THE INFLUENCE OF DIVIDED GOVERNMENT ON DISCRETION WITHIN STATE AGENCIES

by

CASEY JACKSON

(Under the Direction of Stephanie Lindquist)

ABSTRACT

In an administrative state, administrative agencies implement and interpret state laws based on the authority of the legislature. Ideally, the function of administrative agencies would be to act as a “transmission belt” between the legislature and the people. In an ideal administrative state, agencies would follow fair and impartial decision procedures, act within the bounds of statutory authority and respect private citizens rights. However, as government rapidly expands, so does the role of administrative agencies. Legislators are deferring more and more to these unelected agents to make decisions, thus decreasing the fundamental democratic right to assume control of governmental actors by the electorate through elections. This research seeks to explain the variation in state agency discretion across the states. I will examine this variation by looking at some of the mechanisms by which agency discretion may be constrained through a number of legal and political mechanisms.

INDEX WORDS: Discretion, State Administrative Agencies, Divided Government
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I would like to dedicate this to Kathy Jackson and Rebecca Davis. Thanks for always believing in me.
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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACKNOWLEDGEMENTS</td>
<td>vi</td>
</tr>
<tr>
<td>LIST OF TABLES</td>
<td>viii</td>
</tr>
<tr>
<td>Chapter</td>
<td></td>
</tr>
<tr>
<td>I.  Introduction: Broad Theoretical Concerns</td>
<td>1</td>
</tr>
<tr>
<td>II. Constraining Discretion: Dependent Variable</td>
<td>6</td>
</tr>
<tr>
<td>III. Measurement of Dependent Variable Discretion</td>
<td>9</td>
</tr>
<tr>
<td>IV. Independent Variable: Explaining Variation in Scope of Discretionary Authority at the State Level</td>
<td>17</td>
</tr>
<tr>
<td>V. Research Method</td>
<td>20</td>
</tr>
<tr>
<td>VI. Discussion</td>
<td>23</td>
</tr>
<tr>
<td>References</td>
<td>28</td>
</tr>
<tr>
<td>Footnotes</td>
<td>33</td>
</tr>
</tbody>
</table>
LIST OF TABLES

<table>
<thead>
<tr>
<th>Table</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Table 1: Indicators of Discretion</td>
<td>14</td>
</tr>
<tr>
<td>Table 2: Independent Influences on Discretion</td>
<td>19</td>
</tr>
<tr>
<td>Table 3: Ordered Logit Model of Discretion in state Administrative Agencies</td>
<td>21</td>
</tr>
</tbody>
</table>
I. Introduction: Broad Theoretical Concerns

In an administrative state, administrative agencies implement and interpret state laws based on the authority of the legislature. Ideally, the function of administrative agencies would be to act as a “transmission belt” between the legislature and the people. In an ideal administrative state, agencies would follow fair and impartial decision procedures, act within the bounds of statutory authority and respect private citizens rights. However, as government rapidly expands, so does the role of administrative agencies. Legislators are deferring more and more to these unelected agents to make decisions, thus decreasing the fundamental democratic right to assume control of governmental actors by the electorate through elections. This deference dilutes accountability by giving agents broad policy-making power and threatening the fundamental beliefs about institutional limitations and responsibilities. Inherent under the role of an administrative state is the power to make policy, yet the very essence of representative democracy is that people directly responsible to the people should exercise such authority. The rise of the administrative state attenuates this control mechanism because agencies employees are appointed in many situations rather then elected and are granted broad discretion in deciding and implementing state policy.

Is the agency accountable to that governmental entity which has defined the rules within which it is to play? Such questions arise because of bureaucratic discretion. It is obvious that the state legislature cannot micro-manage every decision made by agencies. Thus agents often must use their own discretion to determine whether an action falls within the prescribed goals and laws for that agency.

This research seeks to explain the variation in state agency discretion across the states.
will examine this variation by looking at some of the mechanisms by which agency discretion may be constrained through a number of legal and political mechanisms, including judicial review, legislative and executive oversight, and procedural rules and requirements (APA). Also, Freedom of Information Acts and Sunshine Laws serve to constrain discretion by opening governmental action to scrutiny by the citizenry. In the following section, I will address these mechanisms in more detail.

The traditional theoretical argument about administrative discretion is based on principal-agent theory. The basic structure of this theory is that principal hires an agent to do some task he does not have time nor the desire to do himself. The agency problem is that it is in the agent’s self-interest to pursue the directed task only to the extent that it is beneficial to him. Thus, the principal tries to design the incentive that will get the agent to pursue the principal’s interest. However, in addition to this conflict of individual interest, the agent typically has more information about his actions related to task performance. In short, the agent knows what he is doing at work, but the principal does not. Thus, information asymmetry and conflict of interests produce the basic agency problem.

