by Epstein and O'Halloran to constructing a primary dependent variable. Several of the criteria for the factors that comprise the primary dependent variable ("discretion") were modified to reflect the diversity of state-level political offices and delegated authority. Other dependent variables will be used to run additional analyses, most notably the percentage of delegated, non-delegated, and constraining language found in the statutes. The following, however, discusses the construction of the primary dependent variable.

Delegation Variable (d). This study defines delegation as "any major provision that gives another governmental body the authority to move policy away from the status quo" (Epstein and O'Halloran 1999, 275). Utilizing the above coding structure, the entire statute was coded and the words counted that fit the coding categorization for delegation. This word count makes up the delegation variable (*d*) for use in constructing the overall discretion variable.

Delegation Ratio (r) variable. Using the above criteria, a delegation ratio will be computed for each act. The delegation ratio (r) will be a percentage of the act that contains words that delegate discretion to a bureaucratic agency or actor:

$$r = \frac{\text{word count with delegation}}{\text{total word count within the statute}}$$

Constraints (f) variable. A constraint ratio (f) will be constructed, which is similar to the delegation ratios:

$$f = \frac{\text{words in sections classified as constraining}}{\text{total word count within the act}}$$

Discretion (h) variable. Finally, a discretion variable was developed that will serve as the study's primary dependent variable. As Epstein and O'Halloran describe their variables, the constraint placed on bureaucratic agents should be in proportion to the amount of discretion given to them. They present an analogy to demonstrate:

The clearest way to visualize this problem is ... with a cup of water. Let the cup start empty, and think of the delegation ratio as the percentage of the cup that is originally filled with water. Then the constraint ratio is the proportion of that water removed from the cup—a constraint ratio of 0.5 means that half of the water is removed. Therefore, the constraints placed on a high-delegation bill will have greater policy impact than constraints associated with a bill that delegates very little. To complete the analogy, discretion is then the proportion of the cup left filled with water after the constraints have been removed (Epstein and O'Halloran 1999, 108-109).

The discretion variable will be defined as delegation minus relative constraints:

$$h = r - c$$

To construct the measure of discretion, a calculation of the relative constraints (c) was made, which is the product of the constraint ratio and the delegated discretion ratio.

$$c = f * r$$

Relative constraints capture both constraints and the amount of delegated discretion within the act. For example, a state legislature may delegate a little, but place many constraints on the agency. Or, a state legislature may delegate a large amount of discretion and a small amount of constraining language is incorporated into the statute. These scenarios have differing impacts on policy and delegated authority to bureaucracies. Therefore, as Epstein and O'Halloran contend, "constraints should be considered in proportion to the amount of authority delegated" (108). This allows analysis to be conducted in terms of understanding and empirically testing the concept of *discretion*. There are three advantages of defining discretion in this manner, as Epstein and O'Halloran describe them: discretion is not reported in a negative value; delegation and constraints are redefined into common units to be compared against one another; and, discretion is measured between zero and one (109).

Constructing the Independent Variables

A number of independent variables were used in the analysis with the dependent variable of discretion.

Measuring Legislative Professionalism. As noted above, professionalism can be theoretically defined as "the enhancement of the capacity of the legislature to perform its role in the policymaking process with an expertise, seriousness, and effort comparable to

that of other actors” (Mooney 1994, 70-71). When attempting to quantify this concept, various scholars have developed indices for capturing “the capacity of the legislature to perform its role ... [based on] expertise, seriousness, and effort.” A notable index has been developed by Squire; this study’s variable for legislative professionalism is an updated version of Squire’s index. In his index, Squire (2000) utilized a variety of measurements to arrive at a composite index score for each of the states. These measurements include the salary of the legislator, the number of session days, and the number of staff. An updated index for each year and each state is used for analysis by the author. While Squire only focuses on salary, session length, and staff, this fits within the theoretical context of this study by focusing on resources and capabilities of legislators to enhance their ability to write statutes.

However, Squire’s index of legislative professionalism may not truly capture all aspects of this concept. As an additional form of testing legislative professionalism, dummy variables were included for legislatures classified as “amateur” and “professional.” This would allow for analysis between the three major classifications of legislatures, using “hybrid” legislatures as the reference category. This would enable interpretation of the findings in the event that the continuous variable of legislative professionalism, based on the updated version of Squire’s index, did not fully capture a linear relationship.

Measuring Divided Government. Divided government can appear in different forms.

One such form would be when the executive branch is controlled by one party, and the entire legislative branch is controlled by the opposing party. There may also be the

situation when one party controls the executive branch and a legislative chamber, while the opposition controls only one legislative chamber. Both of these scenarios are designated as “divided government.” For this study, a dummy variable is used to indicate whenever there is divided government (“1”) or unified government (“0”). In the time period of this study, none of the legislatures changed in terms of partisanship dramatically; the majority of them had a turnover rate of zero percent, as tabulated by the Council of State Governments (2000). The one state that had the highest percentage turnover rate was Massachusetts’ senate, which had a five percent (two seats) change following the previous election. The intervening elections did not have an impact on the calculation of this variable. Appendix Table 4.4 reports both the presence of unified or divided government, as well as the percentage of seats in both legislative chambers that are held by Democrats.

Measuring Agency Leadership. In measuring agency leadership, a dummy variable will be created to distinguish between those agency leaders who are appointed by the governor, or by a board or commission, with legislative confirmation versus those who are simply appointed directly by the governor without legislative consultation. In states where the legislature confirms agency leadership, legislators should be willing to allow greater discretion to those bureaucratic agencies because of the power to check the leadership. In states without legislative confirmation of agency leaders, legislators may be unwilling to give an “unaccountable” agency leader power through delegated discretion. Each state’s approach to welfare agency leadership is presented in Table 4.5. A dummy variable will be constructed for this independent variable, with those states

having agency leaders appointed by the governor and confirmed by a legislative chamber will be coded as “1”; all others (gubernatorial or board/commission appointment without legislative interaction or approval) will be coded as “0.”

Measuring Bureaucratic Professionalism. One approach to measuring bureaucratic professionalism focuses on the wages paid to state bureaucrats. Barrilleaux’s (1999) research into state government professionalism measured the difference between state government salaries and the average wages in a state: the larger the state government wages, the more professional the state government. With higher salaries, state government agencies should be able to attract higher quality employees, who would have higher professional backgrounds to bring to the agency. If a legislature recognizes that its bureaucracy is a higher professional level, the legislature may be more willing to delegate authority and power to it, recognizing that professional bureaucrats will use their knowledge and expertise in a more restrained fashion.

Another approach to measuring this influence could be the professionalism of the state government, as measured by wages paid to state bureaucrats. Barrilleaux, Feiock, and Crew’s (1992) research into state government professionalism measured the difference between state government salaries and the average wages in a state: the larger the state government wages, the more professional the state government. With higher salaries, state government agencies should be able to attract higher quality employees, who would have higher professional backgrounds to bring to the agency. They also included a number of other characteristics of state bureaucracies to determine their level of quality. Using Sigelman’s (1976) characteristics, Barrilleaux et al. developed two

broad categories for their measurement: professional and political. Within the professional standard, they include expertise, information processing, innovativeness, and efficiency. The political standard included representativeness of the bureaucracy, partisan neutrality, and integrity. This study utilizes these broad standards, with the following measurements for each:

- Expertise: the average monthly earnings of state bureaucrats, the number of state employees per 10,000 population of the state, and the number of state personnel classification plans within each state (rankings for each state were assigned for all 50 states and the rankings were then averaged);⁸
- Information processing: the presence and administrative power of Chief Information Officers (CIO) within state government over information resource management (IRM) activities (a dummy variable to create an information resource management index for the following areas: whether a state Chief Information Officer's decisions are binding; whether the CIO has the authority to approve IRM plans, policies, standards, and acquisitions);⁹
- Efficiency: ratio of salaries to total spending;¹⁰
- Representativeness: ratio of non-white employees to non-white population;¹¹
- Partisan neutrality: presence of civil service reform activities, 2000 (a dummy variable, with "1" coded to mean civil service activities and "0" to mean no activities);¹² and,
- Integrity: presence of state ethics agency with jurisdiction over executive branch employees (a dummy variable, with "1" coded to mean an agency and "0" to mean no agency with jurisdiction).¹³

As Barrilleaux et al. discovered, a measurement of “innovativeness” has yet to be constructed successfully; this study also could not find a successful measurement of this concept, so the index will reflect only those standards listed above. If a legislature recognizes that its bureaucracy is at a high professional level (higher administrative quality), the legislature may be more willing to delegate authority and power to it, recognizing that professional bureaucrats will use their knowledge and expertise in a more restrained fashion. Table 4.6 reflects the computed index (created for all fifty states) for each state in this study using the above standards.

