Legislatures and Statutory Control of Bureaucracy

John D. Huber Columbia University
Charles R. Shipan University of Iowa
Madelaine Pfahler University of Michigan

Existing theories of legislative delegation to bureaucracies typically focus on a single legislature, often the U.S. Congress. We argue that this parochial focus has important limitations. If one contends that politicians respond rationally to their political environment when adopting strategies for controlling bureaucrats, then theories of control should be able to explain how differences in the political environment—and in particular in the democratic institutional arrangements that shape this environment—influence strategies for controlling bureaucrats. We offer such a theory about the conditions under which legislatures should rely on statutory control (i.e., detailed legislation) in order to limit the discretion of agencies. The theory focuses on the interactions of four factors: conflict between legislators and bureaucrats, the bargaining costs associated with choosing the institutions for controlling bureaucrats, the professional capacity of legislators to create institutions for control, and the impact of political institutions on the relative costs and benefits of statutory and nonstatutory strategies of control. We test our argument using legislation from 1995 and 1996 that affects Medicaid programs. The results show that legislatures are more likely to make use of statutory controls when control of government is divided between the two parties, the two chambers of the legislature are unified in their opposition to the executive, the legislature is more professionalized, and the legislature does not have easily available options for nonstatutory control.

Bureaucratic involvement in policymaking is a pervasive condition of modern political life. Bureaucracies implement policies that legislatures have enacted, and they create policies where legislatures have avoided doing so. They can act to regulate industries, to distribute benefits and costs, and to redistribute wealth. They tackle policy areas as disparate as telecommunications, the environment, transportation, and public health.

Given the pervasiveness of bureaucratic activity, it is not surprising that political scientists long have sought to understand the relationship between legislatures and agencies. Understanding this relationship is essential to democratic theory, as it focuses attention on the legitimacy of the role played by unelected policymakers in a representative democracy. Furthermore, it sheds light on the actions, abilities, and motivations of legislators. Thus, scholars have attempted to ascertain whether, to what extent, and under what conditions legislators influence the actions of agencies.

Much of the focus of this research has been on the U.S. Congress, and much of the debate has centered on the question of whether in fact Congress controls the bureaucracy. This is a difficult question to answer, as it requires fairly precise information on legislator preferences and agency outputs. But while settling the empirical issue has been difficult, in addressing this question scholars have clarified several strategies for control, including the use of budget processes (e.g., Banks 1989; Bendor, Taylor, and Van Gaalen 1987), ongoing oversight (e.g., Aberbach 1990), and statutory control, whereby legislators use legislation to influence agency decisions.

John D. Huber is Associate Professor of Political Science, 732 International Affairs Building, Columbia University, 420 W. 118th Street, New York, NY 10027 (jdh39@columbia.edu). Charles R. Shipan is Associate Professor of Political Science, 341 Schaeffer Hall, University of Iowa, Iowa City, IA 52242 (Charles-Shipan@uiowa.edu). Madelaine Pfahler is a Ph.D. Candidate in Political Science, The University of Michigan, Ann Arbor, MI 48104 (madop@umich.edu).

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Like much of the research on Congress, this article focuses on statutory means of control, with the objective being to understand when, and under what conditions, legislators will attempt to use legislative statutes to spell out in detail what actions bureaucracies should or should not take. We, however, attempt to fill a lacuna in the theoretical and empirical understanding of delegation, a lacuna that inevitably arises when theories are developed and tested within a fixed institutional setting (like Congress). One should expect that the broader political context in which legislators find themselves will affect legislative strategies for controlling bureaucrats (Huber and Shipan 2000a). Efforts to exercise control, for example, should logically depend on factors such as the level of legislative professionalism, the structure of legislative-executive relations, or the arrangements for legislative intervention in bureaucratic activity. When studies of delegation are conducted in settings where such features of the environment are fixed (as they are in studies of Congress), these features cannot become elements of our theories of delegation.

Our primary objective is therefore to develop and test a theory of delegation that is explicitly comparative. By "comparative," we are not simply referring to "outside the United States," as the term is often used. Rather, we mean that variation across institutional arrangements and political systems allows us to make predictions about the effects of these arrangements and systems on incentives to use statutory control. We focus explicitly on variation in institutional arrangements within separation-of-powers systems and test our theory by conducting a comparative analysis of policymaking in the U.S. states. The theory, however, easily can be adapted to encompass delegation in parliamentary systems (Huber and Shipan 2000b).

We believe that a comparative approach is crucial to testing theories of delegation that view the structures constraining bureaucratic behavior as the results of rational choices by politicians who care about the outcomes from bureaucratic behavior. After all, if politicians respond rationally to their political environment when adopting strategies for controlling bureaucrats, then differences in the political environment—and, in particular, in the democratic institutional arrangements that shape this environment—should create differences in the optimal strategies for controlling bureaucrats. It is this idea that we seek to develop and test.

The article proceeds as follows. In the following section, we spell out our theoretical argument about statutory control, an argument that takes into account the influence of particular political institutions that vary across systems. After developing this argument, we discuss our empirical test, which focuses on Medicaid health policy in the states, and present our results. The conclusion summarizes the main results and discusses ideas for future work.

A Comparative Theory of Delegation

Our theoretical argument about delegation is in the rational-choice tradition that maintains politicians purposefully attempt to influence bureaucratic behavior (e.g., McCubbins, Noll, and Weingast 1987, 1989, Ramseyer and Rosenbluth 1993; Moe, 1989, 1990a, 1990b). Recent research has built on this tradition by developing and testing arguments about how features of the political environment influence strategies for control. Epstein and O'Halloran (1994, 1999), for example, develop and test a model that explains why legislators will be more likely to limit agency discretion during divided government. They, along with Drotning (1993), also examine how the level of policy uncertainty affects delegation strategies. Bawn (1995, 1997) looks at a similar set of issues, focusing primarily on tradeoffs between taking advantage of the expertise that bureaucrats possess and controlling agency drift. Her theory indicates that the optimal level of discretion that legislators give to agencies will be a function of a systematic interaction between the technical and procedural uncertainty that legislators face.[1]

Such research has done a great deal to improve our understanding of delegation processes in Congress. But as noted above, the near-exclusive focus on Congress has led to a set of explanatory variables that vary over time (e.g., the level of conflict between legislature and executive) or across issues (e.g., technical uncertainty about policies). This is obviously essential for explaining variation within Congress, but this dominant mode of theorizing has impoverished our understanding of how the institutional setting in which legislators find themselves affects the way in which they design legislation to control bureaucrats. It seems likely, for example, that if the political arrangements in a particular system facilitate nonstatutory control, then statutory mechanisms should be less important in that system. Similarly, the influence of variables like divided government and technical uncertainty on discretion strategies should not be the same everywhere, but should depend on factors such as the

[1]Other studies that have found some empirical support for the argument that politicians delegate strategically include Potoski (1999), Spence (1999), Drotning and Rothenberg (1999), and Volden (2000). Studies that cast doubt on this argument include Balla (1998) and Hamilton and Schroeder (1994).

institutional resources that legislators possess. More generally, we should expect the importance of the control strategies that previous studies have identified to vary with specific features of a system's political institutions.

