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Creativity: Re-thinking Professional Discretion

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1   Introduction

Discretion tends to be seen through a legalistic lens, characterized as a negative phenomenon, arbitrary action in the absence of rules. However, this view has obscured another approach to discretion which sees it as a site of creativity, where professionals work with citizens to meet their needs and make welfare services anew. In the first part of this paper, I will outline these two different conceptions of discretion and consider their respective ecologies of welfare production. Discretion as a creative activity, I will argue, has played an important role in the welfare state, but has been pushed aside in the political and managerial disposition that has characterized the last 40 years of public services. In the second part of the paper, I want to revisit the connections between creativity and discretion and consider the ways in which it can help us better understand the potential for practitioners to craft responsive and empowering services in their work with citizens. I will then explore problem-solving, imagination, and understanding and engaging with other people's perspectives, as aspects of creativity. Recognizing creativity, I will argue, reveals discretion as an innovative dimension of practice which enables practitioners to breathe life into policy on the ground, and to translate bloodless documents and protocols into human services. Re-thinking our approach to discretion in this way can enable us to better recognize the ways in which discretion can be a creative force in public services. This, of course, raises questions of democratic accountability and highlights discretion as the site in which practitioners engage critically and ethically with the diverse social world within which they operate as public servants.

2   The Problem of Discretion

The fundamental criticism of discretion in public services is that it's inherently arbitrary – it entails acting outside the rules. If discretion can't be eliminated, it has to be tightly controlled. A combination of detailed rules and an obedient mindset should constrain discretion.

This viewpoint tends to be one shared by proponents of the minimal state and by those who see a positive role for the state as a command and control structure. Finer's analysis of discretion is a classic expression of both these views. He is critical of the increasing role of the state and the risk of "...Bureaucracy! and New Despotism!" (1941:344) – and at the same time concerned that public officials do not follow order but use "creative solutions" in their approach to political instructions and policy thwarting "...the primacy of public responsibility ...by blurred interpretations, theoretical and practical, of the term responsibility." (1941:348)

Finer is concerned that the good intentions of public officials – if allowed to become action – will lead to expanded state responsibilities. His concern about official discretion is less to do with possible abuse than with what he sees as public servant's inclination to do good things: "A system which gives the 'good' man freedom of action, in the expectation of benefiting from all the 'good' he has in him, must sooner or later (since no man is without fault) cause his faults to be loaded on to the public also," (1941:338). Finer was concerned that public

servants would seek, through discretion, to enhance and extend their role. He also felt that the only way to keep them in line was with close surveillance and threat of sanction.

In looking at the role of public officials within the state, Finer argues that there is a clear distinction between administration and politics. Politicians decide and public servants execute their decisions: "...the servants are not to decide their own course; they are to be responsible to the elected representatives of the public, and these are to determine the course of action of the public servants to the most minute degree that is technically feasible," (1941:336). Public servants should follow instructions. They are not expected to exercise judgment, use initiative, or act creatively.

One of the reasons public officials have power, Finer concedes, is that they have expertise: they know what they are doing and what needs to be done. This, he notes, is often in contrast to politicians, who don't have the same technical expertise. In this respect, he accepts, experts have a role; but expertise shouldn't trump the authority of political decision-makers, even if the policy made by politicians is technically inept, public servants shouldn't strive to "correct" it. They should follow orders. Politicians, he argues, have to decide; public officials then act on their instructions. Their role is to use their expertise to make policy work because their fundamental responsibility is as a cog in the administrative machine: they just have to follow instructions. This requirement is captured in Finer's view that the fundamental expertise of public servants is an overriding recognition that they have to comply with instructions in office.

3   Creativity and Discretion

Friedrich (1940), in contrast to Finer, is dubious about the hard and fast distinction between the political and administrative in public policy that underpins Finer's antipathy to discretion. He sees policy in public services as essentially dynamic and creative in meeting needs on the ground: "Public policy, to put it flatly, is a continuous process, the formation of which is inseparable from its execution. Public policy is being formed as it is being executed, and it is likewise being executed as it is being formed. Politics and administration play a continuous role in both formation and execution, though there is probably more politics in the formation of policy, more administration in the execution of it," (1940:6).

