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Peter Hupe

Dimensions of Discretion: Specifying the Object of Street-Level Bureaucracy Research

Abstract

At the street level of the state public policies get their final form and substance. This being so, discretion is a key concept. The goal of this article is to specify discretion as a research object in the study of street-level bureaucracy. Therefore the theoretical views on discretion prevalent in juridical and other disciplines are explored. Discretion appears to be a multi-faceted concept. This finding has consequences for the analysis of discretion in the explanation of what happens in street-level bureaucracies.

Key words: discretion, autonomy, street-level bureaucracy, policy implementation

1. Introduction

‘When we have doubts about a file, we talk amongst ourselves. Before we go and see a manager, we ask each other: What would you do?’

Dubois (2010, p. 150) quotes this respondent to illustrate how an employee of a French welfare office uses his or her discretion when settling a difficult case.¹ For a number of reasons the statement of this person working in public service is interesting. First, it indicates the possibility of individual variation: not all employees of the welfare office concerned may consult their colleagues in a similar way. Second, organizational variation may be expected. The same task may be differently fulfilled, due to the varying characteristics of the agencies involved. Even welfare offices implementing the same kind of social security laws can be structured in different ways, while management and organizational culture may vary as well. Third, there may be variation at the scale of systems as a whole. The ways in which similar tasks, in this case, the provision of welfare benefits, are institutionally embedded, may vary along cross-national lines. While welfare benefits seem an inherent feature of welfare states, in France the provision of such benefits will be shaped differently from the way they are in Germany or the United Kingdom – although all members of the European Union.

Hence the research issue of generalization is on the table. There are reasons to expect that the practiced peer review observable in the quote above, describes a ‘universal’ phenomenon as induced by street-level discretion which can be assumed to be inherent in policy implementation as such. However, the assumption tells us little about the frequen-

cy of peer review and the nature of its results. This goes even more for the degree to which those who have formulated and decided upon the public policy involved, have left freedom of judgement to those who are deemed to implement it.

Opening the ‘black box’ of what happens on the ground floor of the state *Lipsky* (1980) coined the term *street-level bureaucracy*. He found that, rather than in the political-administrative centre, ‘public policy (...) in important ways (...) is actually made in the crowded offices and daily encounters of street-level workers’ (*Lipsky* 1980, p. xii). With the latter term he refers to individuals who work in ‘public services’ like ‘schools, police and welfare departments, lower courts, legal services offices’ and who ‘interact with and have wide discretion over the dispensation of benefits or the allocation of public sanctions’ (*ibid.*, p. xi). An important element *Lipsky* deems inherent to the work of street-level bureaucrats is the presence of discretion. ‘Policy makers and economists might wish it were otherwise, but it seems clear that in the implementation of social welfare programs there remains an irreducible extent to which worker discretion cannot be eradicated’ (*ibid.*, p. 28). In the 30th anniversary expanded edition of his book *Lipsky* (2010, p. xix) adds that he wants to ‘identify the common elements of occupations as apparently disparate as, say, police officer and social worker’. This ‘essentially comparative approach’ enables us ‘to raise questions systematically about apparent differences in various service areas’ (*ibid.*). Since *Lipsky’s* book was published a range of empirical studies on street-level bureaucracy have been carried out; for overviews of the state of the field, see *Maynard-Moody/Portillo* 2010; *Smith* 2011; *Brodkin* 2012; *Meyers/Lehmann Nielsen* 2012. In most of those studies discretion, one way or another, is a key concept. It often figures as a more or less broadly defined label under which aspects of bureaucratic practice at the street level get attention.

When the study of street-level bureaucracy is conceived as comparative research, and therefore the issue of generalization is at stake, there is a need to differentiate between what needs explanation and what may be seen as potentially explanatory factors, using explicit *ceteris paribus* clauses. First and foremost the programmatic aim of comparison implies the specification of the object of street-level bureaucracy research. Authors have attempted reviews of the literature on discretion (see, for example, chapters 12 and 13 in *Hill* 2013). Seldom, however, has comparing and contrasting the varying approaches to the concept been the explicit, singular, objective. Therefore specifying discretion as such is the goal in this article.

