Street-Level Bureaucracy, Social Work and the (Exaggerated) Death of Discretion

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Summary

Lipsky's classic study of 'street-level bureaucracy' (1980) provided a perceptive analysis of front line practice in public organizations that has continuing relevance to recent literature, which has debated whether discretion continues to operate in social work or whether it has been curtailed. Having considered contributions to the debate on the continuation and curtailment of professional discretion in social work, it becomes clear that there are significant differences between these two positions, differences which focus on beliefs about managers' desire for, and ability to secure, control and workers' ability to resist control and seek discretion. However, after examining these issues further, through an examination of key aspects of Lipsky's work and Howe's (1991) critique of that work, a unifying strand is identified in the curtailment and continuation perspectives. Both perspectives have a tendency to treat professional discretion as a phenomenon that is either present or absent and rest on a background assumption, particularly in the curtailment literature, that professional discretion is self-evidently a 'good thing'. An alternative argument is advanced, based on two propositions: first, that the proliferation of rules and regulations should not automatically be equated with greater control over professional discretion; paradoxically, more rules may create more discretion. Second, discretion in itself is neither 'good' nor 'bad'. In some circumstances it may be an important professional attribute, in others it may be a cloak for political decision-makers to hide behind or it may be an opportunity for professional abuse of power. If this alternative argument is soundly based, future analysis of and research into professional discretion rooted in 'all-or-nothing' formulations are unlikely to advance understanding much beyond the impasse in the existing literature. Rather, the alternative argument suggests that discretion should be regarded as a series of gradations of freedom to make decisions and, therefore, the degree of freedom

professionals have at specific conjunctures should be evaluated on a situation-by-situation basis.

Keywords: street-level bureaucracy, social work discretion, managerialism.

Introduction

Ideas that are both novel and shed some light on an aspect of the 'real world' are something of a rarity. Lipsky's ideas about 'street-level bureaucracy' (1980) fall into this category. They have been highly regarded from the outset as a perceptive and stimulating analysis of professional practice in public bureaucracies (Hill, 1982). In turning the spotlight on professional practice, Lipsky was concerned with the dilemmas experienced by individuals in public service. They are drawn to public service, Lipsky asserted, because they want to be of help to others. However, in the real world of day-to-day practice they have to operate in 'a corrupted world of service', where they struggle with insufficient resources and vague policy goals (Lipsky, 1980, p. xiii). Nevertheless, the essentially discretionary nature of their work—it tends to be conducted in private and is difficult to measure—allows some freedom in responding to these uncertainties in a range of ways:

> At best, street-level bureaucrats invent benign modes of mass processing that more or less permit them to deal with the public fairly, appropriately and successfully. At worst, they give in to favoritism, stereotyping, and routinizing—all of which serve private or agency purposes. (Lipsky 1980, p. xii).

In the early 1990s, Hudson expressed disappointment that Lipsky's work had not been more widely-used in social policy analysis in Britain up to that time (Hudson, 1993). As far as the specific application of Lipsky's thinking to the personal social services and social work is concerned, interest has been intermittent but sustained, with his ideas having been used to illustrate the under-resourced and over-ambitious nature of work in social services (see, for example, MacDonald, 1990, p. 541; Lewis and Glennerster, 1996, p. 207) and to highlight the continuing significance of discretion in front line practice (see, for example, Lewis and Glennerster 1996, p. 18; O'Sullivan 1999, p. 35). The continuation of discretion has been regarded as resulting from practice that occurs:

> away from direct scrutiny by managers, who may themselves also be ignorant of the existence of, or detail in, policy guidance and regulations. Indeed those responsible for local authority policy formation have usually been practitioners themselves and are well aware that procedures will be ignored or interpreted by practitioners who in so doing will themselves formulate policy. Since practitioners retain some discretion and autonomy, and since the large bureaucratic departments where much social work is

practised are difficult to co-ordinate, managers may find it hard to control the content of their practice. ... Equally, workers will have evolved strategies for managing the dilemmas that are integral to their tasks. Policy is thus influenced by local management agendas and individual and group professional cultures ... the way things are done here (Preston-Shoot, 2001, p. 9).

More recently, this kind of analysis of the continuation of discretion has been augmented by an empirically-based literature, concerned with applying and testing Lipsky's ideas and identifying the continued existence of professional discretion in social services bureaucracies (Ellis *et al.*, 1999; Baldwin, 1998, 2000).