Finer, who was writing in the context of the New Deal in America, was more optimistic than Finer about the positive and expanding role of the public services. He characterizes discretion as a creative force — the ability to recognize new needs and create responsive services. Policy — framed in legalistic terms — inevitably looks backwards. It's too often yesterday's solution to today's problem. Social issues are continually shifting and moving. Discretion reflects the need for services to be innovative in anticipating situations, developing new solutions, and creating services in response to emerging issues.

> "The continuously changing pattern of our society requires that the administrator be responsive to whatever trends may be affecting his activities. Laws do not embody static and universal truths; they represent expedient policies which are subject to continuous change and must be so considered. Instead of administering according to precedent, the responsible administrator today works according to anticipation," (1940:16-17).

He also drew a very different picture of public services from Finer's idea of mechanical command and control. Accordingly, for Friedrich "... a modern administrator is in many cases dealing with problems so novel and complex that they call for the highest creative ability,"

(1940:12); but creativity is not unlimited, it is constrained by accountability. He also identifies two critical dimensions of accountability that delimits the role of "creativity" in terms of collegiate peer expertise and democratic sensitivity. Public servants have discretion because they know what they are doing. They have expertise – but this also means that they can only claim authority within the limits of that expertise. Friedrich summarizes this limitation with the idea of the fellowship of experts: "...the man who is called upon to seek and find the creative solutions for our crying technical needs, which cannot be effectively enforced except by fellow-technicians who are capable of judging his policy in terms of the scientific knowledge bearing upon it," (1940:14). The second dimension of accountability involves active democratic engagement — a sort of political nous – monitoring, understanding, and anticipating what public opinion will support or resist. This is a broad sense of democratic accountability:

> "...while the press and Parliament still provide very potent sources of influence, and hence their reactions are keenly watched by policy-formulating officials, newer and equally potent instruments have been developed in recent years...administrative officials have begun to tap independent sources of insight into the views and reactions of the general public which are increasingly important in guiding them towards the making of public policy in a responsible fashion," (1940: 16).

4 Creative Discretion in the Welfare State

Initially, in the context of the development of more expansive post-war welfare states, Friedrich's view of discretion in public services seemed to win out over Finer's (Jackson 2009). In areas such as social work, this policy dispensation is captured in Parry and Parry's (1979) characterization of welfare service organizations as bureau-professional— a combination of hierarchical principles of bureaucracy and professional principles of peer supervision rather than directive management, and a significant degree of individual and collective discretion.

However, in the wake of the fiscal crisis in the 1970s, and particularly, in the political response to this in many Western democracies and the increasingly restrictive idea of the state and citizens as consumers with procedural rather than substantive rights, Finer's idea of discretion as severely restricted and rule-bound is more in line with policy-makers.

An immediate critical response to this changing of policy environment discretion can be found in Titmuss' (1971) critique of limiting discretion and the pathology of proceduralism. He identifies a significant (but not exclusive) critique of discretion in the right-wing promotion – by economists such as Friedman – of smaller government, constrained by rules and subject to legal constraint. Titmuss' concern with these developments was their push to drive out discretion which, he argued, brought innovation, creativity, and responsiveness to public services. To ensure responsive public services that address current issues, he argued, policy provision needs to accommodate both "…proportional (equitable) justice and creative (individualised) justice," (Titmuss 1971:131).

Handler (1986) was similarly concerned about what he saw as an overly legalistic welfare system in which prescriptive rules squeeze creativity out of public services. Discretion, he argues, "…is not only a fact of life; it must be viewed as a creative challenge, a positive good, rather than necessary evil," (169). It provides space as a positive force for change and makes services more responsive – a space for "experimentation, agitation, and the working out of ideas," (10). It is an arena for professionals to work with citizens "…to develop and modify

styles and patterns of operations, to create and emphasise programmes," (9). For Handler, discretion is not something that needs to be eliminated, instead, it is an essential dimension of administrative justice: "… there must be creativity, flexibility, and individuality at the local level…To accomplish these objectives, not only must there be discretion, there must be the creative use of discretion," (10).

5 Dimensions of Creativity

In talking about creativity, Friedrich, Titmuss, and Handler identify its contribution to services, but they don't provide a clear exposition of what creativity entails. In using the term, which we more often associate with the arts more than with public service provision, it's reasonable to draw on the ideas of creativity found in arts practices to help us to develop our understanding of creativity in professional practices (Evans 2019a). In making this connection, it also helps us challenge the proceduralization of professional practice, which has been associated with its bureaucratization and the proceduralization associated with managerialism. However, in drawing on arts practices to elucidate the idea of creativity, we have to avoid the pitfall of the ideological characterization of creativity as individual and exceptional: the romantic "lone genius."