Given this objective it seems useful to take a closer look at the ways the concept of discretion is viewed in law and other academic disciplines. After all, scholars in those disciplines may use different vocabularies, but in fact they, too, are interested in the empirical phenomena which the concept refers to. An exploration of such theoretical views may provide insights useful for street-level bureaucracy research. Hence the central question in this article is: When the study of street-level bureaucracy is conceived as comparative research, how is ‘discretion’ theoretically viewed in the various disciplinary literatures, and what consequences can be drawn from these views for the treatment of discretion in street-level bureaucracy research?

First an exploration will follow of the ways in which the concept of discretion is viewed in the theoretical literatures on law and in other disciplines. Subsequently a view on discretion as research object is constructed, based on approaches from those disciplines. Then, in the fourth section, empirical street-level bureaucracy research is addressed. The ways discretion has been conceptualized get attention, and leads on to suggestions for the analysis of discretion in comparative street-level bureaucracy research. The article ends with a conclusion.

2. Theoretical views on discretion

2.1 A juridical view on discretion

The uses of discretion, edited by *Hawkins* (1992a, p. v), takes as its point of departure the view that discretion – ‘an elusive concept’ – has been given attention by lawyers and social scientists, in relative isolation from each other. *Hawkins* (1992b, p. 13) points out that he has brought perspectives from law and social science together, aware that he is using the latter term ‘in a general way to embrace often very disparate work by sociologists, political scientists, economists, organizational theorists and others’. It seems relevant to identify substantively the ‘disparate’ character of that work. Here this will be done by characterizing separately juridical, economic, sociological, and political views on discretion.

Hawkins (1992a, p. v) states that those who work in jurisprudence and administrative law have addressed discretion while being concerned with ‘decision-making procedures and the scope for the play of individual judgment afforded within a structure of rules’; (...) also with the nature of discretionary power, with the ways in which official authority is used, and with questions of legitimacy’. While ‘law is fundamentally an interpretive enterprise’, discretion, as the translation of rule into action, is inevitable (*Hawkins* 1992b, p. 11). There are three points here:

- ‘(T)he use of rules involves discretion, while the use of discretion involves rules’ (*ibid.*, p. 12).
- ‘Discretion is heavily implicated in the use of rules: interpretative behaviour is involved in making sense of rules, and in making choices about the relevance and use of rules’ (*ibid.*, p. 13).
- ‘Discretion – which might be regarded as the space, as it were, between legal rules in which legal actors may exercise choice – may be formally granted, or it may be assumed’ (*ibid.*, p. 11).

Legal philosophers are concerned with the extent to which rules authorize discretionary behaviour. As related to a set of rules discretion occurs ‘when someone is in general charged with making decisions, subject to standards set by a particular authority’ (*Dworkin* 1977, p. 31, quoted by *Hawkins* 1992b, p. 13). *Hawkins* observes distinctions made in the legal-philosophical literature like the ones between weak and strong discretion (*Dworkin* 1977), formal and informal discretion (*Goodin* 1986), and between discretion as subjective justice and rules as formal justice (*Handler* 1986). Legal scholars tend to think about discretion ‘as if it were not only a property of individual behaviour, but also essentially rule-guided, as if legal decisions were the product of individual knowledge, reflection and reasoning’ (*Hawkins* 1992b, p. 18).

2.2 An economic view on discretion

Economists share a world view in which the *homo economicus* is central. Unlike the study of law with its focus on formal rules, discretion as such is not a term used in economics. However, in what is called the principal/agent approach a similar phenomenon is being analyzed. The term principal refers to the rational actor who seeks the maximisation of his

(her) interests, aiming at benefits as high and costs as low as optimal. He (she) has preferences and makes decisions, being led by the wish to arrive at a ‘rational choice’.

This approach has been adopted and adapted in policy analysis by researchers from outside economics (see, for instance, *McCubbins et al.* 1984, 1987; *Bendor et al.* 2001; *Waterman/Meier* 1998; for an application to supervision and compliance, see *Brehm/Gates* 1994). Being aware that other actors may be useful to realize his preferences, the principal seeks an agent. The choice of the agent must be functional to the realization of the interests of the principal. The problem of trust is addressed in terms of adverse selection. When the agent works in the name of the principal, their relationship is characterized by information asymmetry. Because the behaviour of the agent cannot be completely supervised, the principal makes a claim to the loyalty of the agent. However, even when monitoring procedures have been designed, control of the agent by the principal remains a risk (moral hazard).