Our theory begins with the premise that legislators care about the policy actions taken by bureaucrats. Given this interest in policy, consider the situation faced by the legislature. To begin with, it might be in the legislature's interest to let an agency develop policy, since agencies are staffed with experts who may know more than the legislature about the policy area and about the link between policy actions and outcomes. Thus, to the extent that the legislature can trust the agency to make the "right" choices—in other words, the choices the legislature would make if it had as much expertise as the agency—it will want to delegate broadly and allow the agency to determine policy details.

Of course, it is also possible that the legislature will *not* trust the agency to do the right thing. The legislature may worry that the agency will implement policies that are at odds with the legislature's preferences, acting instead according to its own preferences (or those of some other political actors). In such cases, the legislature will not want to give free rein over policy to the agency, but instead will prefer to constrain the agency by filling enacting legislation with specific policy details and instructions. By writing such legislation, the legislature aims to prevent the agency from acting in ways inimical to the legislature's interest.

The legislature's goal of putting policy details into legislation (i.e., engaging in statutory control) when it does not trust the agency is not the end of our theoretical argument, but rather is only the start. A lack of confidence in the agency may give the legislature the incentive to write detailed legislation, and it undoubtedly will act on this incentive. However, the extent to which it will be able to write detailed legislation is also dependent on other factors. First, the legislature must have the capacity, or ability, to write such laws. That is, it must have the necessary skill and knowledge to know what to write. If it lacks this capacity, it may find itself in the position of wanting to write detailed legislation, but being unsure about what to write and, in the end, being unable to provide as many specific instructions to the agency as it would like. Second, the legislature must be able to overcome obstacles, or what we refer to in following sections as bargaining costs, to passing legislation. Under some conditions, the legislature will find it easier to overcome these obstacles and pass legislation; under other conditions, the legislature may be unable to pass legislation, even when it wishes to do so.

While the incentive to constrain the agency and the capacity to do so are important parts of our theoretical puzzle, there is one remaining piece. The ultimate goal of writing detailed legislation is to prevent the agency from taking an action that runs against the legislature's interests. If, however, the legislature has other means by which it can keep the agency in line, it might choose to rely on these other means rather than exerting the effort to write detailed legislation. In other words, even though the legislature might distrust the agency and thus have the incentive to engage in statutory control, it might prefer to rely on alternative (and less costly) means of influencing the agency's actions.

Our argument thus focuses attention on four sets of political variables and the interactions between these variables. To begin with, the *political context*—whether legislators and agencies agree or disagree about policy—affects the incentive, or need, to limit discretion. If legislators and bureaucrats wish to achieve the same objective (because, for example, government is unified) then legislators have no incentive to control the agency by undertaking the arduous task of writing detailed legislation. When the legislature does have the incentive to engage in statutory control, two other variables become important. The legislature needs the *professional capacity*, or ability, to write detailed, policy-specific legislation. And it needs to be able to overcome the *bargaining costs* that make the passage of legislation difficult. While the political context influences the incentive to limit the agency's discretion, these other variables provide the ability to do so. Finally, the extent to which legislators seek to limit discretion depends on whether alternative, *nonstatutory opportunities* for control exist. Limiting discretion by writing detailed legislation may be a less attractive strategy if the legislature can affect agency behavior through these other means.

These four factors—the political context (i.e., conflict of interest), bargaining costs, legislative capacity, and the nature and availability of nonstatutory opportunities for control—combine to influence the use of statutory control. Having set out the basics of the theory, we now discuss these factors in more detail in order to generate a series of testable hypotheses.

The Political Context: Conflict of Interest and Legislative Control of Agencies

Not surprisingly, conflict of interest has played a central role in theory building and testing about political control of agencies in the U.S. Congress (e.g., Bawn 1995; Epstein and O'Halloran 1994, 1999). Elected politicians will have the greatest incentive to constrain the actions of an agency when there is a conflict of interest between the politician and the agent. If a politician and bureaucrat wish to achieve the same objective, then the bureaucrat has little incentive to work against the politician, and the politician has little to fear from delegating substantial autonomy to the bureaucrat. Indeed, in such situations politicians stand to gain from allowing bureaucrats to make use of their considerable expertise. If, on the other hand, the bureaucrat and politician have different goals, then there is greater downside risk of delegating authority because the bureaucrat will have incentives and opportunities to work against the politician. Thus, if politicians care about choosing institutions that maximize their utility from the delegation process, they should choose institutions that place the greatest limits on bureaucratic autonomy in situations where conflict of interest is greatest.

In separation-of-powers systems, divided government has been the factor most commonly associated with conflict of interest. Divided government should influence the benefits of limiting agency discretion because executives typically have a strong influence on the preferences and actions of leaders in executive agencies. Thus, if the legislature is controlled by one party, and the executive by another, we should expect the legislature and agency to have more divergent preferences than when the executive and the legislature are of the same party. And if the preferences of the agency diverge from those of legislators, then the immediate benefits of specifying details in legislation should be larger than if these preferences converge.

This perspective is consistent with arguments derived from spatial models of politics (e.g., Hammond and Miller 1987; Ferejohn and Shipan 1990; Hammond and Knott 1996; Morris and Munger 1998). In these models, when the legislature and the executive have divergent preferences, the agency has more leeway to implement its own preferred policies. If the agency shares the preferences of the chief executive, and the chief executive and the legislature disagree over policy, then the agency can implement its ideal point without interference from the legislature. The legislature, anticipating this, will need to constrain the agency from doing so. It is precisely because a larger core permits more agency discretion that the legislature will have the incentive to use statutory control to help assure faithful implementation.

Bargaining Costs and Legislative Control of Agencies

It is seldom the case that a coherent "legislature" unilaterally can choose its optimal instruments for control (Moe 1990b). Instead, there may be several institutional actors who must sign-off on the choice of such instruments (such as executives and legislatures, or two chambers in bicameral systems). If these various actors disagree on what form of institutions to adopt, then they must pay bargaining costs to reach an agreement. The more difficult it is to come to an agreement, the higher the bargaining costs they must pay. These costs, in other words, can be thought of in terms of the obstacles that the legislature must overcome in order to pass legislation.

Such bargaining costs are particularly relevant to separation-of-powers systems, where a single legislature cannot unilaterally decide what level of discretion to grant an agency. The chief executive typically must sign legislation in order for it to take effect. And in exactly the situation in which the legislature most wants to write detailed legislation—divided government—the chief executive most wants to avoid detailed legislation, preferring instead that the agency be free to do his or her bidding, relatively unconstrained by the legislature.