Boden (1994) points out that creativity is something we all practice, to a lesser or greater degree, to do things that are new, different, and unexpected (to us, at least). She uses this observation to distinguish two forms of creativity that help us understand the power of the Romantic creative stereotype, but also its limitation. We have all done things that are new or different to oneself – this is what Boden calls "psychological" (P) creativity — but sometimes individuals also do some things that are new, different, or unexpected not only to themselves but also to all those around them. Boden calls this "historical" (H) creativity; this is creativity, but with the additional feature of wider recognition. H creativity tends to dominate our idea of what creativity involves, crowding out ubiquitous P creativity. However, it is also historically and culturally unstable — it is a judement made by peers or posterity that reflects their shifting concerns and priorities of powerful groups — and it is an evaluation that can shift and change over time. It is a form of creativity, but not the only form.

Boden's analysis also helps us to understand that creativity can operate in the organizational world of rules, procedures, and policies. There are two broad approaches that can help here in understanding the link between creativity and imagination. The first is drawn from work on creativity and information technology. The second is imagination, making links and connections that are not only cognitive but also emotional. Creativity, she observes, is essentially context-bound — it is more newish than brand new — often pushing against/building on what already exists: "(…) constraints, far from being opposed to creativity, make creativity possible. To throw away all constraints would be to destroy the capacity for creative thinking," (Boden 1995). Here, creativity is essentially an exploratory process where ideas, assumptions, and principles are interrogated, refined, and developed. It is an exploration of possibilities and potential within an area of practice (Boden 1994). Here, the idea of "affordance," an idea used widely in design, theatre, and literature, is helpful in understanding the process, and I would argue, offers a helpful way to understand the nature and potential of creativity in thinking about discretion. Affordance is the idea of the possibilities offered for action to an actor by an object in a context:

> "The *affordances* of the environment are what it *offers* the animal, what it *provides* or *furnishes*, either for good or ill...If a terrestrial surface is nearly horizontal (instead of slanted), nearly flat (instead of convex or concave), and sufficiently extended (relative

to the size of the animal) and if its substance is rigid (relative to the weight of the animal), then the surface *affords* support," (Gibson 1986: 127 – original emphasis).

An object in an environment is perceived as a way of achieving an actor's purpose – an exhausted person passing a fallen tree sees it as a surface on which to sit; a person who wants to cross a stream sees it as a bridge. It is an idea that highlights agency in social action through the role of imagination, reinvention, improvisation and ingenuity in local action, and through the contribution this makes to continuing processes of reinvention and development of the ideas, assumptions, and conventions (Cave 2016: 62). In this way the idea of "affordance" involves the recognition of possibilities within an environment to create or adapt meaning and open up new possibilities that can change the environment itself. As an example, following the implementation of the NHS & Community Care Act 1990 in England and Wales, many local authorities introduced eligibility criteria as a way of rationing services. Eligibility criteria were widely seen as constraining practitioner judgment and restricting access to services (Carey 2003). However, in a context of austerity and a mismatch between political rhetoric and resources, eligibility criteria now have the potential to hold policymakers accountable, and to act as the basis for the assertion of citizens' rights (even though criteria often only set down minimum requirements) (Evans 2016).

As well as elucidating discretion as problem-solving, the idea of creativity from the arts also helps to engage with discretion in its ethical and critical dimensions in human services. Providing services involves imagining others' needs and adapting and creating provision in encounters between front-line workers and citizens. It is about being able to understand others, and making and recognizing connections. Goffman (1990), for instance, describes the essentially dramatic and performative nature of social life and how we imagine and reimagine others and ourselves in the ways in which we create and act out our social personas. He talks about the ways in which we, as social actors, are given, and take, roles which we manipulate to create and manage (or fail to manage) our identity in the performance of everyday life; and how the way we imagine people, the names we give them, the groups we put them in, can have profound effects not only in our private lives but also in public roles such as those of professionals or policy actors. It is also present in apparently impersonal processes such as professional categories and policy criteria which imagine people and services in particular ways, and by these means, create and limit possibilities (Hacking 1986).