While the concepts behind these models were applied in political science before 1984, Moe (1984) explicitly introduced principal-agent models to the discipline. Supporters of the use of such models within political science argue that they help explicate the critical elements of delegation relationships between citizens and elected officials (Kalt and Zupan 1984; Kau and Rubin 1970; Peltzman 1984), legislative bodies and their committees (Gilligan and Krehbiel 1987), legislative committees or “enacting coalitions” and bureaucratic agencies (Banks and Weingast 1992, Bawn 1995, Bendor, Taylor and Van Gaalen 1987; Calvert, Moran and Weignast 1987).
presidential appointees and agencies (Moe 1985; Wood 1988 and 1989, Wood and Waterman 1991 and 1993), upper level and lower level bureaucrats (Hammond 1986, Miler 1992), higher and lower courts (Songer, Segal and Cameron 1994), and regulators and regulated firms (Barron 1995;20). Together, advocates sometimes refer to these relationships that can shape policy making and/or implementation as a chain, series or link of principle-agent relationships.

Principle-agent models have been particularly insightful for political scientist examining the agency problem within hierarchies, or bureaucratic control. The bureaucrat is typically given wide latitude in accomplishing a task granted to him by an elected official –a principal. Given that both executive (White house or statehouse) and legislative oversight of bureaucratic activity is costly to elected officials, the agency problem is inherent in the bureaucratic administration of public policies. Principal-agent models are of particular interest to regulatory scholars because regulation imposes costs (on producers or consumers), thus there may be a greater likelihood of conflict between the goals of an elected officials and the goals of regulatory bureaucrats than in other policy domains (Meier 1995).

This research will focus on the role of the legislature as the principal. Weignast and Moran (1983), Faith (1982), McCabe’s (1985), and others focused attention on the role of the Congress in federal regulation, collectively developing the perspective of dominance by the legislative branch. Even those that feel that Congress’ power has been overemphasized (Moe 1987, Wilson 1989), agree that the legislature role must be explored. This is true at the state level, especially as legislatures become more professionalized and “capable” (Bowman and Kearney 1988), and as they increase regulatory activity through legislative oversight, sunset laws
audit bureaus (Rosenthal 1990), and administrative procedures acts (Clingermayer 1991).

In some areas of state level regulation, the true principal is the federal Congress, as they wrote the over-arching legislation. But, even here, state legislative influence can be important, including budget decisions. In domains that are strictly under state control, the state legislature clearly should be important.

In some of these studies, state legislative influence is tested as simple party House control or as percentage party control (as with Ranney Index.). Other studies use measures of legislative professionalism to analyze specific legislative rules and powers. None of these studies have yet been fine-grained enough to focus on state legislative committees, as have several federal studies, since the detailed makeup of multiple legislative committees is very resource-intensive.

There is considerable, but perhaps not conclusive, evidence of different types of state legislative influence. Somewhat varied results are not surprising given the large institutional variance across state and across policy domains. Studying discretion in the state context allows for greater variation on the scope of discretion granted to administrative agencies, since states vary substantially on this dimension. Erickson, McIver, and Wright (1987 and 1993) focus on political culture and ideology in suggesting that legislative party and preferences are intervening variables often not found to be influential because they reflect state ideology. This may help emphasize why some studies have found state ideology or measure of “policy innovativeness” to be important (Berry and Berry 1990 and 1992, Gray 1973; Walker 1969).
II. Constraining Discretion (Dependent Variable)

I am interested in evaluating the extent to which states vary in the scope of discretion enjoyed by administrative agencies and why such variation exists. Discretion is the ability for an agency to act according to the course of its own choosing. Discretion can be evaluated on a number of different dimensions. Much of the focus of administrative discretion has been centered on the federal level and whether or not Congress controls the bureaucracy. While this empirical issue has not been settled, scholars have expanded upon several strategies that contribute to the aggregate study of delegation control. This study uses these strategies, while focusing more on constraints and limitations specific to the individual states.