Moreover, there are two forms of divided government. It may be the case that during divided government the legislature is unified in its opposition to the chief executive. In other words, one party controls both chambers of the legislature but does not control the executive. Alternatively, it may be the case that the legislature is itself divided, with one chamber being of the same party as the chief executive, and the other chamber being of a different party. It is important to distinguish between these two forms of divided government—one with a *unified legislature*, the other with a *divided legislature*—since the costs to legislators of adopting detailed legislation will be higher if the two chambers disagree with each other, and one of the two chambers has a higher level of conflict with bureaucrats than the other.

Consider the difference between divided government with a unified legislature and divided government with a divided legislature. The chief executive should accept any legislative proposals that lead to an outcome that he or she prefers to the status quo. This may often be a rather large set, especially after some external shock produces the need for policy change. During divided government, a unified legislature opposing the executive can choose any policy that it likes from this set of acceptable policies. But during divided government with a divided legislature, the two chambers must engage in bargaining and compromise in an effort to choose the outcome that will ultimately be proposed to the chief executive. The chamber in a divided legislature that shares the same preferences as the executive will have few incentives to include language in legislation that constrains agencies and will often have incentives to leave agencies unconstrained (to take advantage of agency expertise). It should therefore fight attempts by the chamber that opposes the chief executive to limit agency discretion through statutory control. Thus, although we should expect some increase in statutory control over bureaucrats during any type of divided government (because the chamber opposing the executive has some bargaining leverage), it should be more difficult for the legislature to impose statutory control when the legislature itself is divided.

In sum, conflict of interest and bargaining costs should interact to influence statutory efforts to control agencies. In separation-of-powers systems, bargaining costs under divided government will be higher for a divided legislature than for a unified legislature. Thus, although the level of statutory control should be larger under any type of divided government than under unified government, the legislature's ability to use legislation as an instrument for control should be greater with a unified legislature than with a divided legislature. This logic, along with our argument about the political context, leads to the following hypothesis:

H1: Statutory control should be greater under divided government than under unified government. In addition, given divided government, a unified legislature should produce more statutory control than a divided legislature.

Legislative Capacity and the Cost of Statutory Control

Legislative capacity also should be crucial for engaging in statutory control. The conflict of interest created by divided government, for example, may create policy gains from exercising statutory control, but legislators must have the personal motivation and ability to write legislation that will constrain the agency in the ways that legislators desire. Even if the political environment indicates substantial benefits from writing detailed legislation, high costs will limit the ability of legislators to do so.

In this respect, opportunity costs loom large. Not all legislators can devote all of their professional energies to their legislative careers. Although this is not the case in the U.S. Congress, legislative careers in many other legislatures are part-time jobs that are relatively low paying. If an individual legislator depends heavily for his or her livelihood on activities unrelated to being a legislator, then the opportunity costs of devoting a great deal of attention to legislative responsibilities will be relatively high. In such situations, legislators should be less inclined to attempt to micro-manage agencies.

Legislative expertise and ability are also crucial. Legislators must be able to understand which specific policies will produce which specific outcomes and to give precise instructions to agencies about what sorts of policies to adopt. This is achieved in part by attracting high-ability individuals to legislative careers. It is also influenced by retaining these highly qualified legislators, since legislators who have been around a long time learn important information about policies. And the expertise of legislators may also be a function of the legislative institutions themselves. If the legislature is highly institutionalized, with a large number of specialized committees and support staff, then it may be easier for the legislature to draft detailed legislation.

It may be that legislative capacity leads to increased efforts to control agencies, regardless of the context. But the discussion above suggests otherwise. If there is no conflict of interest, then there is no need to draw upon legislative capacity to micro-manage bureaucrats. If there is such conflict, then legislative capacity should matter.

These observations suggest that we need to embed our arguments about divided government into an institutional context that is shaped by the degree of professional capacity. In particular, although divided government may provide the incentive to engage in statutory control, the extent to which legislators actually write specific instructions into legislation also should depend on their legislative capacity. The greater this capacity, the greater the (positive) impact that divided government should have on legislative efforts to limit agency discretion. Since the bargaining costs to the legislature of limiting agency discretion are smallest when the legislature is unified, the influence of professional capacity on efforts to limit discretion should be greater for a unified legislature than for a divided legislature. Thus, our theory indicates that to accurately measure the empirical effect of professional capacity, we will need to interact it with the type of divided government.

H2: When there is divided government, an increase in legislative professionalism will produce an increase in statutory control. The amount of statutory control will be greater under a unified legislature than under a divided legislature.

Nonstatutory Mechanisms for Control

Legislators are not limited to statutory control strategies to achieve the policy outcomes they desire from bureaucratic activity. Politicians sometimes can also rely on other features of the political environment to enforce their policy wishes. In some contexts, for example, the authors of statutes have ample opportunity to monitor and correct the actions of agents, such as when legislatures can veto rules adopted by agencies, or when it is easy to hold hearings that hold agents accountable for their actions. In other contexts, the authors of statutes can rely on others to influence the actions of agencies. In some political systems, for example, cabinet ministers or administrative law judges can perform this function. This is not, of course, an exhaustive list, but our more general argument is that in deciding whether to pay the costs of writing detailed statutes, legislators must anticipate the extent to which the political environment may produce favorable outcomes independent of statutory detail.

We focus on one very direct and important mechanism for legislators to exercise nonstatutory control in separation-of-powers systems: the legislative veto. This, of course, is not the only nonstatutory mechanism available. But we use it for two reasons. First, the existence of the legislative veto varies across the states, allowing the variation we need for testing. Other legislative institutions, such as the ability to hold hearings or to vote on budgets, might affect nonstatutory control, but do not vary significantly across states. Second, legislators can clearly anticipate the impact of the legislative veto, because legislators themselves determine its use. Other nonlegislative institutions have a much less predictable impact. Legislators may not know with a high degree of certainty, for example, whether, in the absence of statutory detail, the judicial system will cause the agency to act in ways favorable to the legislature.

Legislative vetoes, then, give the legislature a direct, institutionalized opportunity to veto agency rules (or even to amend such rules, as is possible in West Virginia). Where such institutions exist, and where legislatures are unified (and thus agree on the potential benefits of the veto), the costs of statutory control should be relatively low, and the benefits of specifying precise details in legislation consequently should be low as well. If no such opportunities for legislative vetoes exist, then incentives to limit discretion will be greater. Thus, when government is divided and the legislature is unified, legislators should be less likely to use legislation to limit agency discretion in situations where legislative vetoes provide opportunities to influence agency behavior. This logic is summed up by the following hypothesis:

> *H3: When unified legislatures can use alternative, nonstatutory mechanisms to control agencies, they will be less likely to rely on statutory control.*

To summarize, three specific hypotheses emerge from the foregoing discussion. First, given the bargaining costs that arise when control of the legislature is divided between the two parties, divided government should yield greater efforts to limit discretion when the legislature is unified rather than divided. Second, during divided government, legislative efforts to limit discretion should increase with legislators' professional capacity. Third, there should be a substitution effect. Controlling for the other factors affecting bureaucratic discretion, unified legislatures should be less likely to limit discretion when alternative means of control are available. We apply this substitution effect to the specific institution of legislative vetoes.