The creative imagination is essentially a critical imagination that challenges homogenising and overconfident expertise, and inflexible and decontextualized responses. It's creativity and imagination that are fundamental to questioning the taken-for-granted provision that reflects Luke's (2005) third dimension of power. This is the strand in creativity which reflects the role of imagination in recognizing what is often ignored, hidden, or taken or granted, and makes connections that are insightful or challenging. Creativity is also about finding ways to express and explore ideas and emotions, recognizing and reflecting what we may not notice or acknowledge. At an individual level, it is imaginative ability to step into others' shoes — to try and see the world through others' eyes — or imagine new situations, releasing yourself from the constraints of habitual thinking and the immediate context to imagine different possibilities.

Imagination is also fundamental to social work as social critique, in making connections between individual experiences and broader perspectives. Imagination is a fundamental tool for making connections between individuals and conceiving of them as social actors and subjects to social influences. George Eliot's *Middlemarch*, one of the greatest novels in

English literature, captures this essentially social imagination in her observation that: "(…) there is no creature whose inward being is so strong that it is not greatly determined by what lies outside it," (undated: Ch. 87). This sense of imagination is reflected in Mills' (2000:72) emphasis on analyzing social issues in terms of both history and biography and his concern about "how much exactitude, or even pseudo-precision, is here confused with 'truth;' and how much abstracted empiricism is taken as the only 'empirical' manner of work."

It is also about appreciating that: "(…) instead of seeing one world only, our own, we see that world multiply itself and we have at our disposal as many worlds as there are original artists, worlds more different one from the other than those which revolve in infinite space (...)," (Proust 2000: 254). This is a critical and ethical imagination that underlines the fragility in claims to know best, and the responsibility of challenging assertions of knowing and acting for others, rather than engaging with them as fellow social actors and recognizing their views and concerns. In relation to social work practice and research, this resonates with Humphries' (1997) observation that (in relation to research and other social practices) we need to interrogate our own perspectives and the tensions within them to open up new approaches and understandings that better engage with the complexities encountered in everyday practices.

In making the connections between the creative imagination in the arts and the social, ethical, and critical imagination in social work, I don't want to suggest that one is better than (or prior to) the other, rather, they are both expressions of a common quality of curiosity, inquiry, and challenge in human agency. Ideas of creativity from the arts play a critical role in a proceduralized setting, to remind us of the value of creative imagination in discretion in professional practice — as empowering, responsive, and ethical work at the individual level, and as critical judgment that can link individual experiences and structural issues.

6 Conclusion: Application and Accountability

In concluding this paper, I want to do two things. The first is to consider what this approach to discretion looks like in practice. The second is to consider a question that was raised when I presented this paper: is creative discretion democratic?

Understanding discretion in terms of creativity can help us recognize the positive ways in which social workers are often involved in developing and extending services and responding to citizens' needs. To take a (real) example: a social worker who is working with young mothers found that she was caught between two stools: the local policies and services related to young women in distress, and to mothers and families. Neither service had its head around how it might work with "teen moms." One service could only see the "teen," the other only recognized the "mom." In this situation, I would argue, the expectation is that social workers wouldn't just try and force someone into an inappropriate category, saying "it's not in my job description to work with people who don't fit my service," rather, the expectation is that, as professionals, they would be creative and seek to make existing services work for those in need of them. It would be the social worker's responsibility to be creative. In so doing, social workers could operate at a range of levels. They could, for instance, see this as a problem of private troubles: that they must in some way tailor the service to an individual's needs. This is a classic strategy identified in a lot of the street-level bureaucracy literature — of adapting and tweaking. It's also an approach identified in critical public sector economics as situational contracting and personalizing services. However, as private troubles accumulate, informally, we could see a pattern emerging from these attempts to tailor services through the movement of practice; the key issue here is how this individual creativity can be collectivized. Part of it is about recognizing through collective action and collective professional reflection that these

private troubles are, in fact, public issues, and developing that, not only through service adaptation, but through professional knowledge and skills repertoire. In doing this, we can see creativity moving from individual adaptation and tailoring to one of seeking to shift policy. Here, one of the key creative strategies that is often undervalued is the way in which services are developed through showing and telling. Networking with service-users, colleagues, and communities, and seeing connections and imagining links, help to develop new approaches.