The traditional theoretical argument about discretion is based on the rational choice premise that assumes politicians purposefully attempt to influence bureaucratic behavior (McCubbins, Noll, Weingast 1987, 1989, Ramseyer & Rosenbluth 1993; Moe 1989, 1990). I will look more closely at this theory below. Legal theorists, congressional scholars, and economists have all addressed how rational actors can control the behavior of agents to whom they delegate authority. Administrative law examines the procedural mechanisms that restrict bureaucratic decision making (Mashaw 1990); congressional research focuses on the relation between floor votes and committee members (Krehbiel 1991; Cox and McCubbins 1993); and economic theory looks at firms’ hierarchal relation among owners, managers, and workers (Alchain and Demsetz 1972; Holmstrom 1979; Miller 1992). Overall, past literature focuses on the impossibility of perfect control over agency discretion. This impossibility is centered on problems of asymmetric information, uncertainty about future conditions, and regulating costs.
More modern research has expanded this theory by developing assessments about how and to what extent these features of the political environment influence control strategies. Epstein and O’Halloran (1999) assign delegated authority into two general categories. The first, *ex ante* controls concern issues of agency design. This type of control implements strict requirements on policymaking, criteria, and organizational hoops that administrative agents must go through to perform daily functions. The other category defined by Epstein and O’Halloran consists of *ongoing* controls. Various researchers have expanded on this type of instrument to include: congressional oversight, such as direct and indirect monitoring (McCubbins and Schwartz 1984; McCubbins, Noll, and Weingast 1987; Lupia and McCubbins 1994) and renewing or withholding appropriations (Calvert, Moran, and Weingast 1987). They also include judicial oversight implemented through existing administrative law (Marshaw 1990) and presidential appointment powers (Calvert, McCubbins, and Weingast 1989; Spulber and Besanko 1992). The characteristics of Epstein and O’Halloran’s two categories will be influential in this study because of their applicability to state discretionary restraints.

Mathew McCubbins’s (1987) research was also beneficial in illustrating how these two categories are not explicit from one another. This study shows how *ex ante* reporting requirements may call for *ongoing* oversight of agency activities. McCubbins was responsible for defining the concept of “deck stacking” as the situation when “political actors stack the deck in favor of constituents who are intended beneficiaries of the bargain struck by the coalition which created the agency” (261). McCubbins further emphasizes that the courts play a key role in preventing such “deck stacking,” stating that judicial remedies are a type of “decentralized” enforcers that do not depend on the actions of political controls. Developing and testing
arguments about how features of the political environment influence strategies for control have built upon this rational-choice model. Epstein and O’Halloran (1994, 1999), for example, developed and tested a model that explains how legislators will be more prone to restrain agency discretion during divided government. This, along with Drotning’s research (1993) concerning how the level of policy uncertainty affects federal delegation strategies, will be applied to the states through this study. Another influential scholar on agency discretion has been Kathy Bawn (1995) who focuses on controlling bureaucratic drift. This analysis made strides to show that the optimal level of discretion granted to agencies will be a direct systematic effect of the technical and procedural ambiguities that the legislators face.
III. Measurement of Dependent Variable Discretion

As illustrated, agencies can be constrained in several ways. For the purpose of this research, I will be focusing on constraints imposed by the judiciary and the legislature. The dependent variable, discretion, is a scale measure of indicators by state agencies. The basic premise presented here is that the more of these indicators that are present within an individual state, the less discretion that state has in comparison with the other observations. These indicators include: the stringency contained in the state’s delegation doctrine, presence of an administrative rules review committee, legislative intrusiveness and sunset laws.

Stringency of Court Imposed Delegation Doctrine

I would argue that the varying levels of statutory controls are a major determinant in defining a state’s discretion. The variation across the states is apparent when analyzing the enforced statutory controls, specifically the delegation doctrine. This doctrine has always been a source of controversy because despite the Constitution’s necessary and proper clause, the non-delegation doctrine maintains that Congress’s power to delegate its legislative authority is limited. However, since the New Deal era, the courts have upheld broad delegation of powers with the argument that such dilution was valid if an “adequate standard” was imposed for the agencies to follow (Yankus v. United States, 321 U.S. 414 (1944). Justice Thurgood Marshall stated that the non-delegation doctrine “has been abandoned for all practical purposes.” (Federal Power Commission v, New England Power Company, 415 U.S. 345, 352-53 (1974). It appears that state courts mimic the federal government when it comes to delegation interpretation. Similarly to the federal government, state constitutions can be used as the basis for the
delegation doctrine. When evaluating if delegation of power is constitutional, state supreme courts interpret their own state constitutions. Thus, since constitutional provisions vary, state supreme courts’ formulation and application of the delegation doctrine varies as well. When a legislature delegates rulemaking power to an administrative agency, the agency expands its power and discretion in forming social and economic policy. In essence, broad grants of power allow the agencies to perform quasi-legislatures function as well.

However, the delegation doctrine has a much greater practical significance at the state level than at the federal level (Bonfield, 1992). For example, state administrative agencies may not be as large or complex as the federal bureaucracy, which may cause many state judges to distrust state decision makers due to the limited number of agents performing this process. Also, state agencies are not tied as strictly to such uniform standards as are the federal agencies. Bonfield points out that when debating which limitation is more significant the “important consideration here is not whether the statute delegating the power expresses standards, but whether the procedure established for the exercise of the power furnishes adequate safeguards to those who are affected by the administrative action”(416).

