

# [The conceptualizing administrative discretion economics essay](https://assignbuster.com/the-conceptualizing-administrative-discretion-economics-essay/)

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Administrative decentralization implies the recognition of the discretion of the administrative local government units to carry out functions and duties at that level, (World Bank, 2000; Olowu, 2001; Schneider, 2003; Duncan, 2007). Additionally Rondinelli and Nellis, (1986) assert that local government administrative discretion is the quintessential pivot of all the activity of local sub-national government units. Administrative discretion in local governments is constituted by three dimensions namely legislative authority or powers, discretion to procure and administer services and lastly discretion to manage human resources, (World Bank, 2000; Schneider, 2003; Duncan, 2007). Each dimension comprises specific functions as shown in figure 1 below. As illustrated in the figure above, each dimension of administrative discretion is constituted by certain functions which have to be performed at sub-national government level. For instance the first dimension of legislative discretion is constituted by the sub-national unit’s powers to legislate over land, social services, and law and order issues. For human resources management, some of the functions include budget payroll, recruitment and performance management. In short the scope of administrative discretion is examined in light of the sub-national governments units’ exercise of these functions relative to central control. Thus the exercise of these functions is measured on a continuum informed by three variables namely complete, partial or none. The three (3) dimensions are discussed below.

## 2. 4. 1 Legislative Discretion

Legislative discretion refers to the powers to make (legislate), change and enforce regulatory decisions and laws (executive), (Pranab and Dilip, 2006; World Bank, 2008). By inference this function should be carried out by local government actors, however Conyers, (1990) asserts that in many of the developing countries, legislative powers have remained the preserve of central government technocrats. Consequently central governments still dominate the legislative arena and they often pronounce legislative changes which impact even on the by-laws of sub-national government units. However there is growing influence of civil society groups and think tanks in legislative processes. These groups propose that the role of central government institutions in administrative decentralization be confined to: the facilitation and enabling of local governments; development and management of the policy and regulatory framework; monitoring accountability by local government authorities; financial and performance audit; and provisions of adequate grants, (Wunsch and Olowu, 1995). This would present an opportunity for central governments to enlarge the legislative powers of sub-national government units. Bahl and Smoke, (2003) observe that one principle of administrative decentralization involves the transmission of an important part of the decision making power in administrative matters from the central to the local government. The local government unit must have power of decision on the collectivity they have been designated by, power which is not in juridical relationship with the central power. This provides the basis for justifying local government legislative discretion, (Wunsch and Olowu, 1995). Bahl and Smoke, (2003) further argue that local governments are more effective regulators because they are better able to ascertain and aggregate their constituents’ preferences than regional or central governments. This improves allocative efficiency, (Romeo, 1999; Ribot, 2001). The World Bank, (2008) further posit that in a well-designed administrative decentralized system, regulatory discretion of the local government extends to the following areas: local economic development, land use planning and management, zoning, and some aspects of public safety, public health, social protection, education, and environmental protection,. It frees local managers from central constraints and, as a long term goal, allows them to develop organizational structures tailored to local circumstances, (Bahl and Smoke, 2003). In this regard, local government councils will be free to make laws and operational decisions consistent with the laws of the land and government policies without interference by central government institutions.

## 2. 4. 2 Discretion to Procure and Administer Services

In addition to the regulatory authority, local government also needs discretion to procure goods and services from the private sector or other entities to ensure efficient service delivery to citizens, (World Bank, 2008). In bid to foster procurement discretion, in 1993 the United Nations Commission on International Trade Law adopted the Model Law on Procurement of Goods and Construction to inform country Procurement Regulations. Procurement contracts can take many forms including service or management contracts, leases, concessions, joint ventures, and full or partial ownership. According to World Bank, (2008), the procurement process can be divided into the following phases: specifying goods and services to be procured, designing the contract, selecting suppliers, appraising technical and financial qualification of the bidders, managing the bid process, finalizing the bid process and contract management. Thus decentralization laws should provide clear guidance on the roles of different branches and levels of government in all of the above mentioned steps of procurement processes. In a well-designed administrative decentralization system, local governments should have discretion in all these stages.

## 2. 4. 3 Discretion to manage human resources

The World Bank, (2008) note that local government discretion over human resources and employment policies should ideally cover the following: pay policy discretion (setting overall wage rates as well as local hardship and remote allowances), budget transparency (paying staff from one’s own budget), budget and establishment of control (controlling staff numbers and authority to remove surplus staff), recruitment discretion (recognition as the formal employer), career management control (vertical and horizontal mobility, including transfers to other units within the local government system)Performance management (directing and supervising activities and tasks, conducting evaluations, and exercising the ability to discipline and fire). The World Bank, (2008) however also note that, decentralization of the human resource management is a complex process. Local governments may be limited in the management of certain levels of personnel working within their purview. Part of the personnel that performs local government functions could be hired by the central or provincial government. Local governments, on the other hand, are allowed to hire additional staff on a contract basis. In some instances, functionaries are transferred to the local government but operational control is retained by the central government. These practices create different types of personnel working simultaneously under local government jurisdiction. Failure of the legal framework to clearly define the responsibilities and accountability channels of different types of personnel compounds confusion and reduces efficiency. Ribot, (2001) observed that discretion over these functions allows the local government to hold staff accountable and to allocate staff efficiently by aligning their skills with local activities while managing financial resources. For example, pay policy discretion and performance management not only enhance the accountability of the local staff to the local government but also gives the local government authority over managing fiscal resources. In other words, if the local governments are not in control of each of the above mentioned functions, the structures of accountability remain misaligned.

## 2. 5 Fiscal decentralization

Fiscal decentralization refers to how much central governments cede fiscal impact to non-central government entities. Financial responsibility is a core component of decentralization. Fiscal decentralization transfers three things to local governments and private organizations: (a) funds to deliver decentralized function; (b) revenue-generating power and (c) authority to decide on expenditures, (World Bank, 2000; Smoke 2001; Schneider, 2003; Duncan, 2007). The World Bank, (2000) lists five forms of fiscal decentralization, these include: i) Self-financing or cost recovery through user charges; ii) Co financing or co production arrangements through which the users participate in providing services and infrastructure through monetary or labor contributions; iii) Expansion of local revenues through property or sales taxes or indirect charges; iv) Authorization of municipal borrowing and the mobilization of either national orlocal government resources through loan guarantees; andv) Inter governmental transfers that shift general revenues from taxes collected bythe government to local governments for general or specific uses.

## 2. 6 Political Decentralization

Political decentralization refers to the degree to which central governments allow non-central government entities to undertake the political functions of governance, such as representation, (World Bank, 2000; Smoke 2001; Schneider, 2003; Duncan, 2007). Political considerations frequently play a role in local government decentralization, for example making government more democratic and legitimate and getting the population to participate more. The purpose is to bring the local authorities closer to the people and to increase transparency and accountability as well as enhance service delivery. Political decentralization assumes that decisions made with greater participation will be better informed and more relevant to diverse interest in society than those made only by national political authorities. According to Schneider, (2003), the concept implies that the selection of representations from local electoral jurisdictions allows entireness to know better their political representatives and allows elected officials to know better the needs and desires of their constituents. In short political decentralization often requires constitutional or statutory reforms, the development of pluralistic political parties, the strengthening of legislatures, creations of local political units, and the encouragement of effective public interest groups, (World Bank, 2000; Smoke 2001; Schneider, 2003; Duncan, 2007).