Measuring Policy Liberalism. Measuring policy liberalism within the states has been of keen interest to state politics scholars. Political scientists have sought to score states based on different indicators to determine which states are considered more “liberal” when it comes to policy matters. The most notable index that has been cited among political scientists is Erikson, Wright, and McIver’s policy liberalism index, which utilized eight policy matters to arrive at a composite index for each state. These policy areas included education, Medicaid, AFDC/TANF, consumer protection, criminal justice, legalized gambling, ratifying the Equal Rights Amendment, and tax progressivity. However, the measurement of policy liberalism is taken from data from the 1980s; the authors have up-dated their figures (Wright et al. 2000) and these numbers were utilized in the analysis. It would be expected that states with higher policy liberalism would delegate more to their bureaucratic agents than states with lower policy liberalism scores.

Non-Delegation Doctrine of a State. Utilizing Rossi's (1999) classification scheme of "strict," "loose," and "weak" judicial doctrine within states, dummy variables will be used for states classified with "weak" and "loose" judicial doctrines. These states would allow their legislatures to write statutes with greater delegation to bureaucratic agencies than would "strict" states. This approach will allow, therefore, a comparison to those states with "strict" doctrines by their judiciaries regarding delegation of discretion to bureaucratic agencies. Table 4.7 lists the states in this study with their judicial doctrine regarding non-delegation.

Measuring Partisanship. Partisanship is used as an independent variable to evaluate the impact of political parties on delegating authority to bureaucratic agents. As the U.S. is regarded as a two-party system, Democrats have generally been associated with the notion of delegating authority to bureaucratic agents, while Republicans have been associated with the notion that "big government" is to be avoided and that delegating authority to unelected bureaucrats should be avoided. As Huber and Shipan (2002) note in their study, "Democrats favor a more activist role for government while Republicans favor a more reduced role" (154); in the context of this study, it would then be expected to Republican-controlled legislatures would not delegate as much authority as Democrats would. When the level of partisan competition is high, state public policies are affected, most notably that states with competitive parties tend to spend more on social programs (Bibby and Holbrook 2004). A commonly used measure of state-level partisanship is a series: the Ranney indices.¹⁵ The first index is a measurement of interparty competition, which ranges from a 0 for complete Republican control of all governmental institutions to

a score of 1 for complete Democratic control. In this study, eleven states are classified within the range of being competitive two-party systems, with three states being modified one-party Democratic (Georgia, Maryland, and Rhode Island) and two states being modified one-party Republican (Kansas and South Dakota).

The Ranney State Party Competition index uses the figures for the party control index and represents “how close the states are to perfect competition between the parties for control of government” (Bibby and Holbrook 2004, 89). The range of this index is from 0.500 (non-competitive) to 1.000 (perfect competition). Using 0.750 as the mid-point of this index, the sixteen states within this study fall closer to the competitive side of the index, representing states where the two parties are actively engaged in electioneering and seeking to control governmental institutions to affect public policies and programs. Table 4.8, shown in the appendix, presents the Ranney State Party Control and Competition indices.

Measuring Urbanization. The *Statistical Abstract of the United States* provides the “Metropolitan and Nonmetropolitan Area Population by State” for 2000. Appendix Table 4.9 contains the percentage of the state classified as metropolitan.

Population Size of the State. Again, the *Statistical Abstract of the United States* (2003) provides the residential population of each state for 2000, which is found in Table 4.10.

A database was constructed with the dependent and independent variables inputted for OLS regression analysis. The next chapter presents the findings of these analyses.

CHAPTER V:

ANALYSES AND FINDINGS

Chapters one through three discussed the various theoretical and empirical approaches, while chapter four laid out the contextual approach of this study within welfare policies and the various dependent and independent variables for this analysis. This chapter presents the findings of this analysis.

Descriptive Analysis

The first analyses conducted were descriptive. The dataset is made up of 209 statutes that were coded, with the majority of statutes (54 percent) coming from hybrid legislatures. Statutes from professional legislatures constituted thirty-one percent of the data, while statutes from amateur legislatures represented fourteen percent. With the majority of the statutes coming from hybrid legislatures, this has implications for the statistical analysis of the states, to be described later in this chapter.

An analysis of the percentage of the statute dedicated to the various classifications was conducted. When reviewing the percentage of the statutes that are dedicated to discretionary, non-discretionary, and constraining language, the patterns reveal that a majority within all three classifications is devoted to non-discretionary language. Chart 5.1 demonstrates that among the sixteen legislatures, as well as their respective

professionalism classifications, at least 69 percent of the statutory language devoted to non-discretionary language.

FIGURE 5.1 HERE

When comparing welfare statutes written between 1998 and 2000, all three legislative types favor non-discretionary language. Across the three types of legislatures, less than a fifth of the statutory language contain words classified as discretionary. However, two noticeable areas show differences between amateur/professional legislatures and hybrid legislatures. Hybrid legislatures write, on average, more than twice as much constraining language as their amateur and professional counterparts. Conversely, hybrid legislatures devote 69 percent of their statutory language to non-discretionary language, whereas amateur and professional legislatures devote 76 and 75 percent, respectively, to non-discretionary language.

FIGURE 5.2 HERE

OLS Regression Analysis

Following this set of descriptive analysis, the data set was analyzed within OLS regression. As discussed in chapter four, the primary dependent variable was “discretion,” which is the variable composed of the amount of delegation minus the amount of constraint found in the statute. After computing this variable for all 209 cases, some cases (N = 61) were found to have zero amount of discretion; this would indicate that no discretion was in the legislation or that discretionary language was cancelled out by constraining language. For example, delegating language and constraining language cancelled each other out, making a “neutral” position within the statute. This analysis

focuses on language that *includes* some facet of discretionary language; therefore, these cases were dropped from the analysis, leaving 148 cases for final analysis. Deleting these cases allows for an analysis of when discretion is granted. Statistical significance will be determined through a one-tail test, as noted earlier.

An OLS regression was first conducted of the three dependent variables that represent the percentages of delegation, non-delegation, and constraints found within the statutes. Table 5.1 presents the full model, using the percentage of word count designated as “delegation” within the statute as the dependent variable. Only one of the independent variables, the dummy variable for professional legislature, in this analysis achieved a level of statistical significance ($p < 0.10$).

TABLE 5.1 HERE

The same analysis was then conducted using the robust cluster option. In a regular regression model, one can assume that the observations are “independent.” But, this assumption is clearly violated because delegation decisions made at time by a state affect delegation decisions made by that same state at a later time. Robust standard errors combined with cluster (by state) allow observations which are not independent within the cluster (although they must be independent between clusters). Estimates from these models, therefore, are considered to be “robust” in the sense that they provide correct standard errors in the presence of violations of the assumptions made in regression. An analysis using the percentage word count designated as “delegation” within the statute is presented in Table 5.2.

TABLE 5.2 HERE

In this analysis, several of the independent variables achieved acceptable levels of statistical significance. Most notably, legislative professionalism did achieve statistical significance; however, the estimate indicates a negative relationship with the percentage of delegation within a statute. This indicates that as professionalism within the legislature increases, the percentage of the statute containing words that delegate to the bureaucracy decreases.

Policy liberalism and the variable for state population were statistically significant at the 0.01 level; however, the estimates for both variables were counter to what was hypothesized. Agency leadership was statistically significant at the 0.05 level and in the predicted direction; agencies with legislative confirmation of its leadership would receive increased percentage of delegation in their statutory language. Divided government, also statistically significant, had a negative estimate, supporting the hypothesis that political division between the branches would result in less delegation, as measured by the percentage of language classified as delegating. Both the dummy variables for loose judicial delegation doctrine and professional legislature were significant at the 0.01 level.

The next analysis conducted used the percentage of non-delegation within the statute as the dependent variable. Non-delegation is characterized by limiting the actions of bureaucratic agents by legislative principals. Therefore, one would expect that as non-delegation language increases in a statute, bureaucrats are confined in their actions. As this variable is contrary to the relationship of delegation and discretion as defined in this study, the hypotheses' directions are reversed. For example, while agency professionalism should be positive in the context of discretion, when analyzing non-delegation, the hypothesized estimate for agency professionalism should be negative.