It is in this context that ‘compliance’, respectively, ‘deviance’ or ‘divergence’ become issues. The actions of the agent are supposed to be functional to realizing the preferences of the principal. Although their relationship is a hierarchical one, there are limits to direct control. Apart from the indicated information asymmetry the agent is a rational actor as well, acting in a calculating way. Therefore the principal will invest in institutionalizing and using a range of *ex ante* and *ex post* controls. For the ‘agency preference’ of the principal it is important to suppose that agents will do more ‘their best’ with decisions close to their own preferences; ‘bureaucratic preferences’ are a phenomenon to reckon with (*Gains/John* 2010).

2.3 A sociological view on discretion

Within sociology discretion gets attention – although under varying headings – in organizational sociology. Authors like *Gouldner* (1954), *Blau* (1955), *Simon* (1957) and *Merton* (1957) have encountered the context-setting rather than predetermining role of administrative and organizational rules. They all have, by implication, acknowledged the limits to direct control of organizational behaviour.

Authors like *Freidson* (1970) make a case of contrasting ‘profession’ and ‘bureaucracy’ as, respectively, having, freedom (autonomy) and being constrained (discretion). Others have criticised such contrast as being rhetorical rather than empirical, certainly in health care (see *Exworthy/Halford*, eds 1999; *Dickinson/Mannion*, eds 2012).

Furthermore, the study of street-level bureaucracy itself bears a substantial sociological imprint. Exploring administrative discretion from his early work on, *Hill* (1969, 1972), for example, has been approaching processes of social interaction in an empirically open way. Also in the successive editions of his textbook on public policy he has kept a profiled, sociological, focus on how discretion ‘works’ (*Hill* 2013). *Protas* (1979, p. 298) observes: ‘A general rule in the analysis of power is that an actor with low ‘compliance observability’ is relatively autonomous. If it is difficult or costly to determine how an actor behaves and the actor knows this, then he is under less compulsion to comply’. *Weatherly* (1980, p. 9) states that teachers, and street-level bureaucrats in general, ‘are certainly responsive to public policy. But their activities are also responsive to a number of other influences over which the policy maker and administrator may only have limited or no control’ He speaks, rather of a ‘pyramid-shaped organization’ of an ‘irregularly shaped sphere with vectors of different size directed inward’.

While *Lipky* (1980) already spoke of ‘alienation’ and ‘coping behaviour’ of street-level bureaucrats, these typically sociological, respectively, psychological concepts since then have got more attention (see, for instance, *Tummers* 2012). The study of representative bureaucracy has focused on the street level as well, more or less directly addressing the question how demographic traits of contact officials influence ways of rule application (see, for example, *Christensen et al.* 2012).

2.4 A political view on discretion

While some of the leading exponents of the sociological perspective will consider themselves in disciplinary terms as political scientists, we may identify a separate ‘political’ view. The ‘primacy of politics’ expresses the normative view underlying the politics/administration dichotomy (*Wilson* 1887; *Goodnow* 1900). What has been legitimately decided upon in the institutions of state and democracy, should be implemented accordingly. In fact this view is articulated in the stages heuristic of the policy process (*Anderson* 1984).

Next to this meaning of politics as a locus, however, ‘the political’ can also be used as a focus: a particular way of looking at the world. The sources for such a political view are various. Among the oldest ones are Aristotle’s *Ethics* (2004) and Plato’s *The Republic* (1955). In his *Ethics* Aristotle gives attention to the activities men are supposed to perform for the common good, active in the *polis*. Distinguishing between the Market and the Polis as models of society *Stone* (2002) mentions equity, efficiency, security, and liberty as ‘Goals’. In fact, the latter term refers to what is being addressed as public values.

The articulation and maintenance of those public values concern a profession, not to say a vocation (*Weber* 1947). As one of the first political scientists, *Machiavelli* (2011) formulated the mechanisms of power, exercised by a public actor. *Edelman* (a.o. 1988) added a macro-perspective to these insights, analyzing political language and symbols as used in the ‘political spectacle’. Given the logic of politics, public talk and public action do not coincide (for an exemplary case study, see *Hood/Dixon* 2012). The competence of combining the substantive and the strategic sides of politics, and weighing public values in an accountable way, can be considered to be a craft (cf. *Sennett* 2008). Political-administrative craftsmanship is not reserved for actors in a specific locus of the public domain. Practiced however far from the rule-making institutions, ‘discretionary’ action of public actors, even if not labelled as such, requires an adequate use of ‘governance skills’ (*Hupe* 2011).