In the same period, another stream of literature has documented changes in the nature of social work, under the impact of managerialism. These changes have been regarded as undermining discretion in social work, as the power of management has encroached on professional practice and instituted far-reaching mechanisms of control that have produced more compliant social workers (Lawson, 1993; Clarke and Langan, 1993; Clarke and Newman, 1993; Clarke *et al.*, 1994; Clarke and Newman, 1997; Hadley and Clough, 1997; Harris, 1998*a*; Lymbery, 1998, 2000; Jones, 1999; Langan, 2000). Whilst these claims run directly counter to Lipsky's account, the curtailment of discretion literature largely fails to engage with his argument. This omission is all the more striking when writers within this literature do alight briefly on Lipsky's work. Lymbery, for example, argues that 'the balance of power in social work with older people has shifted substantially in favour of increased managerial dominance over practice' (Lymbery, 1998, p. 875), while at the same time using Lipsky to support the view that 'managers may be able to establish rules and procedures but they will find it difficult to control the work which is undertaken by the social worker' (Lymbery, 1998, pp. 875–6). A notable exception to the lack of sustained engagement with Lipsky's ideas in this current of literature is provided by Howe (1991), who recognized the fundamental challenge Lipsky's ideas present to the claims of curtailment of discretion in social work. In so doing, Howe offers a focused critique of street-level bureaucracy, to which we will return.

We begin by exploring these contrasting perspectives. First, we consider the perspective concerning the continuation of professional discretion through an examination of Lipsky's work, on which the continuation literature draws heavily, and the emergent empirical research. Then we turn to Howe's critique of Lipsky, as representative of the two fundamental assumptions in the curtailment literature: the success of managerial control and worker compliance. The conceptual and empirical flaws in the curtailment perspective are explored as a precursor to suggesting that a careful application of Lipsky's framework (augmented by the work of other writers), with respect to what drives the exercise of discretion, still has much to contribute to an understanding of the operation of front line social work.

Continuation or curtailment of discretion?

Two research studies have called into question claims of the death of discretion and have related their observations to Lipsky's concept of street-level bureaucracy. Ellis *et al.* (1999) researched the impact of the community care reforms on the operation of three social work teams in a local authority. Their study concluded that:

> In some limited respects, community care reforms recreate the conditions under which street level bureaucracy flourished in social services departments in the 1970s and 1980s. Contrary to the rationalizing thrust of both central and local authority guidance, then, no common approach to determining access to assessment existed amongst the teams involved in the study (Ellis *et al.*, 1999, pp. 276–7).

Although they identified the existence of significant space for professional discretion, they were concerned that, in some teams, the informal judgements that continued to shape decision making tended to reinforce rather than challenge pressures towards rationing and also raised questions about the defensive use of discretion to manage overwhelming work pressures. Similarly, on the basis of the findings from another empirical study, Baldwin has argued that social workers retain considerable discretion (Baldwin, 1998, 2000) and has contended that the use of discretion undermines community care policy in a number of ways:

> Inconsistency in the use of priority systems, for instance, was undermining the policy of targeting those most in need. Failure to adopt a needs-led approach and to record deficit was undermining attempts to construct a system in which need will be identified both for individuals but also in a more collective way to facilitate the development of a mixed economy of care. Failure by care managers to involve service users and a focus on carers was undermining the intention that service users should participate in assessments for services to meet their needs (Baldwin, 1998, p. 43).

Both studies are consistent with Lipsky's thesis that policy is, in effect, what street level bureaucrats do. However, whereas Ellis *et al.* identify discretion as supporting care management strategies by filling in the gaps in public policy (Ellis *et al.*, 1999, p. 277), Baldwin regards the use of discretion as undermining official policy (Baldwin, 1998, p. 24 and 2000, p. 94). These different evaluations support Lipksy's observation (above) that practitioners can use discretion in a range of ways, including those that run counter to service users' interests.

In contrast to these empirical accounts of the continuation of front line discretion, the curtailment literature argues that there has been a significant seizure of power by managers in social work organizations, with concomitant curbing of professional room for manoeuvre. The previous structure and culture of social work—identified as a 'bureau-professional regime' that afforded social workers considerable discretion—is regarded as having been subjected to systematic transformation as part of this managerial coup

(Lawson, 1993; Clarke and Langan, 1993; Clarke and Newman, 1993; Clarke *et al.*, 1994; Clarke and Newman, 1997; Harris, 1998*a*; Langan, 2000). The refocusing of social work's core activities, heralded by the transition from 'social worker' to 'care manager' (Simic, 1995; La Valle and Lyons, 1998*a*, 1998*b*; Irving and Gertig, 1999; Lymbery, 2000; Postle, 2001, 2002), has been depicted as the demise of 'real' social work. This shift in role, instigated by the 'purchaser—provider split' as part of the community care reforms, has been seen as having key significance for the curtailment of discretion:

> In the social services, the split between purchasing and providing imposed an immediate reduction in both discretion and autonomy by splitting the role of the social worker … our interviewees are also aware of the influence of the development of a new form of scientific management that sees detailed information on workers' activities as an essential prerequisite for controlling the organisation (Hadley and Clough, 1997, pp. 186–7).