Again, a separate analysis was made, first without the robust cluster option (results in Table 5.3), and then with the robust cluster option (Table 5.4).

TABLES 5.3 AND 5.4 HERE

These analyses indicate that legislative professionalism achieves a level of statistical significance ($p < 0.10$) with the robust cluster option. The estimate is negative, indicating that as legislative professionalism increases, the percentage of a statute containing non-delegation language decreases. In both analyses, the variables for the percentage of Democratic seats held in the legislature, policy liberalism, the Ranney Party Control Index, and the dummy variables for amateur and professional legislatures all achieve a conventional statistical significance level. The estimate for Democratic seats indicates that as the percentage of Democratic seats held in the legislatures increases, the percentage of words containing non-delegation language also increases. This effect is also true for policy liberalism: as policy liberalism increases in a state, the percentage of words classified as non-delegation language also increases. The Ranney Party Control Index indicates that as Democratic Party control increases over a state's political institutions, the percentage of words containing non-delegation language decreases in welfare-policy statutes. Utilizing the hybrid legislature as a reference category, the estimates for amateur and professional classifications indicate a negative effect on the percentage of non-delegation language found in welfare statutes.

The method of agency leadership selection also achieved statistical significance with a positive estimate, indicating that legislative confirmation of agency leaders results in increases in the percentage of non-delegation found in welfare statutes. Both of the dummy variables for loose and weak judicial delegation doctrines also achieved

statistical significance, indicating that using strict judicial delegation as a reference, both have an impact on the percentage of non-delegation found in statutes. States with loose judicial delegation doctrine have a positive effect, while states with weak judicial delegation doctrine have a negative effect. In addition, the Ranney Party Competition index, a statistically significant variable, indicates that party competition has a positive effect on the percentage of non-delegation found in welfare statutes. Finally, metropolitan percentage of a state's population has a negative effect on the percentage of non-delegation found in statutes concerning welfare policy.

The next analyses utilized the percentage of constraining language as a dependent variable, again without (Table 5.5) and with the robust cluster option (Table 5.6). As with the analysis for the percentage of the word count classified as non-delegation, the hypothesized effect would be reversed.

TABLES 5.5 AND 5.6 HERE

Within both analyses, legislative professionalism achieves statistical significance (without robust cluster option, $p < 0.05$; with robust cluster option, $p < 0.01$). The estimates for both analyses indicates that as legislative professionalism increases, the percentage of words classified as “constraining” increases as well within statutes dealing with welfare policy. This would seem to indicate that as professionalism increases, legislators are willing to write greater amounts of constraining language when it comes to welfare statutes.

Other variables achieved a level of statistical significance in the analysis without the robust cluster option. The Ranney Party Control Index achieves statistical significance, and its estimate indicates that as Democratic Party control over a state's

political institutions increases, the percentage of words dedicated to constraining language also increases. The method of agency leadership achieved statistical significance; the estimate indicates that states with methods of selecting agency leaders including legislative confirmation will write statutes with higher levels of language constraining bureaucrats. The other variable that achieved statistical significance was the percentage of Democratic seats within the legislatures. This variable's estimate indicates that as the percentage of Democratic seats increases in a legislature, the effect on the percentage of words containing constraining language decreases. Two variables achieved statistical significance at the 0.10 level in this analysis: the Ranney Party Competition Index (indicating that as the level of competition among the parties increases, the percentage of constraining language decreases in welfare policy) and state population (as state population increases, the percentage of constraining language decreases).

In the "constraining percentage" analysis with the robust cluster option added, all but two of the independent variables achieved a level of statistical significance with a one-tail test. The legislative professionalism variable indicates a positive estimate, meaning that as the legislature's professionalism level increases, the percentage of a statute containing constraining language increases. Another variable meeting statistical significance is the percentage of Democratically-held legislative seats; as the level of Democratic seats increase, the likelihood of constraining language within the statute decreases. This is also indicated for policy liberalism; as policy liberalism increases, the constraining language (as a percentage of the statute) decreases. Both the loose and weak judicial doctrine variables had positive estimates, indicating that using the strict judicial doctrine as the reference category, those states with weak and loose judicial doctrines

regarding non-delegation have a positive effect on the percentage of constraining language found in welfare policy statutes. The metropolitan percentage variable's positive estimate indicates that a state's percentage of metropolitan population has a positive effect on the percentage of constraining language in welfare statutes. However, state population has a negative effect on the percentage of constraining language.

The final model used the discretion ratio as the dependent variable, with the first set of analysis conducted as a bivariate regression with legislative professionalism, as updated by the author. This analysis found a negative estimate corresponding to the legislative professionalism variable, which was also statistically insignificant (one-tail test). The overall model explanation was extremely low as well ($R^2 = 0.0082$, $N=148$). The full model was then analyzed, without the robust cluster option. While the predicted explanation of the model was higher ($R^2 = 0.091$, $N=148$), only the variable for agency professional was statistically significant ($p < 0.05$, one-tail test). The estimate for legislative professionalism was still in the opposite direction (negative) than what had been hypothesized.

A second analysis was conducted, this time with the robust cluster option added. Due to the issue of multicollinearity between the Ranney Party Control variable and a variable for the percentage of Democratic legislative seats (correlation of 0.85), the Ranney Party Control variable was dropped from the original model. In addition, the state population variable was also dropped from the model, due to lack of statistical significance and the impact it had on the statistical significance of the legislative professionalism variable. The final model is presented in Table 5.7.

TABLE 5.7 HERE

One of the striking features of this final model is that the R^2 is 0.098, indicating that only ten percent of discretion within a statute is explained by this model. In other works, most notably Huber and Shipan's, their results found an adjusted R^2 in the range of 0.77, with discretion as measured in thousands of words in Medicaid-related legislation in 1995-96 in non-southern states (N=38).

The final model indicates that legislative professionalism is a statistically significant variable, when other variables are present in the model. However, the estimate for legislative professionalism is negative, indicating that the greater the legislative professionalism level, the less discretion granted to the bureaucracy by the law-making body. This is an important finding, since other research in this area found that the variable for legislative professionalism (most notably compensation) was positive, but not statistically significant, "even with a one-tail test" (Huber and Shipan 2002, 156-157). Most of Huber and Shipan's variables in their first empirical test lacked statistical significance (2002, 156), while seven of the eleven variables in this study's final model obtain conventional levels of statistical significance.

In the final model, the level of agency professionalism is a statistically significant variable in this study. This variable's estimate indicates that as the level of professionalism rose in the welfare agency, so does the level of discretion found in the statute. A bivariate regression was conducted with this variable, and along with being positive and statistically significant, the R^2 value was 0.0438, almost half of what the final model's R^2 value was. This variable indicates that legislatures may look at the level of professionalism within the agency, and grant discretionary power when that level is higher.

The final model's estimate for policy liberalism was also statistically significant, yet with a negative estimate. This indicates that as the level of policy liberalism in the state rises, the level of discretion decreases by the legislature. This contradicts the hypothesis for policy liberalism.

Both of the variables for weak and loose judicial doctrines involving non-delegation are statistically significant in the final model ($p < 0.10$, $p < 0.05$, respectively). Using strict judicial doctrines regarding non-delegation as the reference category, the estimates for both states with weak and loose judicial doctrines indicate a negative effect on discretion granted.

When included in the final model, the variable for divided government achieves statistical significance; the estimate indicates that divided government has a negative impact on discretion granted by the legislature to the bureaucracy in welfare policy. This would indicate that the executive-legislative party division affects the amount of discretion granted by the law making branch to the law executing branch of government. In Huber and Shipan's (2002) research, their measurement of divided government also had a negative estimate, but did not achieve statistical significance in their primary model (156).

Discussion:

While a number of the variables were statistically significant, the final model's predicted value, or R^2 , was low. While other researchers have found their models to have a greater predictive value, this model's low R^2 may indicate that other variables are missing that would explain the level of discretion granted or restrained by legislatures in

welfare policy. For this study, however, the statistical significance levels are considered to be more important. The low R^2 could signal that variables beyond what are commonly used in testing hypotheses at the national level are incomplete when conducting state-level analysis. While it would have been helpful to have a higher R^2 value, the statistical significance of the variables indicates that more than just the commonly thought-of variables are at play with state-level analysis in this research area. More work, therefore, could be done to find additional variables that impact the granting of discretion by state legislatures to their bureaucracies, thereby increasing the predictive explanation of an overall model.