3. Discretion as a research object

The goal in this article is to specify discretion as a research object. In the previous section the juridical view on discretion has been explored, while *Hawkins’* general label ‘social science’ has been differentiated in, respectively, an economic, sociological and political view on discretion. Next, analytical constructions of these views can be made, by distinguishing some parameters, in order to enhance comparison. That is done in this section by looking at the defining characteristic of each of the theoretical views, the sources of discretion, and the type of role the discretionary actor is supposed to fulfil; see Table 1.

In the juridical view discretion involves delegated authority. The foundation for discretion is situated in legal rules. These rules may have been formulated in laws in a literal sense but in fact this applies to all formal rules laid down in public policies. On a legitimate basis margins are circumscribed within which a degree of freedom for rule application is granted. In the economic view interest representation is central. The principal makes a rational choice about how his (her) interests can be realized. The freedom granted to an agent to contribute to this interest representation is checked by controls. In the sociological view no formal limits are posed to the freedom of judgement. The individual capacity to assess situations in the interaction with clients is trusted upon, and seen as, to a certain extent, result of professional training and experience. Institutional power struggles may be the result. In the political view on discretion the reference point is the pursuit of public values in the name of the common good. The exercise of power is functional to this aim.

Table 1. Theoretical views on discretion

	Juridical view	Economic view	Sociological view	Political view
Defining characteristic	Delegated authority	Interest representation	Freedom of judgement	Public values via public power
Sources	Formal rules	Interests	Judgement capacity	Public legitimacy

As far as defining characteristics are concerned authority, interests, judgement, and values and power indicate varying dimensions of discretion. Next to the juridical view, in which rules are central, there stand three ‘social scientific’ views (cf. *Hawkins*). At the same time the juridical and the economic views on discretion jointly feature a hierarchical relationship. The latter has a closed, one-to-one, character. For the discretionary actor only the rules of the rule maker, respectively, the interests of the principal, are supposed to count. Among the four theoretical views, the discretionary actor in the sociological view is approached as having the largest freedom, in the sense that direct external control by one ‘principal rule maker’ is limited. With the ‘primacy of politics’, when politics is approached as a locus, the look at discretion bears resemblances with the hierarchical one from the juridical and economic perspectives. However, in a view on ‘the political’ as a focus, ‘discretion’ takes the form of the ways public actors perform their tasks in the public domain, with an orientation to serving the general interest. Under the rule of law, in a democracy, they are expected to act on the basis but also within the limits of legitimately granted powers.

Hence, in the four theoretical views on discretion the role of the discretionary actor varies from rule follower and agent to professional and public actor acting in a situation of relative autonomy; see Table 2.

Table 2. The role of the discretionary actor

	Juridical view	Economic view	Sociological view	Political view
Discretionary role	Rule follower	Agent	Professional	Public actor
Nature of role script	Prescriptive input	Prescribed output	Occupational standards	Desired outcome
Role fulfilment				
– Idealtypical	‘By the book’	‘Taking initiative’	‘Autonomous’	‘Legitimate’
– Adverse variant	‘One-sided’	‘Limit seeking’	‘Hard to manage’	‘Opportunistic’

While the nature of the roles varies, so do the scripts for each role and, accordingly, appropriate role fulfilment. In the juridical view discretion is meant to bring about the accomplishment prescribed in the rules concerned. 'Going by the book' enhances the chance of such accomplishment. It may imply, however, that others than the rule maker assess the displayed action by the discretionary actor as one-sided. In the economic view discretion is needed to have subordinate others realize specified interests. Contracting tasks to an agent involves a loss of control for the principal. For the agent the issue is to minimize that control loss. Taking the initiative may be functional to realizing the principal's interests as prescribed outputs – if within limits. In the sociological view what is central, irrespective of the degree of formally granted authority, is adequate judgement of the situation at hand. The discretionary actor fulfils the role in a substantial autonomy, which makes him or her difficult to manage. In the political view discretion is instrumental to realizing societally desired outcomes, in a direction legitimately decided upon. While this requires the exercise of power in a relative autonomy, there is a chance of opportunism.

With discretion as prescriptive input the juridical view is the most predetermining, while the sociological view on discretion – not prescribing specified action – is the most open. As suggested above already, this also means that the usage of terms like 'compliance', 'rule bending', 'deviation' or 'divergence' is specific. These qualifications are connected with the juridical and economic views on discretion, as having in common a hierarchical view on the discretionary actor.

