



# The discretionary power of the environmental assessment practitioner

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## ABSTRACT

Discretion is an essential and unavoidable element of most decision-making and is thus often closely related to the judgment exercised by politicians and practitioners alike. It is evident that discretionary power can be executed in different ways, leading to different results. Therefore, it also has a significant influence on the effectiveness of the environmental assessment (EA) as examined in recent environment impact assessment (EIA) and strategic environment assessment (SEA) literature. However, limited attention has been given to the practitioners' role and how they exercise their discretion, while the effectiveness and implementation of decisions has been a recurrent theme in EA literature. This article explores the connections between discretion and some of the fundamental ideas behind how EIA and SEA function in our societies.

Firstly, the article develops and presents a theoretical model of discretion, allowing us to explore the phenomena of discretion from four dimensions: source, form, value and dynamics of discretion. Secondly, a review of EA literature is performed with the purpose of mapping how discretion is studied and what kind of discretion is found in the context of EA – focusing on one of the dimensions – ‘source of discretion’. The results imply that it is prevalent for practitioners to exercise rule, value and task discretion in every choice they make at each stage of the EA implementation process, which influences EA effectiveness, either positively or negatively, depending on how discretionary power is exercised and reflected in EA practitioners' practice. It draws both the management's attention to how to regulate EA policies and the practitioners' attention to how to make a difference.

## 1. Introduction

The purpose of this article is to highlight and unravel the role of practitioners' discretion and look closer into how that influences the effectiveness of the environmental assessment (EA) or other decisions being made. The discretionary role of practitioners is given attention in a variety of disciplines and research, though mainly in public policy and political science. The most representative work by Lipsky (1980) argues that discretion is the street-level bureaucrats' (SLBs) autonomy to make top-level policies adaptable to local specific cases. Vinzant and Crothers (1996) consider discretion as the power to make decisions and choices within legislative boundaries. In our view, discretion influences all decision-making within policies and many specific decisions related to environment and planning. Just as we find in many other fields of policy, it is not only politicians but also administrative practitioners and the public who are involved in the implementation of a policy. Each step from a policy initiation and implementation to its output or outcome leaves room for such imprints on the results. The prevailing ideologies underline that much of the decision-making is rational – if not always on the policy side, then at least on the administrative side.

Where policies can be seen to be symbolic, based on insufficient knowledge or a simple compromise between opposing groups of stakeholders, the implementation process is thought of as neutral and objective, thus following consequential logic (March and Olsen, 1989).

When is discretion then exercised in EA? The discretionary decision-making can happen throughout the process (Wilkins, 2003) and involves judgment and choices on, for example, which projects and plans are mandatory to EA, how the significance of impact is determined, what scope should be included in the EA, who should be involved in the process, and how quality is determined, which we refer to as EA practitioners' decision making process in this article. These examples of discretion point to the fact that discretion can take place in many arenas during the EA implementation process (Zhang et al., 2013), beyond the formal decision-making process.

Discretion, which is relevant for judgment and power, is often highlighted in effectiveness literature. Decisions made upon a subjective and value-laden basis are found in practice (Canter and Canty, 1993; Lawrence, 1993; Wilkins, 2003; Wood and Becker, 2005; Lyhne and Kørnøv, 2013), and underline that practitioners possess the discretionary power to make various decisions based upon a few factors,

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including their judgment, ideology, and personal capability as well as timing and resources, or broadly contextual factors. Practitioners have predominantly been perceived as technicians and/or administrators with assessment skills who are able to provide an objective and neutral documentation informing and advising the decision makers (March and Olsen, 1989). This viewpoint has prevailed under the dominance of the technical-rational thinking of EA, at least from its initiation in 1970 to the more governance-oriented discourse that has been around since approximately 1989, where more emphasis was put on public participation and communication (e.g., Forester, 1993; Healey, 1997) and the role of deliberative practitioners (Forester, 1999). Planners are no longer supposed to follow the objective rules and procedures, collect information and process the data so as to generate a neutral answer to an environmental problem mainly following logic of consequences (March and Olsen, 1989). Contrary to this, we now realize that much decision-making is relatively political in nature and influences the policy-making process in a variety of ways (Bartlett and Kurian, 1999; Kørnø and Thissen, 2000).

Today, it is obvious that most practitioners contribute to decision-making in arenas where they can use their discretionary powers to advocate norms and mediate value conflicts (Fischer, 2003). Discretion is thus also created by the way our language is constituted as communicative praxis. Forester has argued that “the practice of planners is not only tool-like, but also communicative. The actions have to make sense to other people and shape others’ attention, expectation and understanding. ‘Being practical’ in planning is taking place concomitantly with ‘being technical’” (Forester, 1993, p. 25) and communication thus also leaves room for discretion by the fact that communicative forms of practices always unfold in the arenas in question.