Distinguishing between procedural safeguards and standards is important in order to note this significance. Standards are those regulations that are specifically set forth in the statutory language governing the agency. Under the strict standards principle, state supreme courts uphold lawmaking delegation to administrative agencies as long as the statute contains “adequate standards” or an “intelligible principle” to help guide the agency. The stringency of such a standard serves to better protect the accountability of an agency, yet also shackles the flexibility to adjust to ever-changing problems. This standard requirement reflects the idea that the
legislature should not be void of political responsibility because of such lawmaking delegation. The other recognized restraint on administrative discretion is in the form of procedural safeguards. Safeguards serve as more passive and flexible restraints, thus recognizing that state legislatures do not have the time to deal with complex problem solving and therefore need to rely on administrative experts. Consequently, state courts that uphold this type of loose standard allow broad delegation to administrative agencies with minimal guidance from state legislatures.

A survey by Gary J. Greco shows the discrepancies in how the delegation doctrine is enforced across the states. This survey lists 18 states that at least purport to insist on adequate legislative standards, which are grouped in Category I; 24 states that require only a general guiding rule, named Category II; and 4 states that require no standards but only procedural safeguards, classified Category III (1994). From this survey I postulate that since the legislature cannot delegate power to the agencies without definite standards, administrative agencies in a Category I state have less discretion and less power than the other states. According to Greco’s theory, states within Category II allow broad grants of authority from the legislature to state agencies. By granting such broad power, these states have wider discretion in determining how a statute will affect the public. States within Category III uphold the most legislative delegation of power to administrative agencies. As Greco illustrates through his survey, Category III states retain more discretion and power than state agencies in Category I and Category II, because these states are guided by administrative safeguards and have been granted explicit power.

*Administrative Rules Review Committee*

Another restraint that places limitations upon state discretion is the presence of an administrative rules review committee within the state. This committee is not categorized as an
“agency” but rather is a sub-unit to the state legislature. The committee is “fully institutionalized” in that it was formed with the single purpose of regulating all rules review functions. Typically, a state rules review committee is comprised of members of both houses to form a single, standing review committee. No such institution for legislative review is present on the federal level.

During the last part of the decade, states have had to conform to ever-changing circumstances by creating legislative mechanisms of review over administrative agencies. The committee process was seen as the most effective due to the large size of most state bureaucracies. One advantage of such a committee is that through such a singular focus, expertise is advanced in the application of rule making procedures. Also, the committee is in a good position to make the rules of various state agencies compatible with one another, thus narrowing any discrepancies amongst the state agencies. Another advantage of a single committee, suggested by Bonfield, is that it “acts for the full legislature, not just one house” (1992, 431). This is of great importance because it eliminates any rivalries between the houses that might otherwise cloud the review process.

Although many states have adopted such review committees, little information has been gathered on the comparison across states. A study by Marcus Ethridge however, does provide that “empirical support for the ideas that a stronger legislative role [through an administrative rules review committee] can reduce regulatory stringency” (439). Ethridge’s study finds that in two out of the three states he studied, “restrictive [agency] regulatory proposals are considerably more likely to encounter [rules review] committee objection” than other agency proposals (442). Specifically, in this study I assume that the presence of an administrative rules review committee
indicates a higher standard of regulation over the state, thus limiting the amount of discretion
given to the agencies.

I argue that the presence of rules review committees would lead to more regulation and
restraints, thus enacting stricter standards over the state administrative agencies.

Legislative Intrusiveness

New mechanisms have been adopted on the state level which indicates that legislative
participation in implementation is entering a period of considerable development and expansion.
Analysts in favor of enlarging the legislative role in administration usually base such arguments
on the fairly straightforward idea of democratic accountability. Some have argued that
administrative efficiency is improved by legislative surveillance since frivolous policies are
overturned. However, not all forms of legislative participation are equal in terms of
representation. Legislative participation includes inquiries and requests by an individual
legislator, committee investigations, strenuous cost benefit analysis and enactments desired by
an entire legislature. For example, an enactment by both houses of a legislature would be more
reflective of the public will than an action by a single legislator on behalf of a particular
constituent. Another dimension on which legislative participation varies is the degree to which it
results in significant and sustained changes in regulatory policy. Certainly some legislative
action is ultimately insignificant in terms of the overall direction of policy. For example, a few
exceptions for specified individuals can be granted at the request of a legislator without affecting
the fundamental workings of the policy process. On the other hand, legislative participation can
result in marked changes in administrative policies and powers.