Limiting Agency Discretion: Medicaid and State Health Policymaking

Testing our argument is difficult because we need comparable data on legislative control across political systems that vary in their relevant institutional features (i.e., professionalism and legislative vetoes). We can easily obtain variation in our independent variables by focusing on the American states. The dependent variable is much more difficult. We need a measure of bureaucratic discretion in legislation that can be compared meaningfully across these states. Such meaningful comparisons require that we choose a dependent variable that (a) focuses on the same policy issue across states (so that variation in statutory control across states cannot be attributable to issue variation); (b) focuses on an issue that, due to external shocks, is important in all states (so that regardless of existing legislation from previous years, legislators across states have incentives to address the particular issue at stake, and so that variation in legislative activity across states does not simply reflect variation in the need for policy in that state); and (c) is politically contentious (so that divided government is likely to lead to conflict of interest).

Our measure of efforts to limit agency discretion in a state is the total number of new words that the state enacted into law in 1995–96 (in nonappropriations legislation following the 1994 election) on issues related to any aspect of medical care that is provided to Medicaid recipients. Focusing on medical care that is provided to Medicaid (or medical assistance) patients obviously entails focusing on an issue that is reasonably similar across states (satisfying (a), above). We are not comparing, say, transportation policy in California with energy policy in New York with medical policy in Iowa. Moreover, this particular issue is one that all states must address: all states have chosen to participate in the Medicaid program, and the federal government mandates a broad set of guidelines. Importantly, however, each state is responsible for setting many important parameters of its program, including eligibility standards, the scope of services available, payment rates to providers, and methods for program administration. Consequently, there are considerable differences in the programs across states.

It is also the case that this health care issue, especially in 1995–96, is one where two exogenous shocks led to the need for action across the states. One shock was rising costs. In the early 1990s, rising Medicaid expenditures, an increase in the number of Medicaid eligibles, and a push for health-care reform at the national level put Medicaid reform at the top of state political agendas. According to the Health Care Financing Administration (HCFA), total Medicaid program payments increased from $47.7 billion dollars in 1987 to $152.9 billion dollars in 1996 (HCFA 1998). The number of individuals eligible for Medicaid across all states also increased from 23.1 million in 1987 to 36.1 million in 1996 (HCFA 1998). Medicaid spending is of particular concern, however, not just because it is increasing, but because it is becoming a larger share of the states' total health-care spending. According to a report by the Congressional Research Service, Medicaid spending as a share of state and local expenditures increased from 1.0 percent in 1966 to 5.7 percent in 1990 (Congressional Research Service 1993).

The second shock concerned changes in politics at the federal and state level that encouraged states to take up health care and Medicaid reform efforts. After the failed attempt at national health-care reform and with the midterm Republican landslide in 1994, supporters of health-care reform have largely focused on the states (Sparer 1996; Leichter 1996). In addition, in 1993, the Clinton administration issued new guidelines that encouraged states to seek waivers from federal rules and made it easier to do so (Schneider 1997). Thus, following the 1994 election, there not only was an acute political need to address the provision of medical care to Medicaid and medical assistance clients, there also were efforts made in Washington to ease the ability of states to do so. As a result, we believe this two-year cross-section represents the best possibility we are aware of for making meaningful comparisons across states.

Finally, it is crucial to note that the politics of Medicaid and medical care are extremely contentious. Powerful interest groups representing both providers and recipients are acutely interested in the vast amount of money at stake. Providers such as nursing homes, home health care agencies, community clinics, pharmacists, physicians, and hospitals all vie for available money. Recipients, including the elderly, disabled, and low-income families with children, desire comprehensive services. To muddy the landscape further, with the move to managed care in some form in most states, managed-care companies have joined traditional insurance companies on the scene. Although the politics of Medicaid may vary from state to state, the universal conflict of interest across states guarantees heated political debate and differences in the objectives of the major political parties, with Democrats typically more focused on issues of access to care and the rights of low-income Medicaid clients and Republicans typically more concerned with limiting costs and protecting providers.

Measuring Statutory Control

Our dependent variable, *Statutory Control*, is the number of new words (i.e., newly added language) contained in all relevant legislation for the 1995–96 legislative session (that followed the 1994 elections). We identified relevant legislation in each state by searching Lexis's "Advanced Legislative Service" database. [2] For each state we used the search terms "Medicaid" and "medical assistance," which are used interchangeably by states to refer to the Medicaid program, as well as any state-specific names for Medicaid programs (such as "MediCal" in California or "MC+" in Missouri). We retained any nonappropriations bills that turned up in this search that were related to the provision of medical care for Medicaid participants. We then examined the content of the bill for relevance, and if it was only partially relevant (i.e., only partly about Medicaid health care) we edited out the irrelevant portions. We then used a macro in Microsoft Word to count all the words in the legislation that were new.[3] This count of new words is the dependent variable, *Statutory Control*, that we focus on in our empirical tests.

Ideally, we would carefully code the substantive content of each of these bills. This, of course, is a practical impossibility, given that there were over 1.1 million words adopted during this time period alone. Instead we use the objective measure of the number of new words of legislation to represent the amount of statutory control. Our reading of dozens of pieces of legislative convinces us that this provides a good, if imperfect, measure of cross-state differences in the amount of change in agency discretion that was made by state legislatures in 1995–96. Longer bills increase constraints on the agency. When de-

[2] We coded legislation for forty-eight states. We omitted Nebraska from the analysis because it has a unicameral legislature and our theory focuses on the difference between unified and divided legislatures. We omitted Virginia because in each year the state legislature would pass multiple copies of bills, each containing extremely similar (but not necessarily identical) language. Because of this redundancy, it was impossible to obtain even a reasonably accurate count of new words.

[3] Lexis publishes the entire text of adopted acts, but includes notation that enables a user to identify which portions of the text were added, and which were carried over from earlier legislation.

signing a new children's health initiative to be part of the Medicaid program, for example, it takes a great many more words for the legislature to specify who is to be covered, what sorts of enrollment techniques should be used, which procedures should be followed, and so on, than it does to simply ask the agency to "do something" without providing any additional instructions. Long bills with lots of words tend to specify these details, while short bills do not. More words imply more precise instructions to the agency, and thus less discretion.