As a bridge connecting various communities, practitioners also engage in communicative praxis. Practitioners can function as knowledge brokers promoting knowledge-sharing and information transformation (Sheate and Partidário, 2010), knowledge workers undertaking judgment-oriented tasks (Sánchez and Morrison-Saunders, 2011) or as change agents (Kørnø et al., 2011). Many more specific labels could be put on this broker or change agent, since they have been identified as playing pivotal roles in a host of different theories that investigate the dynamics taking place in such arenas. There are other concepts found in the literature describing the role of practitioners, such as street-level bureaucracy (Lipsky, 1980), boundary spanner (Aldrich and Herker, 1977; Boulton et al., 1982), reflective practitioner (Schön, 1983) and deliberative practitioner (Forester, 1999). They all point to the fact that all arenas have room for discretion and all discretion can be moulded and changed by agents that know how to initiate change, so the change agents encountered in all kinds of organizations are exactly the proof of the omnipresence of discretion.

It shows that discretion is an under-researched theme in EIA/SEA literature. Earlier, we conducted a case study on street-level bureaucracy within SEA of a spatial plan, which illustrated the valuable role that discretion plays in ensuring SEA effectiveness (Kørnø et al., 2014); however, the research also questioned the negative connotations of discretion that we find in most work on street-level bureaucracy or the role of practitioners in EA practice. The different ways for EA practitioners to exercise their discretion merits deeper understanding. Thus, it looks for the evidence or clues in the EA literature with relevant descriptions on where discretion comes from, how it is exercised by different groups of practitioners in practice, and the influence on decision-making. In this work, the EA practitioners refer to a broad range of professionals being involved in the EA implementation process, such as impact assessors, EA researchers and experts, and the EA review team members and evaluators, amongst others.

The starting point is to offer some fundamental definitions of discretion and discretionary power and then look into the more concrete examples of discretion found in the accounts from EA praxis. The authors aim to contribute to the state of the art from the following aspects: Firstly, developing a general theoretical model of discretion, allowing

us to unfold the understanding of practitioners’ discretionary power from different dimensions; secondly, systematically reviewing the discretion, performance and practice of EA practitioners with accumulated understanding of their role and behaviour, and thus the reason or context behind it. The review, which use the theoretical model as a framework, focus on one dimension only. This article is based on part of the PhD thesis research reported in Zhang (2012). It is organized into the following sections: Section 2 prepares the understanding of discretion according to Lipsky’s SLBs theory; Section 3 establishes the theoretical model of discretion with four different dimensions (form, value, dynamic and source of discretion); Section 4 addresses the methodology and basis for the study; the last dimension is then exemplified in the classification and explanation of notions found in the review, be it rule discretion, value discretion and task discretion explored in Section 5. The last two sections, the discussion and conclusion, offer reflections of the findings.

## 2. Discretion and the development of the theory of street-level bureaucracy

Understanding the role of EA practitioners can be inspired from the theory of Street-level Bureaucracy. As SLBs cover a group of public servants who work on the front line in delivering public services, such as police officers, lawyers, doctors, social workers, and teachers (Lipsky, 1980). They represent the last link of decision makers who deliver the final decisions to the target group, thus mediating between the ambiguous policy design and the final demand resulting from each case. Room is always left for interpretation or reshaping of the policy to meet the individual situation. Thus, SLBs have to be creative and innovative to be problem-solvers. By defining how the policy should be carried out, they consequently become the actual “decision maker” (Lipsky, 1980). EA practitioners are the group of front line workers who deliver EA policy into practice, who make a series of decisions on whether an EA is needed or not, which guideline to use, what alternatives to choose from, what techniques and models to use to predict the impact, what impacts are considered significant or not, how to conduct public participation etc. In each step EA practitioners possess the space for their decisions using e.g. their professional judgments, expertise and more personal conscious (or unconscious) preferences.

In Lipsky’s work, discretion is the main concern to explain how SLBs behave in public service and how complex and ambiguous policies are interpreted, reshaped, and executed on the front line. SLBs work in the dilemma between the control from the management and using their own discretionary judgment to adapt to each unique case. They have learned where to find the balance, since “the routines they establish, and the devices they invent to cope with uncertainties and work pressures effectively become the public policies they carry out” (Lipsky, 1980, p.xiii). The autonomy of SLBs embodies three aspects: modifying client demand (controlling the timing and pace of interaction), modifying work conception (simplifying the case at hand at making it as routines), and modifying client conception (differentiating clients based upon their preferences) (Hudson, 1989; Lipsky, 1980). The dilemma Lipsky presented is exactly what EA practitioners confronted with in their daily life. The understanding of a certain pattern SLBs possess provides us with the lens to investigate the role of EA practitioners and if their exercise of discretion exerts an influence on the effectiveness of EA policy they have been delivering.

The theory of SLBs has been developed further by successive scholars focusing on SLBs and their roles in solving problems and making a difference. Donald Schön (1983) describes the role of reflective practitioners, who need to understand each case and its context; face the unpredictability, uncertainty, complexity, uniqueness, and conflict of each case; frame and reframe the issue at hand based on the available information; and then take action based on their professional judgment, knowledge, and expertise. In addressing mostly knowledge and its complexity, the focus has been on identifying the skills developed and

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