One of the interesting results out of this study is the agency professionalism variable's effect on discretion within statutes by legislatures. As constructed, this index variable seems to indicate that the amount of professionalism within the agency, and not necessarily within the legislature, has an effect on the amount of discretion given by a legislative principal to a bureaucratic agent. If further explored in other policy areas (such as education, environmental, or health policies, for example), this may be an important finding to the understanding of legislative-bureaucratic relations within the states. While one facet of bureaucratic professionalism, innovativeness, is one of the most difficult to find quantitative measurements for, the other facets—expertise, information processing, efficiency, representativeness, partisan neutrality, and integrity—seem to be important factors in when and how much discretion is given by a legislature to a bureaucracy. This may hold important findings for the discipline's understanding of legislative-bureaucratic relationships.

While the variable for legislative professionalism did reach statistical significance, the hypotheses for this variable predicted that increased levels of legislative professionalism would bring about increased levels of discretion to the bureaucracy. The research findings indicate the reverse, however; *increased* levels of professionalism bring about *decreased* levels of discretion granted to the bureaucracy in welfare policy. This may be explained by the fact that as legislators find themselves with more staff, better information and resources, and more time to concentrate on policy matters, they can scrutinize and oversee the actions of bureaucratic agents more closely. Those legislators who work within an amateur setting, who lack the staff, time, and resources to oversee bureaucratic activities, may seem willing to grant discretionary power and authority to their agents. There may also be questions regarding the accuracy of conceptualizing legislative professionalism based purely on the components in the Squire index, as used to define this variable.

The hypothesis that with increased levels of policy liberalism, particularly when it comes to welfare policy, the amount of discretion granted to bureaucracies to implement welfare policy should also increase. However, the results of this study indicate a *negative* effect between policy liberalism (as measured by updated figures from Erikson, Wright, and McIver) and discretionary authority granted to legislatures. Therefore, this finding seems to indicate that a state's level policy liberalism, as measured through state polling data, impacts the level of discretion granted negatively by that state's legislature to its bureaucracy. Perhaps this finding can be explained in the sense that within states with conservative policy levels, legislatures recognize that welfare policy is critical to the state's overall interests. Therefore, while their citizens may be more conservative and not

wish additional programs or benefits to disadvantaged citizens, legislatures may recognize that bureaucratic actors may be best able to address the needs of those underprivileged citizens. This may also be part of the larger “avoidance-blame” game, as described by Rosenthal. Legislators can steer clear of responsibility for a policy, but blame the agency for not fulfilling the vague intent of the law (Rosenthal 1990, 185).

The findings also indicate support for the hypothesis regarding the effect of divided government. States with divided government have a *negative* effect on the discretion granted in welfare statutes. This finding is similar to Huber and Shipan’s (2002) results, in that legislatures operating in divided government “produced more details” in their statutes concerning Medicaid policy than legislatures operating in unified government (170). Ultimately, Huber and Shipan included interactive variables that resulted in statistical significance for their divided government variable, most notably by interacting divided government with their measurement of legislative professionalism, compensation.

The final chapter presents the specific theoretical areas where this study contributes to the discipline’s understanding, as well as questions for further study and comparison between more recent works developed within this area of legislative-bureaucratic relations since this study was undertaken.

CHAPTER VI:

CONCLUSION

This study has sought to investigate the impact of legislative professionalism on delegated discretion to bureaucracies at the state level. This analysis has indicated that legislative professionalism does have an impact on delegated discretion to bureaucracies in the American states; however, that impact indicates that legislative professionalism negatively affects discretion granted to bureaucracies. In addition, the findings suggest that the level of agency professionalism, as measured through a number of factors, appears to positively impact the level of discretion given to bureaucracies in welfare policies for 1998-2000. Divided government also impacts the relationship between legislatures and bureaucracies, as does the type of judicial doctrine related to non-delegation. These findings offer insight into one particular area of political science, but also offer opportunities to understand and advance several key theoretical concepts within the discipline. This chapter summarizes this study's contributions to the various theoretical approaches (new institutionalism, principal agent and transaction cost analysis, and democratic governance) as well as the value of state-level analyses. This chapter closes by proposing future research opportunities that may contribute to further understanding of the political behavior of institutions and institutional actors.

New Institutionalism

This study fits into the recently developed “new institutionalism” within political science by utilizing the behavior of actors within an institutional setting. Rothstein (1996) denotes that the study of institutionalism in the discipline offers scholars the opportunity to present both normative and empirical judgments. Within the empirical realm, scholars have devoted considerable research to understanding the role and relationship of “political architecture” (Macintyre 2003) and how governing structures impact the system and the individuals who operate within a governing system. As MacIntyre (2003) describes in his study of different systems that either fragment or fuse decision-making power, “institutional perspectives on politics have their limits. Institutions do not cause outcomes on their own: they set the framework within which contending interests do battle” (169). Two critical interests within the law-making institution are lawmakers and the law-executioners. Yet much of the research on legislative studies, as Gamm and Huber (2002) note in their review of the state of the discipline, focuses on Congress, and this focus carries with it “some clear costs” (340). Gamm and Huber make the call for “orienting the research frontier of legislative studies today toward questions that comparativists of all sorts tend to ask—questions that investigate the origins of institutions and the impact of institutions on behavior” (341).

State governments in the United States offer such opportunities. Legislators and bureaucrats are key individuals within state governments in the United States who regularly do battle within different frameworks. Yet the relationship and actions of these actors have yet to be fully understood within the discipline of political science. For example, Weaver and Rockman asked “if political institutions do facilitate differences in

policymaking capabilities, how do these differences come about?” (1993c, 5). For this study, the differences within the professionalism of both legislatures and bureaucracies appear to affect the relationship between the two institutional actors.

This study’s findings appear to contribute further clarification to Simon’s (1947) notion of “bounded rationality.” Simon argued that legislators are unable to identify all aspects of a policy dilemma and the possible solutions. Therefore, legislators would delegate the responsibilities to those who are better educated and deal with the policy problem on a day-to-day basis, that is, bureaucrats. This study’s findings suggest that while Simon was correct in assuming that legislators would delegate to their bureaucracies, it appears that lawmakers in amateur legislatures utilize delegated discretion while lawmakers in professional legislative bodies feel that they have the resources and capabilities to make the decisions to address policy dilemmas.

As noted by most historical institutionalists, structures of governing entities affect individuals’ behaviors, and these institutional structures ultimately impact political outcomes. This study’s findings suggest that within the welfare policy arena, institutional structures, such as legislative and bureaucratic professionalism, impact the ultimate product of law making, i.e., statutes. In another theoretical aspect of new institutionalism, this study could contribute to Krehbiel’s ideas that legislatures use both rules and procedures to develop expertise in different areas. This study suggests that legislators, realizing that they may not be able to fully develop that expertise through internal rules and procedures, may recognize that others outside the legislative process already possess the expertise needed. Therefore, by developing expertise and knowledge, bureaucrats may help legislators fulfill their need for “informational concerns.”

As mentioned in Chapter II, one of the key questions often raised in the study of institutions is, when does the nature and framework of a governing structure impact the capabilities and reasoning of those making governing decisions? As this study's findings seem to indicate, the level of professionalism within a legislature—the resources (both financial and staff) and the time commitment—seems to affect the willingness of a legislative principal to allocate power and authority to an agent in the bureaucracy. Beyond the advancement of the new institutionalism theory in political science, this study's findings also contribute to further development of the principal-agent and transaction cost analysis theories.

Democratic Governance Theory

This study of the delegation of discretion addresses important questions regarding the very nature of a governing system that divides power and authority among different branches of government. Some scholars, most notably Lowi, have contended that the American governing system, particularly at the national level, has been transformed into a process whereby “*modern law has become a series of instructions to administrators rather than a series of commands to citizens*” (1979, 106, Lowi's emphasis). As another leading scholar of delegation has observed, once governments engage in delegating authority and discretion to administrative actors, it leads to citizens throwing themselves upon the mercy of those given the power, typically non-elected administrators (Davis 1969b). By simply discarding the use of explicit language in favor of broad latitude to administrators, citizens are left with a “jurisprudential carte blanche for poor legislative

drafting and at the same time sweeps away all concern for the consequences” (Lowi 1979, 125).

