

**French Theories of Administrative Discretion
before World War II : Focus on the Function of Public Service
and the Scope of Judicial Control**

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Abstract

In the discharge of their missions, Government agencies are allowed to exercise discretionary power to a certain degree in reply to peculiar circumstances in any given case, such as the time, location, or nature of the case to boost efficiency. Such discretion, however, does not provide an absolute safe harbor for all agency actions, as part of which, under certain circumstances, are still subject to judicial scrutiny. The split of authority between the lawfulness and the appropriateness test as applied in complaint against improper exercise of discretion may affect one's redressability, prompting a heated debate in the pre-war era among French academia. Despite the legitimacy of professor M. Hauriou's theory on administrative morality, once upheld by the Conseil d'Etat in pre-war France, gradually eroded away in the postwar era, the principles thus enshrined may nevertheless provide insightful guidance on rethinking the correlation between state power and the existence of government agencies. The modifier "before WWII" in the heading shall not be understood to qualify this note as a reservoir of antecedent documents from previous years; the purpose of this note, rather, is to provide a sketch of significant features on administrative discretion in French administration theory, and, from this comparative perspective, to seek further to invite more discussions in the development of a deeper appreciation of the administrative law.

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