4. Discretion in street-level bureaucracy research

Although acknowledged as 'disparate', *Hawkins* (1992b) addressed the alternative to the juridical view on discretion under the encompassing heading of 'social science'. In the previous two sections this general label has been differentiated, while a range of theoretical views on discretion have been explored. Now we address the ways discretion is conceptualized in empirical studies on street-level bureaucracy, including its connections with other concepts, like rules and autonomy. In particular we will look at the consequences to be drawn from the cross-disciplinary exploration. At the basis of this section are books and articles from international academic journals on street-level bureaucracy, front-line work, and linguistically equivalent terms.

4.1 Definitions and sorts of discretion

Distinguishing between 'policy as written' and 'policy as performed' (p. xvii) *Lipsky* (2010, p. xii) speaks of a 'paradoxical reality'. On one hand the work of street-level bureaucrats is 'highly scripted'; on the other it requires 'improvisation and responsiveness to the individual' (*ibid.*). The term 'street-level bureaucracy' itself embodies this paradox: 'How to treat all citizens alike in their claims on government, and how at the same time to be responsive to the individual case when appropriate' (*ibid.*). *Lipsky* acknowledges that discretion will vary according to the nature of the street-level tasks at hand. The greater the degree of discretion, the more salient is such an analysis in understanding the character of worker's behaviour. Although hence characterised as a 'relative concept', discretion is 'difficult, if not impossible' to reduce (*ibid.*, p. 15).

In the empirical studies on street-level bureaucracy following *Lipsky's* classic *Davis'* (1969, p. 4) definition is often quoted: 'A public officer has discretion wherever the effective limits on his power leave him free to make a choice among possible courses of action and inaction'. *Stensöta* (2012, p. 554-5) defines discretion as 'the latitude that front-line bureaucrats possess to interpret rules when implementing programs, making them de facto bureaucratic policy makers'. While *Soss et al.* (2011, p. i225) speak of 'the discretion possessed by case managers', *Brodkin* (2011, p. i272) states: '(D)iscretion involves more than either a simple response-to-incentives or a response-to-preference. Discretionary choices also derive from specific organizational conditions that interact with performance incentives (and preferences) to create a street-level calculus of choice'.

Dubois (2010) focuses on roles and identities of welfare workers as created and influenced by institutions. Three main points guide *Dubois'* (*ibid.*, pp. 3-6) analysis: first, the identity and social roles that play a part in the interactions at the desk; second, managing tensions and producing consent; maintaining the institutional order, and third, the uses and practices of the institution, its functions and their joint transformations. 'Neither impersonal bureaucrats nor standardized clients exist: only social agents with individual personalities who, within certain conditions and limits, are required to play the role of the impersonal or standardised bureaucrat or client' (*ibid.*, p. 3). The relationship of an individual street-level bureaucrat with the institution is ambivalent; it is characterized by 'both a "social bond" and coercion' (*ibid.*, p. 16).

This has implications for the usage of discretion. Referring to *Dupuy and Thoenig* (1985) *Dubois* (*ibid.*, p. 150) states that street-level bureaucrats 'make arrangements'. '(T)hey cannot only stick to merely implementing the regulations' but 'use their discretion and apply the rule according to their interests (*Bourdieu* 2005)' (*ibid.*). In the contacts with individual clients this may mean 'favours and favouritism', with a chance that they 'bring about discredit and conflict' (*ibid.*, p. 153). Although, however, mistakes can be used as pretexts for complaints, they 'are usually easily accepted at the desk. Injustice rarely leads to scandals' (*ibid.*, p. 153-4).

Maynard-Moody and *Musheno* (2003, p. 10) refer to *Frederickson* 'who reminds us that discretion is inherent in all acts of administration'. Rules and supervision do play a role, but as a 'feature of the social terrain that the worker must navigate' (*ibid.*, p. 18). Speaking of 'state-agents' and 'citizen agents' *Maynard-Moody* and *Musheno* distinguish two 'narratives of street-level work'. While street-level workers embody both, their stories appear to be 'citizen centered more than rule centered, and the workers' judgments are more moral than legal' (*ibid.*). 'Rather than relying on policy to guide so-called discretionary decisions about cases, workers first make judgements about the citizen-client and then turn to policy to help enact or, if negative, to rationalize their judgements' (*ibid.*).