Both political science and public administration have sought to understand the unique situation of a democratic republic and its common characteristic of dividing power. Through the commonly acknowledged the principle of “separate institutions sharing power” (Neustadt 1960), different governmental actors supervise different governmental functions and powers. With modern-day complexities of public policy, however, the bureaucracy is often looked to as the actor that combines different governmental functions into one actor. As noted in Chapter II, this raises a host of questions, particularly from a normative standpoint. While this study does not specifically address normative questions regarding the validity and value of delegating governmental powers to other governmental actors, the findings of this study do offer some empirical suggestions regarding this relationship.

Most notably, this study’s finding that the level of agency professionalism plays a significant role in whether a legislature decides to delegate is a key conclusion. Legislators apparently look to the level of professionalism within the agency to determine whether that bureaucracy can be trusted with delegated authority. Through such characteristics as the level of expertise, the ability to process information effectively, the level of efficiency within the bureaucracy, and the emphases on integrity, representativeness, and partisan neutrality, legislators may determine that bureaucrats can be trusted with delegated authority. This study’s approach to agency professionalism is supported by the fact that sixteen different states, representing varying levels of agency professionalism, were tested in the empirical analyses. By virtue of differences among

the states, this study empirically develops the notion that legislatures delegate discretion to their bureaucracies by virtue of their professionalism, a major tenant in the normative argument surrounding the delegation doctrine. While additional empirical analyses should be done to confirm the results in this test, the difficulty experienced by Sigelman to quantify agency professionalism may be overcome, with the exception of measuring “innovativeness.” Further research on this area, utilizing the diversity found within state governments, may prove useful to advancing theories related to democratic governance and public administration.

Another critical aspect that was beyond the scope of this project is the fact that while legislators may or may not delegate to their bureaucracies in these specific statutes, administrators may have additional discretion in the implementation stages of the policy process. This delegated discretion could have been addressed in legislation enacted prior to the time period of this study. This study focused its approach on the enactment stage of the policy process; the implementation stage was beyond its scope of study. However, important considerations regarding discretion and statutory implementation (such as in Pressman and Wildavsky’s (1973) research) are critical to fully understanding the policy process and the comprehensive relationship between law makers and law executors.

Principal-Agent Theory and Transaction Cost Analysis

This study contributes findings to both the principal-agent and transaction cost analysis theories. Within the framework of principal-agent theory, this study finds that state legislatures are unwilling to write discretion to their bureaucracies, based on the descriptive analyses. All three types of legislatures—professional, amateur, and hybrid—

wrote significantly more non-discretionary language into their welfare statutes in the period 1998-2000 than either discretionary or constraining language. By looking at the distribution of both word counts and percentage of statutes, state legislatures seek to deny their bureaucratic agents the discretionary authority. However, the multiple regression analysis points to the fact that amateur legislatures grant discretionary authority more than professional legislatures. This finding is comparable to what Huber and Shipan found in their study of state statutes regarding Medicaid policy. Huber and Shipan found that “legislative capacity acts to increase the level of detail in laws in the U.S. states, where we found that, given the presence of policy conflict, higher-capacity legislatures write more detailed and constraining statutes” (2002, 218). In this study’s empirical results, professional legislatures were more likely to decrease discretion to their bureaucracies than amateur legislatures. Therefore, both this study and Huber and Shipan’s research (one of the first major studies to utilize state-level analysis to explore delegating discretion) find that professional legislatures differ from their amateur counterparts in writing statutory language.

This overall finding could be described as compatible with principal-agent theory in which principals generally seek the most efficient production of a task by utilizing an agent’s specialization. In this study, because of an amateur legislature’s lack of time, knowledge, and resources, legislators seem to delegate discretion to their bureaucratic agents more so than do professional legislatures. While this relationship may bear the hazards of hidden action and information on the part of bureaucratic agents, amateur legislators may simply acquiesce to these dangers as part of the nature relationship between the two actors. Contrary to what was discussed in Chapter II, this study’s

findings seem to point to the idea that information- and resource-rich principals will delegate less discretion to agents. It appears from the findings that professional legislatures, even with their information capacities and time, will limit their bureaucracies in welfare policy because legislators can oversee the implementation and activities of bureaucrats.

Within the theory of transaction cost analysis, this study's findings address Huber and Shipan's call for examining the "factors underlying variation in institutional choices for political control" (2000, 26). By utilizing variations within state governments (most notably the level of professionalism found within the law-making branch), the findings indicate that state-level statutes dealing with welfare policies are non-delegating in nature. Similar to the principal-agent theory, transaction cost analysis advances the belief that political actors may choose procedures that maximize their preferences. These results could be interpreted in a slightly different manner, but adhering to this "preference maximization" principle that legislators in amateur law making institutions prefer to delegate policy making to bureaucrats by acknowledging the limitations on legislators' time and resources. While this may not necessarily be a preference that legislators may have in their work (they perhaps would rather have the time, resources, and expertise that their counterpart legislators in professional institutions have), actors in amateur legislatures accept this fact.

Using States to Explore National-Level Theories

While most of the research within the legislative-bureaucratic delegation question has centered on national level actors (most notably the U.S. Congress in Epstein and

O'Halloran's work), state-level analysis offers scholars opportunities to explore beyond the what some consider to be the "most-professional legislature" in the country. This allows the testing of theoretical concepts derived from using Congress as their source of data. With the richness and variation found within state governments, scholars can empirically test hypotheses derived from theories developed from national level analyses.

The variation and richness of using state legislatures is becoming central to research within political science. Epstein and O'Halloran noted that scholars should utilizing states for quantitative analysis to empirically test the delegation theory. While Epstein and O'Halloran found that divided government did impact the level of discretion granted by Congress to the executive branch ("Congress gives less discretionary authority to executive agencies controlled by the opposite party" (235)), Huber and Shipan's state-level analysis of Medicaid statutes found that divided legislative chambers increased the likelihood that "legislation is less detailed than when the legislatures is unified against the executive" (2002, 218). However, this study's findings suggest that divided government did not statistically impact delegation by legislatures to their bureaucracies. While this runs contrary to the findings of two major works in this area, this study's finding does not invalidate the overall theory regarding divided government. It could mean that, according to Huber and Shipan, "as general theories of delegation, [theories on Congress] are incomplete" (2002, 215).

Another critical finding that contradicts the findings of Huber and Shipan's work is the model's overall low predictive capability. While Huber and Shipan's results generated R^2 in the range of 0.74, this model's predictive value was only 0.09. This could indicate that when creating amore specified coding regime (other than merely

counting all the words in a statute, as Huber and Shipan did), that other critical variables are needed within the model's specification. Further refinement and development of variables that tap into the diversity of states could improve this model's predictive value and further expand the discipline's understanding of legislative-bureaucratic relations.

Agency professionalism is one factor that this study does take into account that neither Epstein and O'Halloran nor Huber and Shipan include in their respective models. The empirical significance of agency professionalism indicates that legislators, in all types of institutions, acknowledge the qualifications of bureaucrats in granting them authority. This finding allows scholars to further develop theoretical understanding of legislative-bureaucratic relations. In 1991, Wood and Waterman declared that the "controversy should not end over *whether* political control occurs.... Future research should turn toward exploring the *determinants* of political control" (822). This study's findings suggest that one of the determinants of political control is the level of bureaucratic professionalism, and that future exploration of this subject should factor into any model the level of agency professionalism.

Future Exploration Using Delegated Discretion

As this study singularly focused on one specifically defined policy area, issues of generalizability to other policy areas is inherently limited. Nevertheless, this research offers the opportunity to explore other areas of scholarship by using the methods of coding and analyzing statutory language by legislatures. For example, this research could be applied to other policy areas to explore whether discretion is truly granted among different policy areas, or just within policies that the bureaucracy is expected to be the

expert. It would be expected that within specialized areas such as health and environmental policies state legislatures may recognize bureaucrats as having the expertise and knowledge to oversee the program implementation. However, in other areas such as education policy or policy related to criminal behavior, legislatures would be expected to set specific standards and guidelines curtailing or constraining bureaucratic actors. Legislators would not leave it up to bureaucrats to determine the sentencing and penalties for criminals, therefore law-makers establish standards for bureaucrats to follow in criminal law. Likewise, with legislation such as the federal “No Child Left Behind” Act demonstrates, education policy has become an arena where legislators are specifying detailed goals and programs for bureaucrats to implement. Further empirical analysis into various policy areas by political scientists would help to advance the broader theories regarding delegated discretion.