The “scope of legislative involvement” is then a central dimension in the amount of
discretion an agency has in the legislative context. Marcus Ethridge (1981) analyzed the variance of legislative and administrative interaction. Etheridge coded each state on the basis of whether the state had a high degree of intrusive access or simply generalized legislative oversight. Those states that qualified as “intrusive states” suggest that agency discretion is limited due to the high degree with which the legislator can block administrative action either through veto provisions, committee action or individual legislator slughters.

*Sunset Review*

Another important oversight tool to consider is the presence of sunset laws in the states. According to recent arguments, two problems have led to the adoption of sunset laws. The first centers on the weaknesses of agency program implementation and the need to improve performance. The second problem is that legislators have ignored their role in overseeing that performance.

In order for a to be classified as sunset there must be at least a termination date on the agency’s existence forcing the legislators to pass new legislation if the agency is to continue. Most recently, thirty-four states had adopted sunset laws. Additional elements can be present that enhance the evaluation of that agency or improve the legislator’s oversight role, but they are not a prerequisite for the existence of sunset. Yet, all legislators’ can abolish agencies and their programs by not approving their appropriation request for the following fiscal year or by abolishing their statutory authority. In most cases, state sunset laws contain a certain amount of legislative oversight, including; public participation rules for agencies, full disclosure and conflict of interest regulation, and equal employment opportunity measures. What does sunset accomplish for legislative oversight? In strict terms, sunset defines a periodic review of agencies
and their programs to determine if they are performing according to legislative intent; if they are efficient or at least employing the most efficient means of accomplishing that mandate; and ultimately, if the agency services are required in the future. The clout of most sunset laws is this termination emphasis. In most cases, state legislatures have always had this ability to terminate programs; sunset laws, however, provide a more formal and systematic review of agency actions.

One critical distinction is made in the type of sunset law enacted: selective versus comprehensive. The comprehensive category requires that before the cycle of review is completed, all or most agencies of the state must complete the sunset process. In the selective category, concentration is on occupational licensing and regulatory bodies to the exclusion of most administrative departments such as highway, health, and education departments. Only seven states have adopted comprehensive sunset laws, while twenty-seven have enacted selective laws. The scope of sunshine laws for the fifty states is measured using Pajari’s index (1988). High scores indicate a broad scope of sunset laws applicability, while low scores indicate limited discretion.¹

All of these discretion indicators are presented below in Table 1:

<table>
<thead>
<tr>
<th>Table 1. Indicators of Discretion</th>
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<tbody>
<tr>
<td>2. Presence of administrative review rules committee.</td>
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<td>3. Legislative Intrusiveness</td>
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<td>4. Sunset Review.</td>
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From the restraints summarized in Table 1, I devised an index to measure discretion. The dependent variable is ordinal in nature with 0 equaling the most expansive degree of discretion.
and 4 equaling the most stringent constraints placed upon state agencies. This index helped form a composite measure of discretion across the states. I began this measure of discretion by listing each of the discussed indicators with reference to each of the fifty states. Then when analyzing a state, if one of the specific indicators was present, that state received a score of 1, and if no such restraint was present, a score of 0.

After each of the indicators had been scored with reference to each of the fifty states, the total index score was calculated. Individual states that have a high total index score signify the presence of more constraints within that state. Thus, higher values on this variable indicate less discretion granted to administrative agencies.
IV. Independent Variable: Explaining Variation in Scope of Discretionary Authority at the State Level.

The remaining variables addressed control for the other numerous factors that may influence the level of discretion given to state agencies. The independent variables within the states included: a divided government, divided legislature, professionalism, economic status, education level, political culture, and ideology. I have chosen the year 1999-2000 for the specific time period because it allows for the most recent data relevant to the independent variables. However, one needs to consider that the laws and state statutes are constantly changing. Yet, I hope to control for these discrepancies by analyzing the most updated information amongst the states.

*Divided Government*

The first independent variable analyzed was divided government, which centers on the effects of whether the legislature and the executive branch agree or disagree on policy. I postulated that in the circumstances of a divided government, the legislature and the executive would have more incentive to constrain agencies. A legislature that is in agreement with the executive would have more faith in executive’s action and thus grant more leeway to agencies. Furthermore, where the two branches are in agreement, the legislature has less to worry about when it comes to the executive implementing the law written by the legislature. I addressed the problem of time order and causation by collecting data on divided governments within each state spanning the last decade. Overall, the measure of divided government remained relatively stable across time.
Thus, the hypothesis is as follows:

**H1: The amount of discretion granted to state administrative agencies would be less under a divided government than a unified government.**