In several studies on street-level bureaucracy sorts of discretion are specified. Qualifying labels are, for instance, administrative discretion (*Sowa/Coleman Selden* 2003), bureaucratic discretion (*Scott* 1997; *Keiser/Soss* 1998); and front-line discretion (*Ellis* 2011). The latter author refers to a distinction made by *Taylor* and *Kelly* (2006): value discretion, rule discretion and task discretion. *Blackmore* (2001, p. 147) speaks of informal discretion. 'Discretionary powers' is used by *Riccucci* (2005) and *Walker/Niner* (2005). Furthermore, the distinction between objective discretion – related to law to be applied (styles of rule application) and subjective discretion – related to managing one's workload (coping strategies) can be found (*Winter* 2003, p. 8). *Riccucci* and *Meyers* (2004, p. 592) describe their measure of workers' discretion as constructed by 'summing answers to a series of questions about

whether their decisions are controlled largely by agency rules (low discretion) or by the exercise of professional judgement (high discretion)'.

Evans (2010) writes about 'professional discretion' as exercised by, particularly, professional social workers in management roles. While considering discretion 'a difficult idea to pin down' he argues that one should avoid definitional debates about a concept like this (*ibid.*, p. 2). He quotes *Smith* (1981), who looks at '(...) the language of discretion in relation to the action of discretion', and adds 'As a topic, discretion is concerned with the extent of freedom a worker can exercise in a specific context and the factors that give rise to this freedom in that context'. *De jure* discretion is about 'the authority to act, the official recognition of a right or entitlement to decide, such as professional discretion'. *De facto* discretion refers to 'having the power to act, though not necessarily officially recognised'. It can be associated with 'a capacity to act because of the absence of effective control' (*ibid.*, p. 33).

Three 'regimes of discretion within managerialised social services' are distinguished by *Evans*, each with a different characterisation of discretion (Table 3.1., p. 66). Next to the regimes labelled 'dominant managerialism' (discretion undesirable and severely constrained) and 'street-level bureaucracy' (discretion widespread, necessary but also problematic), *Evans* puts forward 'discursive managerialism'. In the latter perspective, 'practitioner discretion is contingent upon local circumstances and draws on a range of resources and alliances specific to locations. It shares the street-level bureaucracy perspective's view of the possibility of *de facto* discretion, but also points to the possibility of professional discourse as a resource in creating discretionary space' (*Evans* 2010, p. 153). *Evans* (*ibid.*, p. 151) refers to *Evetts* (2002) who has argued that 'the idea of discretion as autonomy – that is absolute freedom – is a myth: discretion is freedom within constraints'.

Comparing welfare administration in the USA, Germany and Sweden *Jewell* (2007) observes 'three worlds of social welfare'. He tries to link 'macro-' and 'micro-' analysis by connecting 'national culture, institutional history, and agency organization to ground-level practice' (*ibid.*, p. 34). Micro-level differences may, in a 'nested' way, be related to system differences, resulting in varying regulatory environments. Addressing 'welfare caseworker behaviour' and 'activation caseworker behaviour' as dependent variables *Jewell* places them in context. Across different institutional settings discretion may vary not only as it is used (micro) but as it is granted (macro) as well.

4.2 The discretionary actor and autonomy

While *Lipsky* focuses on the individual street-level bureaucrat as the discretionary actor, sometimes the discretion of the individual public functionary as either manager or operator is addressed (*Kelly* 1994). *Evans* (2011, 2012) looks at the discretion of professionals as managers. Doing the latter is not taken for granted. *Weissert* (1994, p. 245) observes differing perceptions of discretion: '(S)ome office directors and assistants had difficulty in applying the term to caseworkers. (...) Worker discretion has been overemphasized and manager discretion undervalued in previous work'. *Ringquist* (1995), observing discretion as 'making judgements regarding policy action not prescribed in detail by formal rules or legislation', points out the fact that 'discretion can also be exercised by mid-level civil servants (determining acceptable civil penalties, determining research designs), upper-level civil servants (setting agricultural-loan interest rates, approving operating licenses),

and political appointees (accepting final administrative rules, setting the discount rate)' (*ibid.*, p. 339).

Scott (1997, p. 37) makes links between discretion on the scale of the organization and of the individual. Bureaucratic discretion is viewed as 'a range of choice within a set of parameters that circumscribes the behaviour of the individual service provider. These parameters can exist in the form of organizational rules, or they can be externally sourced, being grounded in laws or even norms or codes associated with professional practice'. Some empirical studies focus on discretion, but not as exercised by individuals at the micro-level. *Spence* (1999), for instance, looks at agency discretion, *Keiser* (1999) at state bureaucratic discretion.