Since this project began, several other projects have been published that continue this study’s line of work. These studies represent the growing interest of political scientists in the study of legislative-bureaucratic relationships. In the August 2004 issue of the *American Political Science Review*, two articles explore legislative-bureaucratic themes. Charles Shipan’s work on regulatory regimes, agency actions, and the conditional nature of congressional influence suggests that legislative oversight activities can influence agency actions under certain circumstances, what Shipan notes as “regimes.” His research finds that as congressional committees become more liberal, agencies become more activist; whenever committees become more conservative in composition, agencies defer activism (Shipan 2004). In the subsequent article, Huber and McCarty address the need for incorporating bureaucratic professionalism into a model of

delegation and policymaking, and offer mathematical proofs for their analysis that “low bureaucratic capacity diminishes the ability of politicians to influence the actions of bureaucrats.” Based on the fact that bureaucrats operating in low-capacity environments will not have the incentive to comply with legislative demands, legislators take this into account whenever they write statutory language. This, as Huber and McCarty suggests, turns theoretical perspectives such as the “monitoring principle” and “ally principle” on their heads, forcing scholars to rethink theories regarding bureaucratic delegation (Huber and McCarty 2004, 491). This study’s findings suggest that Huber and McCarty are correct in their mathematical proof of bureaucratic expertise: whenever agency professionalism in welfare policy is higher, legislatures delegate greater authority. However, this study only analyzed one particular policy area; further research is needed to explore other policy areas to determine if this finding holds true. By studying statutes through the coding methods described within, additional analysis may aid political science and public administration scholars to further develop an understanding of when legislators “decide to delegate.”

ENDNOTES

¹ *State v. Broom*, 439 So. 2d 357 (La. 1983). The trial court accepted Broom's challenge, and on appeal, the Louisiana State Supreme Court overruled the trial court's finding and held that the Secretary of Public Safety held discretionary power to determine criminal actions based on the Louisiana Explosives Code.

² *Connecticut State Medical Society v. Connecticut Board of Examiners in Podiatry*, 546 A.2d 830 (Conn. 1988). The Board of Examiners in Podiatry was found to have overreached its discretionary authority to include the ankle in podiatry practice.

³ In *Boreali v. Axelrod*, 71 N.Y. 2d 1 (1987), the Court of Appeals of New York agreed with the challengers of the regulation, and held that the PHC had usurped its legislatively-delegated authority to address tobacco smoking in public areas.

⁴ 143 U.S. 649 (1892)

⁵ 293 U.S. 388 (1935)

⁶ 295 U.S. 495 (1935)

⁷ Whenever the unit of analysis is institutionally-based, rather than individual actor-based.

⁸ Average monthly earnings came from *The Statistical Abstract of the United States* (2001), Table No. 472; the number of state employees per 10,000 state population came from *The Book of the States*, Vol. 33 (2000), Table 7.17; and the number of classifications came from an average of the figures in Tables 7.3 (2000) and Table 7.3 (1998-99) from *The Book the States*.

⁹ Information resource management information came from *The Book of the States*, Vol. 33 (2000), Table 7.8

¹⁰ Ratio computed from *The Book of the States* (2000), tables 6.9 and 7.19.

¹¹ Figures from *Job Patterns for Minorities and Women in State and Local Government* (2001).

¹² Figures from *The Book of the States* (2000), table 7.6.

¹³ Figures from *The Book of the States* (2002), table 8.23.

¹⁴ These figures come from the “revised 1960-2002 citizen ideology series” and the “revised 1960-2002 government ideology series” by Berry et al. (1998).

¹⁵ These figures come from Bibby and Holbrook (2004), page 88.

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APPENDICES

Table 4.1:

Legislative Professionalism of States Included in the Study

State	Potential Compensation	Calendar Session	Legislative Session	Permanent Staff	Squire's ranking
California	\$114,700	257	128	2,510	1
Massachusetts	50,100	362	147	N/A	5
Florida	27,900		60	1,900	10
Illinois	67,300	135	55	970	11
Maryland	31,500	91		510	16
Connecticut	28,000	122	90	450	20
Colorado	30,000	121		210	21
Oregon	23,900	104		240	24
Iowa	29,800	105		180	25
South Carolina	10,400	166	65	270	30
Rhode Island	11,200	258	82	220	35
Kansas	21,900	134	68	120	37
Georgia	23,900	61	40	510	38
Alabama	30,600	120	39	320	45
South Dakota	10,100	66	36	30	47
New Mexico	0	48		50	49

Source: Squire, 2000.

Table 4.2:

Number of Social Welfare Statutes Enacted, 1998-2000

State	Social Welfare Statutes Enacted, 1998-2000
Alabama	10
California	33
Colorado	40
Connecticut	13
Florida	22
Georgia	5
Illinois	4
Iowa	7
Kansas	2
Maryland	13
Massachusetts	6
New Mexico	11
Oregon	9
Rhode Island	17
South Carolina	7
South Dakota	10

Source: Author.

Table 4.3:

Legislative Professionalism Index Scores

State	Squire's Index of Legislative Professionalism	Classification
Alabama	0.158	Amateur
California	0.625	Professional
Colorado	0.300	Hybrid
Connecticut	0.233	Hybrid
Florida	0.255	Hybrid
Georgia	0.133	Amateur
Illinois	0.302	Professional
Iowa	0.225	Hybrid
Kansas	0.152	Hybrid
Maryland	0.204	Hybrid
Massachusetts	0.614	Professional
New Mexico	0.098	Amateur
Oregon	0.183	Hybrid
Rhode Island	0.148	Professional
South Carolina	0.178	Hybrid
South Dakota	0.083	Amateur

Source: Squire, 2000.

Table 4.4:
Unified or Divided Government in the States

State	Presence of Unified or Divided Government	Democratic % of Legislative Seats Held
Alabama	Unified—Democrat	65
California	Unified—Democrat	60
Colorado	Unified—Republican	40
Connecticut	Divided between Executive-Legislature	61
Florida	Unified—Republican	38
Georgia	Unified—Democrat	57
Illinois	Divided between Executive-House	50
Iowa	Divided between Executive-Legislature	42
Kansas	Unified—Republican	36
Maryland	Unified—Democrat	73
Massachusetts	Divided between Executive-Legislature	81
New Mexico	Divided between Executive-Legislature	58
Oregon	Unified—Republican	42
Rhode Island	Divided between Executive-Legislature	86
South Carolina	Divided between Executive-House	47
South Dakota	Unified—Republican	30

Source: Council of State Governments, 2000.

Table 4.5:

Welfare Agency Leadership

State	Agency Leadership Selection Method
Alabama	Board
California	Gubernatorial appointment with senate confirmation
Colorado	Gubernatorial appointment with senate confirmation
Connecticut	Gubernatorial appointment with either chamber confirmation
Florida	Gubernatorial appointment with senate confirmation
Georgia	Agency appointment
Illinois	Gubernatorial appointment with senate confirmation
Iowa	Agency
Kansas	Gubernatorial appointment with senate confirmation
Maryland	Agency
Massachusetts	Appointment by cabinet secretary, approval by governor
New Mexico	Gubernatorial appointment with senate confirmation
Oregon	Gubernatorial appointment with senate confirmation
Rhode Island	Gubernatorial appointment
South Carolina	Gubernatorial appointment with senate confirmation
South Dakota	Gubernatorial appointment

Source: Council of State Governments, 2000.

Table 4.6:

Index Score of Agency Professionalism:

State	Agency Professionalism
Alabama	3.14
California	1.89
Colorado	4.56
Connecticut	2.78
Florida	2.79
Georgia	2.82
Illinois	2.79
Iowa	3.78
Kansas	4.39
Maryland	3.84
Massachusetts	2.06
New Mexico	3.06
Oregon	3.17
Rhode Island	3.78
South Carolina	3.83
South Dakota	3.50

Source: Council of State Governments, 2000.