Two Medicaid bills on managed care included in our sample—Alaska's House Bill 393 and Massachusetts' House Bill 6107—illustrate the strong correlation that exists between the number of words and the level of statutory control. The Alaska bill, with just over 600 words, gives few specific instructions to the Alaska Department of Health and Social Services regarding the development of a managed-care system. The legislation tells the agency to "begin development of a managed care system...by designing and implementing no fewer than two innovative managed care pilot projects." It further instructs the agency that the pilot projects should take place in one or more predominantly urban areas, taking into account any unique features of the project areas. The law also gives the department the right to require Medicaid clients to participate in a managed-care system and the authority to determine who will be affected by this requirement.

Like the Alaska bill, the Massachusetts bill gives the agency the authority to create demonstration projects to assess the benefits of a system of managed care. But rather than delegating broad decision-making power to the agency, it spends more than 3000 words telling the agency how to arrange these demonstration projects. The bill specifies, for example, precisely who should be enrolled in managed care and how enrollment must occur for the chronically ill, the disabled, and the long-term unemployed. It specifies the conditions under which potential clients might be denied eligibility (e.g., those people "with incomes in excess of one hundred and thirty-three percent of the federal poverty level who were enrolled in a health insurance plan not administered by the state or federal government at any time during the eighteen months prior to applying [for managed care]"), along with other details about how the agency should implement managed care, such as where clinics should be located, how potential clients should be notified about the program, the role of school-based clinics in providing care to school-aged children and adolescents, among other things.

Both bills, then, set out to accomplish the same goal—the adoption of a managed care program within Medicaid. Both give the agency discretion regarding where the program should be located. But the Massachusetts bill goes to great length to specify the actual ultimate policy that health agencies must enact, whereas the much shorter Alaska bill simply delegates these policy choices to the agency.

Our reading of considerable legislation, then, suggests that the number of words in the legislation is a good measure of the amount of policy discretion that legislation gives bureaucrats in the implementation process. Once one accepts that more legislative words on a particular issue amounts to less legislative discretion, then one could operationalize *Statutory Control* by using either the number of new words or the total number of enacted words. These two measures are highly correlated (r=.83), but the number of new words is a better and more reliable measure of legislative effort to constrain agency behavior because of cross-state differences in how legislation is enacted (and in how it is reported by Lexis). In some states, if legislators want to amend a bill, they adopt the entire bill (and Lexis spells out which section of the new bill consists of new words). In other states, legislators could make the exact same change to the exact same bill, but the convention in that state would be to publish legislation stating merely that the new bill is an amendment or change to existing legislation. Legislation created by states that follow this second convention would thus refer to previous legislation, but would not contain the wording of that previous legislation. In both states, the exact same legislation is on the books, and the number of new words is identical. But enacted words would be considerably greater in the first state than in the second state because of the differing conventions on how to make changes to legislation. To avoid this problem, we use the number of new words as our measure of differences in legislative effort to limit discretion. In the tests below, we expect that the number of words should increase with the incentives and opportunities to limit agency discretion.

Our measure of statutory control varies widely across the states. In South Dakota, for example, the government enacted only 216 new words of legislation, while in California the government added 277,496 words. With the exception of California, however, the number of words operates along a more or less continuous distribution.[4] The average number of words is 24,681; the state closest to this

[4]California added more words of new legislation in 1995 and 1996 than did the next three most active states combined (Arizona, Michigan, and Minnesota). In part, this is because California, more than any other state, passes a great deal of county-specific legislation (e.g., to authorize the formation of new managed care organizations in various counties).

number of words is Louisiana, with 25,602. Not surprisingly, some states that have been identified as "policy leaders" in the area of health care have produced a large number of new words—New York, for example, produced 61,976, and Minnesota wrote 91,659. Yet at the same time, other states that are seen as policy leaders produced very little new legislation (e.g., Florida and Hawaii produced only 9282 and 3395 words, respectively). And other states that are not viewed as leaders produced a large volume of legislation (e.g., Arizona, with 101,312). Thus, it is not the case that all states that are policy leaders produce a high volume of detailed legislation, or that only policy leaders produce a lot of new words.

Explanatory Variables

Three of the primary independent variables from our theory are straightforward to measure. If the governor's party controls only one of the legislative chambers in 1995 and 1996, then *Divided Legislature* takes on a value of 1. Similarly, if the governor's party controls neither of the legislative chambers, then *Unified Legislature* takes on a value of 1. Finally, in states where the legislature has a veto over agency actions, *Legislative Veto* is set equal to 1. Following our theoretical argument, which contends that under divided government the availability of an alternative means of control will reduce the need for statutory control, we interact *Legislative Veto* with *Unified Legislature*.[5]

Central to our argument is the idea that legislative capacity must be sufficiently large for the predicted institutional and partisan effects to occur. To measure this variable we use the amount of compensation paid to legislators per year. In part, our reasons for using this measure are statistical. Compensation is strongly correlated with other measures of professionalism (e.g., the number of staff, or the number of days per session), so including multiple measures introduces an unacceptable degree of collinearity. In addition, using a single-variable measure like this also has the advantage of being more straightforward and easily interpretable than a variable that combines different measures.

More importantly, we have strong substantive reasons for using this measure. Our theoretical argument emphasizes the degree to which members need a high level of personal motivation and expertise if they are going to write detailed legislation that will constrain agencies. Legislative compensation works as a strong proxy in this regard. Members who have more experience in the legislature will have higher levels of expertise; higher compensation leads to less turnover, and thus more experience (Squire 1988). Higher levels of compensation also attract higher quality candidates in the first place and give these candidates more incentive to stay in office. Finally, low-paid state legislators generally hold other jobs; therefore, such legislators will face considerable opportunity costs for devoting substantial time to legislative activities. As compensation increases, a seat in the legislature becomes more valuable, which increases the payoff of devoting energies to legislative activities. Thus, because legislative compensation provides a useful single-variable proxy for the types of effects we look for in a measure of legislative capacity, we use *Compensation*, which includes the annual salary plus guaranteed per diem expenses to members of the lower house in 1995. As indicated by our theory, we interact *Compensation* with the two forms of divided government.

Control Variables

Even within the limited domain of Medicaid, there exist a variety of different types of issues that the legislature can address. Thus, *Statutory Control* could measure more legislative control, or could simply measure more policy change. It is therefore important to control for factors that could lead to more words independent of the need to limit discretion. To account for the possibility that legislative detail is a function of policy change, we need to have some measure of demand for Medicaid policymaking in each state. That is, since legislative attention to Medicaid-related legislation should be influenced by the demand for such legislation, we should expect the number of words to increase with the size of a state's Medicaid program. Thus, the regression models we estimate contain a control variable, *Medicaid expenditures*, which is the per capita Medicaid expenditures in each state.