*Divided Legislature*

Another factor that may influence the statutory controls placed upon an agency is the presence of a divided legislature. The previous independent variable accounts for the impact of a divided government in general, however, I need to address the two forms of divided government. In one case the legislature is unified in its opposition to the executive, whereby the same party controls both chambers of the legislature. However, it may also be the case that the legislature is divided between two different parties. This would result in one chamber belonging to the same party as the governor and the other chamber affiliating with the opposing party. This scenario is of importance to the study because in the case of a divided legislature, the conflict surrounding the adoption of detailed legislation will be greater than if the two were unified. Similar to the argument in the case of a divided government, I postulate that the in the presence of a unified legislature, there will more discretion granted to state administrative agencies. Thus, I offer the following hypothesis:

**H2: The amount of discretion granted to state administrative agencies would increase in the presence of a unified legislature.**

*Professionalism of Legislature*

The professionalism of each state’s legislature will be another influence upon the scope of discretion given to state agencies. I use the term professionalism to describe several
characteristics of legislative capacity such as the number of staff, days in session, and total expenditures. Such characteristics are important to the study because the more professionalism present within the state’s legislature, the more resources the state will have to spend on policymaking. For instance, if the state wanted to limit agency discretion, the legislator would face higher costs in implementing rigid statutory controls. The more highly professional legislators are more likely to have time to consider the various procedural constraints that may be placed on administrative agencies and utilize various mechanisms, such as sunset laws, as a means to control agencies. Thus by the concept of professionalism, I do not simply imply financial disadvantages, although these would come into play through the increase in staffing and material, but also the cost of additional time and expert ability. I measured professionalism by analyzing the compensation allotted to each state legislature. This measurement allows us to see if the legislator is a part or full-time employee, the degree of money that can be spent on policy making, and the extent of expertise within the state’s legislative staff. Therefore, this single measurement of compensation allows us to have a straightforward measure without having the possible co linearity of using multiple measures.

The hypothesis is stated as follows:

H3: The higher the professionalism of the legislature, the lower the discretion granted to state administrative agencies.

Economic Status

The economic level of the state is another necessary control variable in the study. Assuming that a state falls below the average economic level, less expenditure can be spent on agency safeguards and oversight resources, therefore, resulting in an expansion of discretion
available to state agencies. Therefore, the hypothesis is as follows:

**H4: The higher the economic level of a state the less discretion granted to state administrative agencies.**

**Education Level**

Another variable examined within the study was the educational averages within the individual states. The assumption here is that states with more highly educated citizens will be more proactive in the activities of government which will lead to an increase in public participation and agency accountability. Therefore, the hypothesis is as follows:

**H5: The higher the educational level of the state, the lower the level of discretion.**

**Political Culture**

The role of political culture within a state was also examined within the discretion model. Here I use the concept of “political culture” as a determinant of the expectations and values that citizens share about government. The data used for this measurement was obtained by Daniel Elazar’s (1966, 1972) typology of political cultures among the American states. Elazar lists three types of political cultures: the Individualistic, the Moralistic, and the Traditionalistic. The Individualistic culture characterizes states where the role of government is strictly limited and the individuals control politics. The Moralistic culture is present in states where there is much concern for the public good and where government is a concern for everyone. The Traditionalistic culture is present in states where the main concern is preserving the existing traditions and where the elite and public participation control government is limited. By using this typology, I will analyze how the traits...
of a state’s political culture affect its scope of discretion. 7

Moralistic and Individualistic cultured states are more open to public participation and government leniency, thus advocating broad discretion. On the contrary, Elazar’s Traditionalistic culture offers a very different view on agency discretion. I assume that the states with this type of political culture are biased against any major changes in legislation, thus decreasing agency discretion. Thus the hypothesis is as follows:

**H6: The states with a Traditionalistic political culture have less discretion granted to state administrative agencies.**

**State Ideology**

The ideological leanings of a state may also shape the amount of discretion granted within the state administrative agencies. In one instance, a liberal state may be more prone to bring more issues to the table of decision makers, thus broadening the realms of discretion. A conservative state, however, may be less receptive to “loose” analysis and practices by the state agencies, thus squelching the amount of discretion granted within that state.

Measuring this control variable requires a more in depth analysis than the variables previously mentioned. To obtain the data for this measurement I used a study conducted by Wright, Erikson, and McIver (1993), which involved a collection of surveys from 1974-1982. 7 This estimate of state ideology is the most direct reflection on the state opinion and state policy liberalism that is available at the present time. The hypothesis is as follows:

**H7: A more conservative state will delegate less discretion to administrative agencies than a liberal state.**

All of the independent variables are summarized in the following table:

**Table 2. Independent Influences on Discretion**
1. **Divided Government (G):** This independent variable represents the level of conflict in comparison of a divided over a unified government. This will be the test variable.