The link made between discretion and rules is ubiquitous. *Oberfield* (2010) makes a distinction between 'rule followers' and 'discretion users'. Speaking of 'rule-bound and discretionary behaviour in bureaucracies' *Walker and Niner* (2005, p. 64) support *Bradshaw's* view (1981) implying that 'there is a rules/discretion continuum rather than any sharp distinction between discretion-based and rule-based organizations. The same organization, section and even individual officer seem able to operate satisfactorily at different points on the continuum according to the nature of the task being undertaken'.

Several authors make a connection with autonomy. *Jorg et al.* (2005, p. 826), for instance, state: 'Autonomy is defined as the freedom to make discretionary decisions' (see also *Ballou* 1998 and *Batey/Lewis* 1982). *Sosin* (2010, p. 381) observes: 'Autonomy toward clients frequently is referred to as organizational discretion: the ability of organizational members to act independently from the demands of authorities'. Often the concept of autonomy is used in relation to an occupation. *Bundt* (2000, p. 775) looks at the autonomy of librarians as professionals while *Smith/Meier* (1994, p. 556) find that: 'Far from restricting the autonomy of teachers, bureaucrats can free them from administrative responsibilities and allow them to concentrate on what they do best – teach (...)'.⁷

Often the concept of autonomy is used in relation to the level of an organization, like *Verschuere* (2007) does. In a study of the bureaucratic autonomy of some American executive agencies *Carpenter* (2001) makes a sharp distinction, relevant here. For him discretion is part of a contractual arrangement, given to an agency in a statute, as leeway to interpret and enforce a law within certain bounds. Bureaucratic autonomy, on the other hand, 'is external to a contract and cannot be captured in a principal-agent relationship' (*ibid.*, p. 17). '(T)he key prerequisite for autonomy is bureaucratic reputation' (*ibid.*). *Huber and Shipan* (2002) approach discretion and autonomy as related concepts. Their book is about 'the institutional foundations of bureaucratic autonomy' (subtitle), while they treat the 'level of discretion in statutes' as the dependent variable (*ibid.*, p. 218).

4.3 Discretion in context

Dependent or independent variable. The general usage of the term in street-level bureaucracy research makes it look as if 'discretion' has a uniform meaning. In fact, it has not. Some studies in which a distinction between sorts of discretion is made, indicate that the term refers to two different empirical phenomena. In one meaning, discretion stands for the degree of freedom as *prescriptively granted* by a rule maker to an actor supposed to apply the rules from the latter. This 'granting' can happen more or less deliberately. It is sometimes expressed as 'the preferences of politicians' (*Huber /Shipan* 2002, p. 24), but

does not always have to be a matter of ‘rational choice’. In an alternative meaning the same term discretion refers to the ways granted freedom is *actually being used*. The focus is on behaviour, in a given setting. Mostly it is the behaviour of individual actors at the street-level that is looked at.

All street-level bureaucracy researchers share a focus on *discretion-as-used*. They also acknowledge, to a larger or smaller degree, the influence of the discretion granted in a specific policy statute, as a relative one. Hence the usage of the same term for both phenomena hides in fact a rather fundamental difference in meaning. On the one hand the term discretion refers to a determinant of output and thus regards an independent variable, on the other to empirical variation in behaviour which needs to be explained. Then discretion is a dependent variable.

Now it becomes possible to formulate some definitions. When the term rules is reserved for action prescriptions from a formal rule maker, discretion can be seen as granted freedom to act within limits prescribed in a given set of rules. Discretionary authority is the freedom to act within prescribed limits, as granted by a legitimate rule maker. As such this authority may be exercised by a variety of actors, on a range of layers; it is not a prerogative of the individual public servant at the street-level. In contrast to discretion as described in rules, the way freedom is used refers to actual behaviour of actors. If the latter is the empirical object, it seems sensible to use a corresponding conceptualization. Also autonomy is a characteristic of an actor. More precisely, autonomy concerns the freedom of actors to pursue their own sustained course of action as accepted by relevant others on the basis of a reputation for expertise and appropriate task fulfilment (cf. elements adopted from *Carpenter 2001*).