Second, we may also need to account for changes in the political environment that might lead to new policy initiatives. If party control of the legislature switched in 1995, we might expect, all else equal, that the amount of legislation will increase independent of the need to control the agency. Thus, we can include a variety of dummy variables that measure changes in the partisan composition of the various institutions of governance. We note, however, that if we are correct about the importance of the exogenous shocks with respect to Medicaid, then such partisan changes might not predict *Statutory Control*, because these shocks should prompt all states to

[5] We obtained the data for these and other independent variables from *The Book of the States*.

some action, regardless of recent changes in the partisan composition of the legislature.

Third, one might expect that in political systems where control of the government regularly switches between the two parties, politicians may be more likely to write detailed legislation whenever they are in power. This is, of course, similar to Moe's (1989) concept of *political uncertainty.* Moe argues that political majorities are uncertain about whether they will continue to be in power in the future, and this uncertainty gives strong majorities the incentive to write legislation that locks in the policy outcomes they desire. One could interpret this argument to imply that the greater the level of uncertainty about future control of government, the greater the incentive to use legislative details to structure future agency behavior. While this is a plausible interpretation, the theoretical impact of political uncertainty is not completely clear. Moe himself does not treat political uncertainty as a continuous variable, but rather argues that such uncertainty is inherent to politics and that its impact on political strategy is always present. Moreover, de Figueiredo's (1998) model of political uncertainty indicates a weak link between the level of uncertainty and incentives to lock in agency behavior. Given the ambiguity about the theoretical relevance of political uncertainty in the context we consider, we will estimate models both with and without variables measuring political uncertainty.

Finally, features specific to the executive might influence the amount of statutory control. In particular, the legislature's decision to delegate broad discretion to the agency may be influenced by the bureaucracy's level of professionalism. All else being equal, a legislature may be more willing to give broader discretion to an agency that has a higher level of competence. Thus, we test whether bureaucratic professionalism influences the amount of statutory control. In addition, we examine several variables related to the governor's institutional power to see whether they influence the way in which the legislature delegates to the agency.

Empirical Tests

The dependent variable in our empirical tests is, as described above, *Statutory Control.* A positive coefficient for the independent variables indicates more statutory control, and thus greater effort to limit agency discretion. The main independent variables, as described in the previous section, measure the various forms of divided government, legislative professionalization, legislative vetoes, and a variety of control variables related to the size of the Medicaid program, recent political change, political uncertainty, the professionalism of the bureaucracy and powers of the governor. We estimate the models using OLS. We use a simple linear model, both because our theory does not suggest that other functional forms are more appropriate and because the results are easily interpreted.[6]

Table 1 estimates our statistical models using the nonsouthern states (a restriction we relax below). Scholars have widely recognized that southern Democrats are more conservative than are Democrats elsewhere in the country and that the policy differences between the Democrats and the Republicans are therefore less in the South than elsewhere. Consequently, divided government in the South is much less likely than elsewhere to measure genuine conflict of interest between the legislature and the executive.[7]

Column 1 of Table 1 presents the most straightforward test of our theory. The regression in this column includes four divided government variables: one dummy variable for each type of divided government, and both of these dummy variables interacted with *Compensation.* Our expectation is that for compensation sufficiently large, an increase in compensation during divided government will lead to an increase in statutory control, with the effect being larger during *Unified Legislature* government than during *Divided Legislature* government.

Column 1 also includes two control variables. First, as discussed earlier, we include per capita *Medicaid Expenditures* to control for the overall level of policymaking activity. Second, we include a dummy variable to account for the large amount of legislative activity in California.[8] We do not enter *Compensation* separately, as our theory does not indicate that this variable should have any independent effect, distinct from its interaction with our

[6]Results obtained using negative binomial regression are nearly identical to those reported here.

[7]When divided government occurs in the South, it usually consists of a Republican governor and a conservative Democratic legislature. While this would be categorized as "divided government," the policy differences between the two branches are often not nearly as great as the differences in nonsouthern states (Erikson, Wright, and McIver 1993).

[8]As noted earlier, the number of new words enacted by the government of California far exceeds that of any other state. While we add a dummy variable to account for this extreme volume of legislation, we hasten to add that the results of our analysis remain substantially the same when we simply omit California from the empirical analysis. Excluding California from the analysis causes goodness-of-fit measures to fall, of course, but they remain respectable. More importantly, the significance (or insignificance, as the case may be) of our independent variables does not depend on whether California is included in the analysis.

TABLE 1 OLS Models of State Legislative Efforts to Limit Agency Discretion in Nonsouthern States

Independent Variables	(1)	(2)	(3)	(4)
Unified Legislature	–24,854 (9,903)	–20,846 (9,815)	–31,695 (13,219)	–25,611 (10,788)
Unified Legislature × Compensation	2.25 (.91)	2.23 (.86)	2.29 (.92)	2.35 (.95)
Divided Legislature	–20,020 (11,435)	–17,999 (11,705)	–23,917 (12,197)	–20,353 (11,090)
Divided Legislature × Compensation	.51 (.39)	.49 (.37)	.38 (.45)	.47 (.38)
Unified Legislature × Legislative Veto	–25,520 (11,247)	–28,190 (10,847)	–27,407 (11,910)	–27,795 13,427
Ranney Index	—	—	60,846 (61,270)	—
Unified-to-Divided	—	–7,946 (8,603)	—	—
Bureaucratic Professionalism	—	—	—	.10 (.40)
Medicaid Expenditures	36,145 (20,698)	36,943 (20,298)	36,360 (20,227)	36,079 (22,245)
California dummy	248,867 (12,984)	247,901 (12,573)	249,397 (13,197)	248,727 14,434
Constant	2,351 (14,008)	1,922 (13,935)	–46,401 (52,963)	–6,101 (30,359)
Adjusted R^2	.72	.71	.72	.71
N	38	38	38	38

Note: The dependent variable is *Statutory Control* in Medicaid-related legislation in 1995–96 (see text for details). Positive coefficients reflect less agency discretion. Numbers in parentheses are White standard errors.

divided government variables. It is worth noting, however, that if we do include this variable on its own, it is always insignificant and its inclusion generally has little effect on the other results that we report.

