

Bureaucracy: Discretionary and Rule-Making Authority

Explain how the federal bureaucracy uses delegated discretionary authority for rule making and implementation.

1. Political science tells us: *Bureaucrats are powerful political actors because they have some flexibility as they interpret the law and implement public policy. For instance, police officers overlook some offenses during their shifts and welfare caseworkers decide the order and speed with which applicants receive their benefits. Of course, the actions of police officers and caseworkers, like all bureaucrats, are at least theoretically bound by the law. The point is not that bureaucrats are rogue actors but that they have some latitude as they make decisions.*

The main idea of this excerpt is

- Federal bureaucrats use delegated discretionary authority for rule making and implementation
- Federal bureaucrats act both outside and above the law when implementing federal rules
- Federal bureaucrats remain as positive civil servants as long as they follow the election returns
- Federal bureaucrats deliver benefits to those that vote giving them life-long job security

2. What is the historical danger of bureaucratic rule making without adequate checks?

- Frequency of divided government
- Partisanship and polarization of the law-making process
- Corruption and abuse
- Abuse of the court's judicial review power

3. Executive Departments of the federal government have broad *discretion* to act. This means that they

- Are empowered to act under strict limits both with respect to time and money
- Are "hand-cuffed" when implementing difficult public policies
- Possess freedom to decide how to implement vague policies
- Possess judicial authority but not legislative authority

4. Executive Departments of the federal government have broad *discretion* to act. Which of the following would be an example of the Department of Homeland Security using its discretionary authority?

- Favorably deciding contentious ethanol policies
- Administering massive infrastructure improvement plans
- Directing clandestine foreign intelligence operations
- Initiating controversial meta-data collections

5. Executive Departments of the federal government have broad *discretion* to act. Which of the following would be an example of the Department of Agriculture using its discretionary authority?

- Favorably deciding contentious ethanol policies
- Administering massive infrastructure improvement plans
- Directing clandestine foreign intelligence operations
- Initiating controversial meta-data collections

6. Executive Departments of the federal government have broad *discretion* to act. Which of the following would be an example of the Department of State using its discretionary authority?

- a. Favorably deciding contentious ethanol policies
- b. Administering massive infrastructure improvement plans
- c. Directing clandestine foreign intelligence operations
- d. Initiating controversial meta-data collections

7. Executive Departments of the federal government have broad *discretion* to act. Which of the following would be an example of the Department of Transportation using its discretionary authority?

- a. Favorably deciding contentious ethanol policies
- b. Administering massive infrastructure improvement plans
- c. Directing clandestine foreign intelligence operations
- d. Initiating controversial meta-data collections

8. Political science has criticized the dangers of an administrative state. One expert has written: *“After absolute power was defeated in England and America, it circled back from the continent through Germany, and especially through Prussia. There, what once had been the personal prerogative power of kings became the bureaucratic administrative power of the states. The Prussians were the leaders of this development in the 17th and 18th centuries. In the 19th century they became the primary theorists of administrative power, and many of them celebrated its evasion of constitutional law and constitutional rights.”* What is the fear?

- a. Prerogative powers are antithetical to the primary themes of American government
- b. Discretionary authority can be used to break up our federal system
- c. Discretionary authority gives too much power to the legislative branch thus causing an imbalance
- d. Prerogative powers when used inappropriately would restore an illegal parliamentary government

9. A common response to those critics who complain about the administrative state is

- a. Federal aggrandizement is the natural response to a court system that routinely evades its responsibility
- b. Federal aggrandizement is the natural response to more and more states declaring bankruptcy
- c. Federal aggrandizement is the natural response to threats made by secret agents in our government
- d. Federal aggrandizement is the natural response to demands made by “we the people.”

10. As would be expected, the Supreme Court has been asked to interpret the use of discretionary authority for rule making and implementation. In the case *INS v. Chadha* (1983) the Court

- a. Ruled that federal bureaucracies cannot use discretionary authority without asking for permission
- b. Ruled the legislative veto unconstitutional
- c. Ruled the “power of the purse” must be approved by the president
- d. Ruled the power of judicial review was limited only to congressional acts

Critical Thinking Prompt: How does bureaucratic discretionary authority challenge the basic premise of the separation of powers? Explain. Defend the bureaucracy’s discretionary authority by way of example.