A multi-dimensional theoretical approach. Discretion is a broad term, which has multiple meanings. In street-level bureaucracy research the term *discretion*, unless specified, seems to function as a general label for what needs explanation. With that character it is in the company of similar umbrella concepts authors have come up with in their quest to capture the unspecified ‘rest’: practice beyond expressed intentions. As such the concept looks interchangeable with other grand terms employed in research to designate what happens in the ‘later’ parts of policy processes. In those parts, ‘after a bill has become a law’ (*Bardach 1977*), so much takes place, that researchers have tried out a range of umbrella labels for addressing varying aspects in this process as their empirical object. Examples are *administration* in the politics/administration dichotomy, *implementation* in the stages picture of the policy process, but also *performance*, a concept prevalent in the contemporary study of public management (cf. *Walker et al. 2010*). These different terms have in common that they are used as a general label for what in fact entails a variety of activities (forms of action), practiced by different actors, at a range of action spots.

However the degree of specification of the term discretion, in most empirical studies on street-level bureaucracy the primary focus actually appears to be on observed or self-reported rather than presupposed behaviour. Probably both as a cause and consequence of that fact, the imprint of the sociological view on the scholarly theme as a whole, is clear. It has led to a diversification of insights on what happens in the practice of bureaucracies at the street-level. At the same time, a full understanding (*Verstehen*) of ‘what happens’ there, as well as an explanation of empirical variation, cannot do without the aspects central in the theoretical views of the other three disciplines.

The sociological view points at processes of social interaction within and at the borders of organizations. The economic view draws attention to issues about control over

agents in contexts of divergent interests and the transaction costs involved. The political view focuses on questions about legitimacy. And the juridical view clearly points out the interplay between rules and discretion. All these aspects are important. Also in a ‘bottom-up’ analysis of social interaction the possible occurrence of interest-driven behaviour (cf. the *homo economicus*) cannot be overlooked. The working of power mechanisms and the prevalence of particular values in the public sphere indicate the relevance of the political view (cf. *Brodkin’s* 1990 ‘policy politics’). And in the end, even in a ‘horizontal’ (cf. ‘citizen-agent’) view the fact has to be acknowledged that street-level activities of public servants involve delegated authority ‘vertically’ exercised in the name of the state.

When explaining what happens at the street level of that state is the objective, all four discipline-bound questions and subsequently highlighted issues are relevant. The problem of ‘too many variables’ (*Goggin* 1986), the fact that we do not know much yet about the relative weight of factor clusters, as well as practical constraints for doing research, leave the ideal of a more comprehensive analysis aside. It is a greater explanatory potential that is aimed at when making a case for a multi-dimensional theoretical approach of discretion.

Contextualization. The ways in which discretion as granted differs can be expected to have a substantial impact on the variation in the ways discretion is used. As *Jewell* (2007, p. 188) observes, behaviour of street-level bureaucrats will vary, due ‘to differences in a variety of institutional influences that impact their work’. Taking the characteristics of legal and public-administrative systems and other institutional factors, like administrative culture, into account can shed a differentiated light on the role of discretion. Even if the consultation of peers, indicated in the quote in the Introduction, can be expected to be a more or less universal phenomenon, its frequency will vary across settings. In France, where the quote comes from, discretion to specify broad regulatory rules, is a more common feature than, for instance, in Germany. Here, by contrast, usually more detailed specifications are made in the laws themselves. The use of discretion is then structured via prescriptions in particular administrative procedures. For research this implies the need to specify the rules involved, as well as their sources. Also the nature of control by and the conceptions of the rule makers behind the law or policy-on-paper are to be taken into account.

5. Conclusion

The analytical and political consequences for the study of government put on the agenda by *Lipsky’s* book are still being dealt with (*Brodkin* 2012). Inasmuch as the policy process, and particularly its implementation part ‘at the street level’, empirically represents a continuation of the political process, the normative consequences of observations like the ones above are substantial. Given the scope of this article these have been left aside. The focus has not been on ‘what *should* happen’ but on ‘what happens’.

Obviously the texts of laws and public policies do not automatically predict the literal, direct and comprehensive pursuit of the expressed intentions in the practice of their implementation. Hence it is this that needs research attention to begin with. Since the 1970s such attention is given in implementation research, as a subfield of Political Science and Public Administration (cf. *Hill/Hupe* 2009). Taking the comparative nature of street-level bureaucracy and, subsequently, the issue of generalization seriously implies approaching discretion in a specified way, as a multi-faceted concept. Most of all discretion is to be analyzed in its context.

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