Several aspects of the results from Column 1 are worth noting. First, there is strong support for the argument about the effects of *Unified Legislature.* The coefficients for both *Unified Legislature* and *Unified Legislature × Compensation* are statistically significant ($p < .05$, one-tailed tests). Of course, the coefficient for the *Unified Legislature* is negative while the coefficient for *Unified Legislature × Compensation* is positive. Considering the two coefficients together, discretion decreases during *Unified Legislature* government if legislative compensation in a state exceeds $11,046, a total exceeded by twenty-nine of the forty-eight states in our sample.[9]

Second, the results provide some support for our theoretical expectations regarding *Divided Legislature.* Both *Divided Legislature* and *Divided Legislature × Compensation* are significant (at $p < .05$ and $p < .10$, respectively, one-tailed tests). For any given level of compensation, the effect of *Unified Legislature* exceeds that of *Divided Legislature,* which is consistent with our hypothesis about bargaining costs. However, the relatively small coefficient on *Divided Legislature × Compensation* means that a divided legislature results in an increase in words only for highly compensated legislatures.[10]

[9] This figure for compensation is obtained by dividing the absolute value of the coefficient for *Unified Legislature* by the coefficient for *Unified Legislature × Compensation.* Since $24,854/2.25=$11,046, when *Compensation* equals $11,046, the effect of *Unified Legislature × Compensation* will be exactly equal to the effect of *Unified Legislature.* For values greater than $11,046, the combined effect of *Unified Legislature* and *Unified Legislature × Compensation* will be greater than zero.

[10] *Divided Legislature* produces more control for levels of *Compensation* above $39,254, a level exceeded by six of the states in our sample. It should be kept in mind, however, that the coefficient of the interactive term is estimated somewhat imprecisely. To the extent that the "true" value of this coefficient is higher than .51, the level of *Compensation* needed to produce a positive number of added words will decrease.

Third, there is strong support for our argument about the substitution effect: *Unified Legislature* x *Legislative Veto* is negative, large, and very precisely estimated. Thus, if states have the incentive and capacity to use legislation to micro-manage agencies, they will be most likely to do so if they lack the institutionalized means for vetoing agency rules.[11]

It is worth noting that if we use an index created from legislative compensation, the number of staff, and the number of committees, we obtain essentially identical results. The coefficient for *Unified Legislature* × *Legislative Veto* again is significant ($p < .05$), with a very similar value (–22897). The coefficients for *Unified Legislature*, both on its own and interacted with *Compensation*, are significant at $p < .05$; and the corresponding coefficients when the legislature is divided are significant at $p < .10$. Finally, the effect for a *Unified Legislature* is greater for all levels of compensation that the effect for a *Divided Legislature.*[12]

Testing Alternative Specifications

As discussed earlier, it is possible that the number of new words might be a function of changes in the political environment. Although this is *not* part of our theory, we need to control for this possibility in order to gain more confidence that the results shown in Column 1 are not spurious. *Unified-to-Divided* is a dummy variable that takes the value 1 if the 1994 election resulted in a move from unified to divided government. This variable is intended to capture the fact that political change in the 1994 elections could have led to the demand for new legislation independent of the need to control the bureaucracy. If the election generated divided government, then partisan control of at least one branch of government has changed, and it has done so in a way (towards divided control) that should lead to an increased number of new words. Thus, to the extent that *Statutory Control* measures policy change independent of the need to control agencies, and to the extent that political change leads to policy change, the coefficient of this variable should be positive. Below, we discuss other variables that could also be used to measure relevant political changes in the 1994 elections.

Column 2 presents the results when we control for political change. *Unified-to-Divided* is measured very imprecisely, lending little support to the notion that the number of new words is a function of political change independent of the need to control an agency. More importantly, controlling for this variable does not substantially change the results reported in Column 1.

It is possible, of course, that *Unified-to-Divided* is simply a bad proxy for political change. But we also ran the regression in Column 2 with three other proxies for political change: (1) a dummy variable that took the value 1 if the government went from divided to unified; (2) a dummy variable that took the value 1 if any branch of government changed party in 1994; and (3) a dummy variable that took the value 1 if the legislature went from divided to unified. None of the estimates for these variables was remotely significant, and the inclusion of the various alternatives did not affect the positive or negative results described above for Column 1.

While these results provide little support for the possibility that political change influences the number of new words, we also need to investigate another alternative hypothesis discussed earlier, the hypothesis that greater political uncertainty would lead those in power to write more detailed legislation. Thus, we include a variable called *Ranney Index*, which is a widely used proxy for the level of political competition in the American states.[13] If political uncertainty increases with electoral competitiveness, then this variable should have a positive coefficient. As with our variable measuring political change, however, the results in Column 3 show little support for the alternative hypothesis. Political uncertainty, as measured by the Ranney Index, has no effect on *Statutory Control.*[14]

So far we have found no support for the political uncertainty argument using the Ranney Index. Although this is a widely used proxy for political competitiveness, perhaps it is not a good proxy for political uncertainty.

[11] We also looked at *Legislative Veto* on its own (i.e., without interacting it with *Unified Legislature*). As our theory would predict, this variable is not statistically significant.

[12] Similarly, a *Unified Legislature* produces a positive number of words for more states than does a *Divided Legislature*. The former actually produces a positive number of words for all states, while the latter produces a positive number for states where the professionalism index exceeds 3.85. As pointed out in the text, this number has no intuitive meaning, which is why we choose to report the results using legislative compensation. What it implies, however, is that for only four states in our sample is the overall level of professionalization high enough to produce more statutory control when the legislature itself is divided.

[13] Our measure of the Ranney Index is for the 1995–98 period (Bibby and Holbrook 1999). We use the Ranney Competition Index, which varies from 0 to 1, and where a higher number indicates a greater level of electoral competitiveness. The formula for this index is $1 - |(.5 - \text{Ranney Party Control Index})|$. The Party Control Index is calculated as a function of three variables: (1) the percentage of votes won in gubernatorial elections and sets won in state legislative elections, (2) the duration of partisan control of the state legislature and governorship, and (3) the frequency of divided control. See Ranney and Kendall (1954) and Ranney (1976).

[14] We also interacted *Ranney Index* and *Unified-to-Divided* with *Compensation* and included these terms in our tests. They were not significant (when entered either separately or together) and did not influence our other results.

We therefore considered several other proxies for political uncertainty: (1) the size of the legislative majority (with the idea being that smaller majorities should lead to more uncertainty), (2) the sum of the number of changes in majority control of each branch of government over the last four elections (with the idea being that a history of change should lead to greater uncertainty), and (3) term limits (with the idea being that if legislators know they will not be around in the future, incentives to insulate are maximal). It turns out that there is only one state (Maine) where both chambers have members who were prevented by term limits from running in 1996, and only one other (California) where term limits were put into effect in one chamber in 1996 and the other in 1998. Thus, we cannot test the term-limits idea in any systematic way; however, a dummy variable for these two states was not significant and did not change our other results. The other two variables similarly produced insignificant results. Neither the size of the majority nor the sum of partisan changes has a significant effect (regardless of whether entered alone or interacted with *Compensation*), and the inclusion of these variables has no effect on our previous results.