Table 4.7:

Rossi Classification of State Judicial Doctrines

State	Judicial Doctrine
Alabama	Loose
California	Weak
Colorado	Loose
Connecticut	Loose
Florida	Strict
Georgia	Loose
Illinois	Loose
Iowa	Weak
Kansas	Loose
Maryland	Weak
Massachusetts	Strict
New Mexico	Strict
Oregon	Weak
Rhode Island	Loose
South Carolina	Strict
South Dakota	Strict

Source: Rossi, 1999.

Table 4.8:

Ranney State Party Control and Competition Indices

State	Ranney State Party Control Index	Ranney State Party Competition Index
Alabama	0.629	0.871
California	0.532	0.968
Colorado	0.425	0.0925
Connecticut	0.486	0.986
Florida	0.487	0.987
Georgia	0.681	0.819
Illinois	0.363	0.863
Iowa	0.371	0.871
Kansas	0.264	0.764
Maryland	0.720	0.780
Massachusetts	0.634	0.866
New Mexico	0.578	0.922
Oregon	0.413	0.913
Rhode Island	0.688	0.812
South Carolina	0.461	0.961
South Dakota	0.287	0.787

Source: Council of State Governments, 2000.

Table 4.9:

State Population in Metropolitan Areas in 2000

State	Percentage of State Population in Metropolitan Areas
Alabama	69.9
California	96.7
Colorado	83.9
Connecticut	95.6
Florida	92.8
Georgia	69.2
Illinois	84.9
Iowa	45.3
Kansas	56.6
Maryland	92.7
Massachusetts	96.1
New Mexico	56.9
Oregon	73.1
Rhode Island	94.1
South Carolina	70.0
South Dakota	34.6

Source: U.S. Census Bureau, 2003.

Table 4.10:

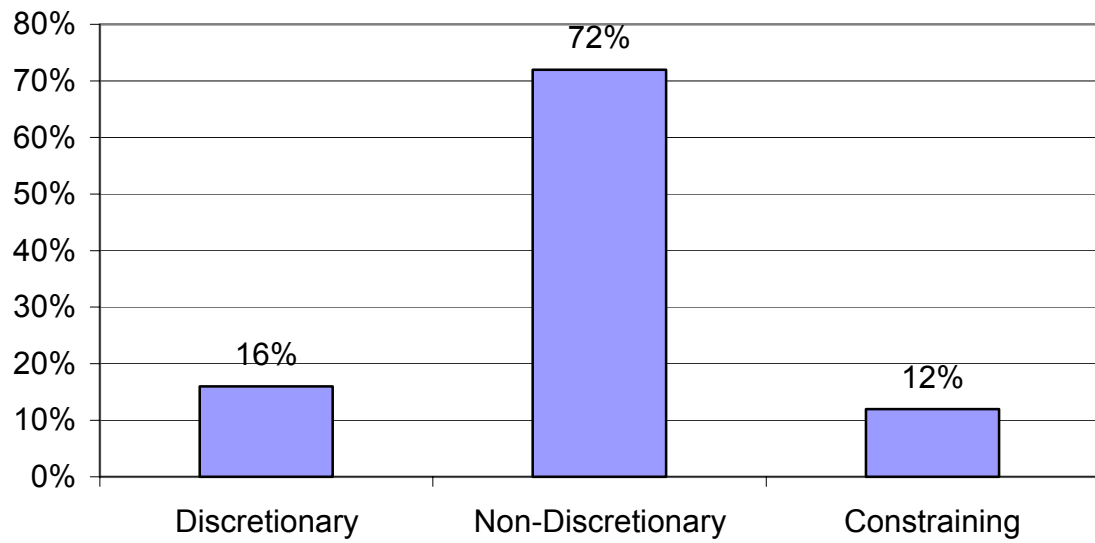
State Residential Population

State	State Population
Alabama	4,447,000
California	33,872,000
Colorado	4,301,000
Connecticut	3,406,000
Florida	15,982,000
Georgia	8,186,000
Illinois	12,419,000
Iowa	2,926,000
Kansas	2,688,000
Maryland	5,296,000
Massachusetts	6,349,000
New Mexico	1,819,000
Oregon	3,421,000
Rhode Island	1,048,000
South Carolina	4,012,000
South Dakota	755,000

Source: U.S. Census Bureau, 2003.

Figure 5.1

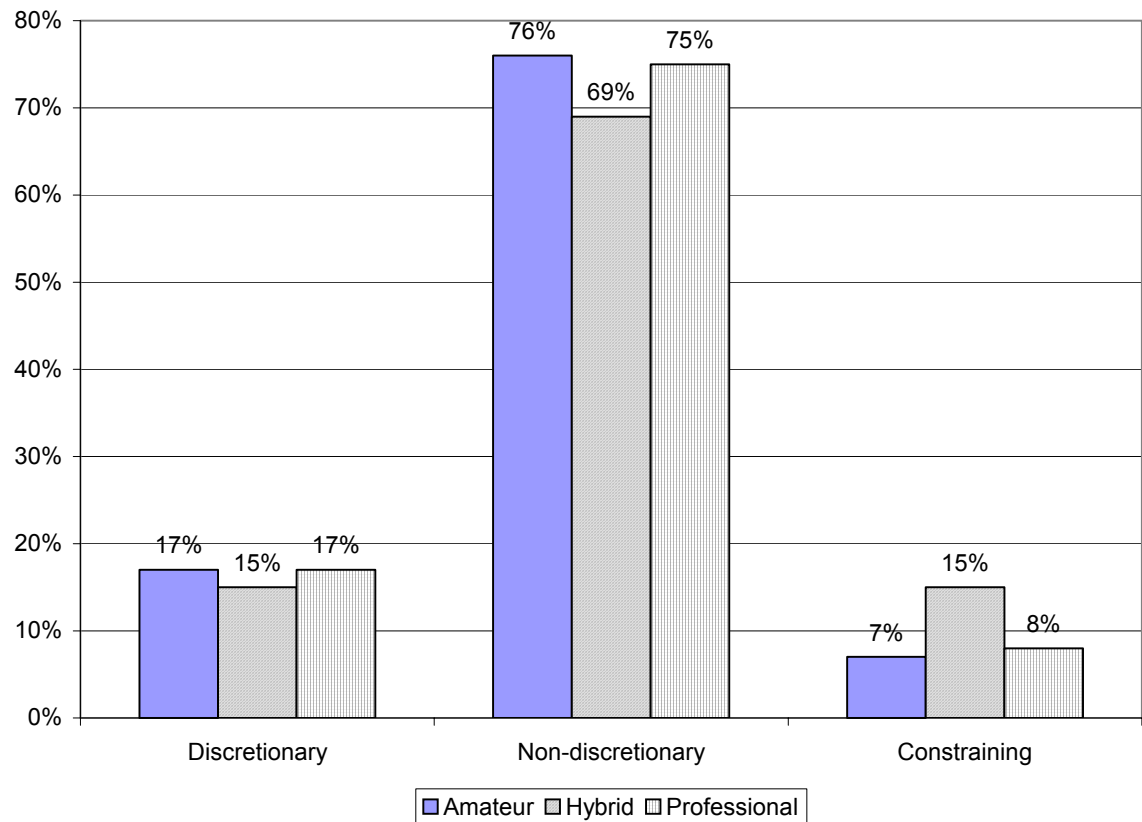
Percentage of Statutory Language by Category for All Legislatures



N = 209

Figure 5.2

Percentages of Discretionary, Non-discretionary, and Constraining Language within Statutes of Amateur, Hybrid, and Professional Legislatures



N=209

Table 5.1

OLS Regression Model (% Delegation)

	Coefficient	Std. Error	t	Significance Level
Legislative Professionalism	-0.8692878	0.7502638	-1.16	0.12
Agency Professionalism	0.0030094	0.022963	0.13	0.45
Agency Leader Selection	0.0430335	0.121232	0.35	0.36
State Population	-7.18E-06	0.0000145	-0.50	0.31
Divided Government	-0.1256374	0.1782569	-0.70	0.24
Percentage Democratic Legislative Seats Held	0.0009233	0.0129678	0.07	0.47
Policy Liberalism	-0.5662241	0.6478434	-0.87	0.19
Loose Judicial Delegation (strict reference category)	-0.0984965	0.103938	-0.95	0.17
Weak Judicial Delegation (strict reference category)	-0.0163639	0.1575296	-0.10	0.46
Ranney Party Control	-0.3023626	1.082026	-0.28	0.39
Ranney Party Competition	0.3024391	1.036579	0.29	0.39
Metropolitan Population %	0.0021595	0.0081452	0.27	0.40
Amateur Legislature (hybrid reference category)	0.0397984	0.2266776	0.18	0.43
Professional Legislature (hybrid reference category)	0.4449879	0.3117358	1.43	0.08
Constant	0.0093597	0.9228314	0.01	0.50