2. **Divided Legislature (L):** This independent variable represents the additional factors surrounding a divided legislature in relation to discretion. This will be a control variable in the study.

3. **Professionalism (P):** This independent variable represents the various costs placed upon the legislature when trying to control agency discretion. This will be a control variable in the study.

4. **Economic Status (E):** This independent variable measures the average economic status of the state. This will be a control variable in the study.

5. **Education (ED):** This independent variable will measure the average education level with the state. This will be a control variable in the study.

6. **Political Culture (C):** This independent variable represents the overall political culture of the state. This will be a control variable in the study.

7. **Ideology (I):** This independent variable will represent the dominant ideology within the state. This will be a control variable in the study.
V. Research Method

Table 3 presents two models: the first reflects the original model of explanatory variables and effects on discretion and the second reflects a reduced model of determinants of discretion degree. The use of an ordinal dependent variable complicates analysis using the most common regression techniques. Ordinary least square regression, which assumes interval level data, tends to overestimate the consistency between scores in ordinal scale. Use of multinomial regression analysis neglects the hierarchical aspects of ordinal dependent variables. For this reason, Greene (2001) suggests the use of Ordinal Logit Regression with ordinal level dependent variables. The results presented below were conducted using STATA 7.0 ordered logit function.

<table>
<thead>
<tr>
<th>Variable</th>
<th>Original Model Parameter Estimates (Standard Estimates)</th>
<th>Reduced Model Parameter Estimates (Standard Estimates)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Divided Government</td>
<td>-1.15 (.645)**</td>
<td>-1.30 (.634)**</td>
</tr>
<tr>
<td>Divided Legislature</td>
<td>-0.812 (.701)</td>
<td>-0.888 (.695)</td>
</tr>
<tr>
<td>Legislative Professionalism</td>
<td>-0.992 (.627)**</td>
<td>-1.18 (.617)**</td>
</tr>
<tr>
<td>Education</td>
<td>1.23 (.690)**</td>
<td>1.57 (.588)**</td>
</tr>
<tr>
<td>Ideology</td>
<td>-0.089 (.675)</td>
<td>0.059 (.553)</td>
</tr>
<tr>
<td>Political Culture</td>
<td>-0.148 (.817)</td>
<td></td>
</tr>
<tr>
<td>Economics</td>
<td>-0.853 (.736)</td>
<td></td>
</tr>
<tr>
<td>Constant (1)</td>
<td>-4.05</td>
<td>-3.43</td>
</tr>
<tr>
<td>Constant (2)</td>
<td>-1.92</td>
<td>-1.37</td>
</tr>
<tr>
<td>Constant (3)</td>
<td>0.435</td>
<td>0.951</td>
</tr>
<tr>
<td>Constant (4)</td>
<td>2.06</td>
<td>2.57</td>
</tr>
</tbody>
</table>

Note: **p<.05, *** p<.00; one-tailed tests. Log-Likelihood (Original Model):-62.607, p<.01;
Log-Likelihood (Reduced Model): -63.326, p<.00.

**Original Model.** The results presented in Table 3 demonstrate that the degree of discretion amongst state administrative agencies is affected by the presence of a divided government, the professionalism of the legislature, and the education level within the state. As for divided government, in those states that have a governor that belongs to one political party and a legislature that belongs to another, both branches delegated less discretion to administrative agencies than in states that were unified. The presence of a divided government was the most significant variable within the model with a standard error of .645. Interestingly, however, the presence of a divided legislature did not prove significant to the degree of discretion within a state administrative agency.

The relationship between legislative professionalism and discretion was significant at the .05 level. However, the hypothesized causal direction was not supported. I postulated that the more expenditure spent by the legislature, the less discretion state agencies would have. Yet, the negative coefficient for the dependent variable supports just the opposite.

As for education, in states that have a higher education level, delegated discretion amongst administrative agencies was less. Economic levels, however, did not have a significant relationship to the amount of discretion within administrative agencies. Furthermore, neither ideology nor political culture had a significant relationship to the amount of discretion within a state administrative agency.

**Reduced Model.** The second model also evaluated the determinants of the dependent
variable; however, economics and political culture have been excluded. Economics was highly correlated with education within the original model, which could possibly be minimizing the significance within the model. Similarly, there was a high correlation between political culture and ideology in the original model.