Finally, in Column 4 we control for the level of bureaucratic professionalism. Here we operationalize this measure by using the annual salary of the head of the health agency in each state.[15] This variable is not significant. At the same time, all of our other variables remain significant. To check on the robustness of this result, we also tried two other measures for this variable: the average pay for all noneducational state employees, and the average pay for state employees who work in the area of health. Once again, these variables were not significant, and their inclusion did not affect our other variables. Last, in additional unreported tests we also included measures specific to the governor that might influence the level of statutory control, such as the percentage of legislators needed to override a veto, the governor's overall appointment powers, the governor's prospects for staying in power, a summary measure of the governor's veto powers, and a summary measure of the governor's institutional powers. None of these variables were significant, and none affected our results.[16]

Divided Government and the South

Scholars have found that differences between the South and the rest of the country remain but are narrowing in recent years (Hood, Kidd, and Morris 1999). We therefore consider our arguments about divided government and the legislative veto with the Southern states included in the analysis. As in Table 1, we begin with the most straightforward test of our model.[17]

Table 2 shows that when we include Southern states, we again find positive results for all of our theoretical variables. In Column 1, both the dummy variables and the interacted variables for each type of divided government are significant. Furthermore, when we look at the combined effects, we find that a unified legislature produces positive values for levels of compensation above $10,635, and a divided legislature does the same whenever compensation exceeds $29,326. Thus, as our theoretical argument suggests, there is less of an effect with a *Divided Legislature* than with a *Unified Legislature.*

In Column 2, we include a dummy variable for the Southern states, as Southern politics differs in ways other than ideology from the rest of the country (Black 1987). The Southern dummy variable has the expected negative sign, but it has a huge standard error. Inclusion of this variable does not affect the previous results.

Column 3 tests the idea that our theoretical argument applies to both southern and nonsouthern states, but with a weaker effect in the South (because partisan differences are weaker there). We therefore estimate a model that includes the various divided government variables interacted with region. The results provide no support for our theoretical arguments in the South, but strong support for our arguments regarding *Unified Legislature* government and legislative vetoes in nonsouthern states. This underscores the appropriateness of omitting the South from the analysis, as we did in Table 1.

Conclusion

Our main objective has been to develop and test a comparative theory of legislative delegation to bureaucrats. The theory is comparative in that it explicitly takes into account how features of the political environment that differ across political systems affect the strategies that

[15]When control of health policy was split between two agencies, we used the average of the salaries paid to the officials in charge of the two agencies.

[16]We obtained the various measures of bureaucratic professionalism and the governor's powers from *The Book of the States* and from Beyle (1999). We find it somewhat surprising that none of these measures are significant, and we believe that the relationship between bureaucratic professionalism, the governor's powers, and delegation of discretion deserves further investigation.

[17]We also ran regressions with the political uncertainty and political change variables. We do not report these as the results are identical to those in Table 1—there is no effect for the uncertainty and change variables, and inclusion of these variables does not affect the results for the other variables.

TABLE 2 OLS Models of State Legislative Efforts to Limit Agency Discretion in Forty-eight States

Independent variables	(1)	(2)	(3)
Unified Legislature	−16,910 (8,275)	−16,229 (8,169)	—
Unified Legislature × Compensation	1.59 (.70)	1.56 (.71)	—
Divided Legislature	−17,244 (9,958)	−16,169 (9,718)	—
Divided Legislature × Compensation	.59 (.32)	.56 (.34)	—
Unified Legislature (South)	—	—	446 (10,237)
Unified Legislature × Compensation (South)	—	—	.46 (.72)
Divided Legislature (South)	—	—	−16,479 (17,818)
Divided Legislature × Compensation (South)	—	—	.73 (.95)
Unified Legislature (Non-south)	—	—	−23,039 (9,785)
Unified Legislature × Compensation (Non-south)	—	—	2.00 (.81)
Divided Legislature (Non-south)	—	—	−18,094 (11,241)
Divided Legislature × Compensation (Non-south)	—	—	.52 (.40)
Legislative Veto × Unified Legislature	−13,804 (7,549)	−13,513 (8,091)	−18,526 (6,356)
South	—	−2,071 (5,200)	—
Medicaid Expenditures	28,301 (17,533)	28,274 (18,047)	35,559 (21,190)
California dummy	244,040 (10,933)	243,972 (11,253)	248,520 (13,308)
Constant	4,442 (11,822)	4,716 (12,206)	538 (13,871)
Adjusted R^2	.72	.71	.70
N	48	48	48

Note: The dependent variable is *Statutory Control*. White standard errors are in parentheses.

politicians adopt for controlling bureaucratic agencies. We begin by noting that a central variable in the existing literature—conflict of interest between legislators and bureaucrats—is a necessary but not sufficient condition for legislators to implement statutory control of agencies. If conflict exists, then legislators must have the capacity to engage in such control. We also argue against assuming that legislators can unilaterally choose the desired institutions for controlling bureaucrats. Instead, there are bargaining costs that will rise with increases in conflict among those that choose such institutions, and there are costs to legislators that fall with increases in legislative professionalism. Finally, we argue that the use of statutory control depends on how political institutions influence the cost of alternative strategies for control. Thus, optimal strategies for statutory control depend on interactions between conflict of interest, bargaining costs, legislative capacity, and nonstatutory control mechanisms, all of which are affected by political institutions that vary across systems.

We test our argument by focusing on the American states. States are often described as laboratories of democracy. The usual connotation of this statement is that states represent ideal locations in which to try out different policy ideas and options. However, states can be viewed as laboratories in a different sense: they allow us to test and develop theories that cannot be tested, or perhaps even developed, with a sole focus on the United States Congress.

We have used the states in exactly such a manner. We create a data set consisting of all state-level laws relating to Medicaid and the provision of health care passed in 1995 and 1996. Regressing our measure of statutory control for each state on a set of independent variables, we find that the results generally support our hypotheses. In particular, we find consistent support for arguments about interactions between conflict of interest and bargaining costs (more words are added by a unified legislature than a divided legislature), legislative capacity (the influence of divided government is dependent on the legislative capacity within a state), and alternative institutions for control (states with legislative vetoes do less to limit discretion, all else being equal). The article also fails to find evidence supporting the existence of a relationship between political uncertainty and agency discretion.

These supportive results suggest two avenues for future research. First, we have tested the substitution effect by focusing on the legislative veto. The general argument about substitution effects, however, is not limited to this specific institution. Other institutions, such the structure of the judicial system, the use of sunset provisions, or the existence of well-funded watchdog agencies, can affect the cost of nonstatutory control, and thus incentives to exercise statutory control.

Second, although we test our theory on the American states, the arguments about conflict of interest, bargaining costs, legislative capacity, and substitution effects should apply in other contexts as well. The challenge is to operationalize these abstract concepts in other settings. In parliamentary democracies, for example, conflict of interest should be higher during minority government than during single-party majority government. We might also expect that the capacity to exercise statutory control will be limited by cabinet instability. In general, thinking through such issues should contribute a great deal not only to building valuable comparative theories, but also to recognizing similarities and differences in the opportunities for political control of government in parliamentary and presidential systems.

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