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# Strategic Delegation, Discretion, and Deference: Explaining the Comparative Law of Administrative Review

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NUNO GAROUPA & JUD MATHEWS\*

Strategic Delegation, Discretion, and Deference:  
Explaining the Comparative Law  
of Administrative Review†

*This paper offers a theory to explain cross-national variation in administrative law doctrines and practices. Administrative law regimes vary along three primary dimensions: the scope of delegation to agencies, agencies' exercise of discretion, and judicial practices of deference to agencies. Working with a principal-agent framework, we show how cross-national differences in institutions' capacities and the environments they face encourage the adoption of divergent strategies that lead to a variety of distinct, stable, equilibrium outcomes. We apply our model to explain patterns of administrative law in the United States, Germany, France, and Commonwealth jurisdictions.*

I. INTRODUCTION

In this Article, we develop a general model to explain cross-national variation in administrative law regimes. We focus on explaining three features in particular: legislative practices of delegation to agencies, the exercise of discretion by agencies, and the application of deference by reviewing courts to agency actions. We show how these features of an administrative system are linked to one another in ways shaped by the background features of the legal and political system.

The emerging field of comparative administrative law has highlighted significant cross-national differences in administrative law processes and institutions, including the different roles played by courts.<sup>1</sup> Of course, administrative law is just one of the many dimensions along which national legal and political systems vary, with

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1. For a recent and concise overview of the field, see Francesca Bignami, *Comparative Administrative Law*, in CAMBRIDGE COMPANION TO COMPARATIVE LAW 145 (Mauro Bussani & Ugo Mattei eds., 2012). See generally COMPARATIVE ADMINISTRATIVE LAW (Susan Rose-Ackerman & Peter L. Lindseth eds., 2010).