As seen in Table 3, the significance of divided government, legislative professionalism and education were all increased within the second model. In addition, although not significant at the .05 level, the relationship of divided legislature and ideology on discretion was greatly increased from the original model.
VI. Discussion

The delegation of policymaking authority to regulatory agencies has expanded tremendously over the past few decades. In attempting to mitigate the tension this has caused for the political system, the legislative and the executive branches have instituted a variety of constraints to ensure the quality of administrative efforts to regulate the exercise of bureaucratic discretion. Some of these efforts included; state delegation doctrines, administrative rules review committees, legislative intrusiveness and sunset laws.

The main objective throughout this study has been to develop a comparative theory of legislative delegation to state agencies. The theory is comparative in that it takes into account how various features of the political environment affect the level of discretion granted to individual states in the decision making process. The research described here finds evidence for the proposition that discretion is associated with the presence of particular administrative controls. One measure, divided government, has negative causal direction associated with discretion granted to state agencies. One possible reason for this relationship could be that in the circumstances of a divided government, fewer constraints will be enforced upon administrative agencies because of the increased need to reach policy decisions. It is possible that if legislators and executives do not agree on the same goals, deference will still be given to administrative agencies so that policy decisions can be enforced or nullified. Therefore, to reduce gridlock in decision-making, greater autonomy may still be granted to state administrative agencies in the presence of a divided government.

Moreover, the explanatory variable, divided legislator had a similar relationship on
discretion granted to agencies. This association appears consistent with the claim that uncertainty over policy alternatives may lead to the use of administrative procedures to control delegated authority and implement reforms. Another interpretation could be that when facing a stand still in compromise, the legislative and executive branches relinquish authority to administrative agencies as a means to moving forward.

Education also appeared to be related to the discretion within the state. This relationship seems to support the theory that the more highly educated a population within a state the more likely the citizens are to take an active role in government, thus increasing the accountability of representatives. This accountability would make it harder for the legislators and executives to abdicate their delegated authority upon the state administrative agencies. Another noteworthy relationship was legislative professionalism, although significant, the negative association to discretion does not support the initial hypothesis. One possible explanation could be that the more money and resources spent by the legislature positively coincides with the workload transferred to administrative agencies. In other words, as the exertion of legislators is spent, both financially and physically, they must bequeath some responsibilities to state administrative agencies.

Overall, the analysis provides only sporadic support for this version of the discretion model. This may be the case because of the imperfect measurement or the uncertainty surrounding this idea of administrative discretion. Certainly, many of the measurements here leave much to be desired, but superior indicators are hard to find at the state level. It is possible that the model might receive more support if the analysis were applied to a more disaggregated data set; one composed not of aggregate state outcomes but of agency-specific procedures or of
individual-level legislative behaviors, such as legislators’ roll call votes on new administrative controls. I also acknowledge that time order and causation could be a problem within the independent variables, however, further measurements across time spans as was conducted with divided government could alleviate this problem for future research.

Despite these shortcomings, at least one tentative conclusion can be drawn from this analysis. There is clearly a variance amongst the states in the levels of discretion granted to administrative agencies. Certainly researchers should continue to examine the possible explanations for this variance, but it seems likely that a major part of this explanation will be found within state bureaucracies themselves. The question of representative accountability is clearly a thriving force surrounding this relationship.
REFERENCES


Calvert, Randall, Mathew McCubbins, and Barry Weingast. 1987. “Congressional Influence


**Footnotes**

1. The scope of sunset laws is measured using Pajari’s index (1988). The variable is treated as continuous with an actual range of 4 to 21. I coded the states as 1 on the discretion
index if that state had a score higher than the median value of 10 on the Pajari index.

2. The data to test the divided government variable was the National Conference of State Legislatures, which can be found at site http://www.ncsl.org. After referring to this data, I will give the state a value of 1, if the state’s legislature and the state’s governor are from separate parties. If the state has a unified government, it will receive a value of zero.

3. The mean level for legislative professionalism during the 2002 year period was $45,000. This number was found by totaling individual legislative salary and voucher compensation. Forty-five thousand was the average legislative compensation among the fifty states.

4. I will get the data to measure legislative compensation by referring to the National Conference of State Legislatures Website (http://www.ncsl.org). This site lists the compensation allotted to each state’s legislature during a one-year period.

5. The mean economic level of the state was found by averaging the individual state per capita income level. The average per capita income level was set to be $30,000.

6. The average education level amongst the states was set at 24%. If an individual state was found to have less than 24% of its population to obtain a bachelor degree that state received a coding of 1.

7. Political culture was coded by referring to Elazar’s survey. The states classified as moralistic or individualistic received a coding of zero while those classified as traditionalistic in political culture received a coding of 1.

8. State Ideology was coded using the study conducted by Wright, Erikson, and McIver. Liberal states were coded as zero and conservative states received a coding of 1.