Adjusted $R^2 = 0.0052$

N = 148

Table 5.2

OLS Regression Model (% Delegation)

	Coefficient	Robust Std. Error	t	Significance Level
Legislative Professionalism	-0.8692878	0.1128248	-7.70	0.00
Agency Professionalism	0.0030094	0.0035472	0.85	0.21
Agency Leader Selection	0.0430335	0.0185149	2.32	0.02
State Population	-7.18E-06	2.07E-06	-3.47	0.00
Divided Government	-0.1256374	0.0560609	-2.24	0.02
Percentage Democratic Legislative Seats Held	0.0009233	0.0032284	0.29	0.39
Policy Liberalism	-0.5662241	0.1057035	-5.36	0.00
Loose Judicial Delegation (strict reference category)	-0.0984965	0.0209881	-4.69	0.00
Weak Judicial Delegation (strict reference category)	-0.0163639	0.0294558	-0.56	0.29
Ranney Party Control	-0.3023626	0.2325685	-1.30	0.11
Ranney Party Competition	0.3024391	0.2979312	1.02	0.16
Metropolitan Population %	0.0021595	0.0022362	0.97	0.18
Amateur Legislature (hybrid reference category)	0.0397984	0.0593277	0.67	0.26
Professional Legislature (hybrid reference category)	0.4449879	0.0551925	8.06	0.00
Constant	0.0093597	0.1860757	0.05	0.48

$R^2 = 0.10$ $N = 148$

Clustered by state

Table 5.3

OLS Regression Model (% Non-Delegation)

	Coefficient	Std. Error	t	Significance Level
Legislative Professionalism	-0.342993	0.8038623	-0.43	0.34
Agency Professionalism	0.0015557	0.0246035	0.06	0.48
Agency Leader Selection	-0.2681519	0.1298928	-2.06	0.02
State Population	0.0000243	0.0000155	1.57	0.06
Divided Government	-0.1512735	0.1909915	-0.79	0.22
Percentage Democratic Legislative Seats Held	0.0302982	0.0138942	2.18	0.02
Policy Liberalism	1.127164	0.694125	1.62	0.05
Loose Judicial Delegation (strict reference category)	0.0582775	0.1113633	0.52	0.30
Weak Judicial Delegation (strict reference category)	-0.1324943	0.1687834	-0.78	0.22
Ranney Party Control	-2.79799	1.159326	-2.41	0.01
Ranney Party Competition	1.077123	1.110632	0.97	0.17
Metropolitan Population %	-0.0083046	0.0087271	-0.95	0.17
Amateur Legislature (hybrid reference category)	-0.1717179	0.2428713	-0.71	0.24
Professional Legislature (hybrid reference category)	-0.512393	0.334006	-1.53	0.06
Constant	0.4623726	0.9887581	0.47	0.32

Adjusted $R^2 = 0.07$

N = 148

Table 5.4

OLS Regression Model (% Non-Delegation)

	Coefficient	Robust Std. Error	t	Significance Level
Legislative Professionalism	-0.342993	0.234077	-1.47	0.08
Agency Professionalism	0.0015557	0.0073594	0.21	0.42
Agency Leader Selection	-0.2681519	0.038413	-6.98	0.00
State Population	0.0000243	4.30E-06	5.66	0.00
Divided Government	-0.1512735	0.1163097	-1.30	0.11
Percentage Democratic Legislative Seats Held	0.0302982	0.006698	4.52	0.00
Policy Liberalism	1.127164	0.2193034	5.14	0.00
Loose Judicial Delegation (strict reference category)	0.0582775	0.0435441	1.34	0.10
Weak Judicial Delegation (strict reference category)	-0.1324943	0.0611121	-2.17	0.02
Ranney Party Control	-2.79799	0.4825105	-5.80	0.00
Ranney Party Competition	1.077123	0.6181187	1.74	0.05
Metropolitan Population %	-0.0083046	0.0046393	-1.79	0.05
Amateur Legislature (hybrid reference category)	-0.1717179	0.1230873	-1.40	0.09
Professional Legislature (hybrid reference category)	-0.512393	0.1145081	-4.47	0.00
Constant	0.4623726	0.3860518	1.20	0.13

$R^2 = 0.166$ $N = 148$
 Clustered by state

Table 5.5

OLS Regression Model (% Constraint)

	Coefficient	Std. Error	t	Significance Level
Legislative Professionalism	1.230633	0.7137974	1.72	0.04
Agency Professionalism	-0.0048327	0.0218469	-0.22	0.41
Agency Leader Selection	0.224937	0.1153395	1.95	0.03
State Population	-0.0000174	0.0000138	-1.26	0.10
Divided Government	0.2781821	0.1695928	1.64	0.05
Percentage Democratic Legislative Seats Held	-0.0314176	0.0123375	-2.55	0.01
Policy Liberalism	-0.5798649	0.6163551	-0.94	0.17
Loose Judicial Delegation (strict reference category)	0.0393636	0.0988861	0.40	0.35
Weak Judicial Delegation (strict reference category)	0.1505181	0.1498729	1.00	0.16
Ranney Party Control	3.108309	1.029435	3.02	0.00
Ranney Party Competition	-1.387966	0.9861961	-1.41	0.08
Metropolitan Population %	0.0062608	0.0077494	0.81	0.21
Amateur Legislature (hybrid reference category)	0.1335691	0.2156599	0.62	0.27
Professional Legislature (hybrid reference category)	0.0693148	0.2965839	0.23	0.41
Constant	0.5309941	0.8779774	0.60	0.27

Adjusted $R^2 = 0.068$

N = 148

Table 5.6

OLS Regression Model (% Constraint)

	Coefficient	Robust Std. Error	t	Significance Level
Legislative Professionalism	1.230633	0.1219979	10.09	0.00
Agency Professionalism	-0.0048327	0.0038356	-1.26	0.11
Agency Leader Selection	0.224937	0.0200203	11.24	0.00
State Population	-0.0000174	2.24E-06	-7.77	0.00
Divided Government	0.2781821	0.0606189	4.59	0.00
Percentage Democratic Legislative Seats Held	-0.0314176	0.0034909	-9.00	0.00
Policy Liberalism	-0.5798649	0.1142977	-5.07	0.00
Loose Judicial Delegation (strict reference category)	0.0393636	0.0226946	1.73	0.05
Weak Judicial Delegation (strict reference category)	0.1505181	0.0318507	4.73	0.00
Ranney Party Control	3.108309	0.2514774	12.36	0.00
Ranney Party Competition	-1.387966	0.3221544	-4.31	0.00
Metropolitan Population %	0.0062608	0.002418	2.59	0.01
Amateur Legislature (hybrid reference category)	0.1335691	0.0641513	2.08	0.03
Professional Legislature (hybrid reference category)	0.0693148	0.05968	1.16	0.13
Constant	0.5309941	0.2012045	2.64	0.01

$R^2 = 0.157$ $N = 148$
 Clustered by state

Table 5.7:

OLS Regression Model (Discretion Ratio)

	Coefficient	Robust Std. Error	t	Significance Level
Legislative Professionalism	-0.8004476	0.906555	-8.83	0.00
Agency Professionalism	0.0139455	0.0042386	3.29	0.00
Divided Government	-0.0819518	0.0470804	-1.74	0.05
Percentage Democratic Legislative Seats Held	-0.0001693	0.0021346	-0.08	0.47
Policy Liberalism	-0.4682918	0.1071639	-4.37	0.00
Loose Judicial Delegation (strict reference category)	-0.0296607	0.0178724	-1.66	0.06
Weak Judicial Delegation (strict reference category)	-0.0520513	0.025982	-2.00	0.03
Ranney Party Competition	0.2855439	0.2533978	1.13	0.14
Metropolitan Population %	0.0006748	0.0022111	0.31	0.38
Amateur Legislature (hybrid reference category)	-0.0521754	0.0512242	-1.02	0.16
Professional Legislature (hybrid reference category)	0.3123467	0.0360221	8.67	0.00
Constant	-0.1154599	0.2266949	-0.51	0.31

$R^2 = 0.098$ $N = 148$
 Clustered by state