Many policy developments arise from the recognition of particular initiatives and they attempt then to bring them into policy discourse and "mainstream" them. An issue here is often the relationship between these initiatives and their promotion. Entrepreneurialism, in the earliest use of the term, was associated with promoters of theatrical production, and we can see the potential for creativity here in making the links between particular provisions and more general responses. Perhaps one of the barriers now is in the more modern sense of entrepreneurialism, where new, imaginative, and creative initiatives in meeting individuals and community needs are being commodified and sold and pushed by practitioners who take ownership of them, and social entrepreneurs, who pick up and run with these new products to sell them to policy-makers. Alongside this acknowledged aspect of creativity in discretion and policy work, there is also the more obvious, direct intervention and challenge to policy through advocacy and political participation which, again, can be seen as a dimension of this creative approach through not only a connecting of particular issues into general challenges, but also the political coalition-building that relies on imagining and responding to different perspectives and political commitments in communities.

One of the questions about the idea of discretion I've presented here is: is it democratic? This was certainly one of the concerns that Finer had with Friedrich's account of discretion as creativity, and reflects a continuing theme of seeing discretion as an aberration which, if it can't be eliminated, needs to be minimized and closely monitored. This critique of discretion is very much associated with ideas of principal/agent control in which the ultimate principal is a democratic institution, such as parliament (the political principal). In considering this question, I want to accept the premise of the sovereignty of formal democratic institutions, but call into question the assumption that's often made in this argument, that the line of authority and instruction running through layers of bureaucracy and various principal/agent relationships, is a clear and unbroken line. Alongside this, in assessing the relationship between discretion and democratic accountability, we also need to consider that democratic institutions are constituted in an idea of citizens' rights and broader human rights that should question and challenge simple populist views of democracy. In the space available here, it's not possible to go into this argument in detail (for a more detailed exposition, see Evans 2019b), but I want to sketch some of the key points.

The first is the idea that policy provides an unbroken line of political authority that runs through the layers of an organization with each subordinate simply accepting the instruction of the superordinate. This view assumes that policy is a precise prescription for action, but politicians and senior policymakers talk of policy in a range of different ways — sometimes as a detailed plan of action, but also as an intention to do something, or simply by referring to established schemes of provision or custom and practice in services (Levine 1997). Policy analysts also point out that policy is, often, simply a stance or position or rhetoric rather than a practical plan of action (Hill 2013).

Putting this problem aside for the sake of argument, and even if we assume policy is a clear set of prescriptions for action, the unbroken line of authority argument is difficult to sustain.

One of the things we know about implementation and how decisions are transferred through layers of an organization, is that they are interpreted several times over (Evans and Hupe 2019); certain elements are prioritized over others. This suggests that, as the distance between political authority and the people actually providing the service is often mediated by several organizational levels of organizational interpretations of policy, there often has to be space to question and adapt instructions in the light of frontline workers' perceptions of the situations they encounter and the needs of the people with whom they're working to best realize the broad goals of policy. Furthermore, policy in human services often only seeks to provide a broad idea of a service to be provided. It does not, and usually cannot, specify how that service is provided. The policy will say, for instance, that a local authority should offer adult social services but the nature of that service will be left to professional practice. In a local situation, creativity is often what's required, rather than mechanical implementation.

Alongside this idea that democratic implementation entails freedom to be imaginative and creative in delivering services, there is also the democratic imperative of the recognition of fundamental rights where the second dimension of creativity mentioned above plays a particularly important role in recognizing that, as professionals, while we have something to contribute, the people with whom we work and the communities within which we work not only have substantive rights that need to be acknowledged, but also have rights as citizens to participate in decisions that are made about the services they receive. Furthermore, the critical role of discretion (to interrogate top-down instruction) is underlined, particularly in a contracting-out setting, where the claim of an unbroken line of political authority is made even more of a problematic idea with public service concerns being distorted by the priorities of individual organizations and the financial imperatives of for-profit corporations that are their raison d'etre.

This argument is tentative, and purposely so; uses of discretion in particular circumstances have the potential to be undemocratic and oppressive. However, this should not blind us to the important role discretion can play as a creative force in public services. It is often a site within which practitioners can work with citizens to continually make and remake public services that respond to dynamic needs and enable practitioners to engage critically and ethically with the diverse social world within which they operate as public servants.

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