It has been argued that this form of management has eroded discretion not only through the employment of information technology but also by means of close supervisory control (Harris 1998*a*). These developments underpin the central thesis of the curtailment of discretion literature that: 'social work has been transformed from a self-regulating professional activity into a managed and externally regulated set of tasks (Jones, 1999, p. 38). Jones has argued that the degradation of social work through this transformation has led to a 'much more mundane and routinised relationship with clients which could not be described as social work' (Jones, 2001, p. 552).

   Lymbery's account of the impact of the community care reforms on the exercise of discretion in professional social work with older people is pessimistic in a way that is characteristic of the curtailment literature. He argues that the introduction of care management had the potential to enhance the professional status of social work with older people but its implementation was ceded to managers who used it to gain greater control over professional practice by fragmenting social work and directing its focus onto practical and financial tasks, not the least of which was the rationing of resources (Lymbery, 1998, p. 873). As a consequence, social work became predominantly concerned with care planning, which left little room for counselling:

> The hope that care management might represent a viable direction for social work with older people was therefore not realized; instead, the role—as it appears to be developing—has much in common with the pre-professional world of the old welfare departments, with a priority given to the efficient allocation of resources (Lymbery, 1998, p. 875).

Smith echoes this concern in relation to the operation of regulation, guidance and procedure in social work practice with children and families (Smith 2000, p. 369; 2001, p. 289) and thus supports the curtailment literature's assertion that professional discretion has been replaced by an increase in administratively and managerially driven practice across the range of service settings.

There are two key problems with this argument. The first is the assumption that professional freedom should be equated with 'counselling', whilst social care planning must be seen as inevitably managerial and mechanistic. The second problem is that this argument draws on a widespread assumption that management now functions flawlessly and, accordingly, it can bend workers to its will (Harris, 1998*b*, chs 2 and 3; Ackroyd and Thompson, 1999, p. 1). While there is evidence that management can have an influence on work behaviour, the empirical basis for the stronger assumption—that it has achieved uncontested control—is unclear (Ackroyd and Thompson, 1999, pp. 5–6). In relation to social work, a major study does not support this stronger assumption. In their examination of the implementation of the community care reforms, Lewis and Glennerster concluded that the fear among practising social workers that care management would make their work routine and mechanistic had not on the whole been realized (Lewis and Glennerster, 1996, p. 205). Similarly, in relation to child protection, Horwath and Calder (1998, p. 894) point to a significant lack of clarity in post-registration procedures at both national and local level.

Having considered the literature on the continuation and curtailment of professional discretion in social work, it is clear that there are significant differences between these two perspectives, differences which focus on beliefs about managers' desire for, and ability to secure control and workers' ability to resist control and seek discretion. These issues are examined further through the elaboration of key aspects of Lipsky's work and Howe's critique of that work. (We focus on Howe's argument here because it both represents the main themes of the curtailment literature and provides the most thorough-going critique of the application of Lipsky's ideas to contemporary social work.)

The centrality of discretion

Lipsky's (1980) account of street-level bureaucracy is complex and multi-faceted, dealing with the 'dilemmas of the individual in public services' (the subtitle of his book). For the purpose of the present discussion, we concentrate on his account of the conditions within which street-level bureaucracies operate, which are at the core of his analysis of discretion. This is perhaps the most incisive part of his study of public bureaucracies and the individuals who work within them, through which he demonstrates not only that managers in street-level bureaucracies are limited in their ability to control street-level workers, but also that workers are left to deal with a policy and resource quagmire. As a consequence, in their day-to-day work, street-level bureaucrats have to work out practical versions of public policy that can often look quite unlike official pronouncements. When such distortions of policy are 'discovered', workers are often castigated for thwarting policy intentions but,

in contrast to this common response to the problem of policy implementation, Lipsky locates the difficulty at a structural level, in the defining characteristics of street-level bureaucrats' work (Lipsky 1980, p. xv). He points out that the short-cuts and policy distortions developed at street-level are often tacitly accepted by managers as real world solutions to getting the job done (Lipsky 1980, p. 18).

Such real world solutions were desperately needed in the American urban politics of the 1960s and 1970s, the context from which Lipsky developed his concept of street-level bureaucracy. This was a context of constrained public services, working in a challenging environment characterized by poverty, social diversity and political conflict (Hawley and Lipsky, 1976). Lipsky and his colleagues sought to show that the behaviour of public service workers could best be understood in terms of the work-related pressures, stemming from this context, with which they constantly had to cope (Halwey and Lipsky, 1976, p. 209). It is important to be clear about those employees of public services considered to be street-level bureaucrats in Lipsky's account. They are those workers:

> who interact directly with citizens in the course of their jobs, and who have substantial discretion in the execution of their work. Typical street-level bureaucrats are teachers, police officers and other law enforcement personnel, social workers, judges, public lawyers and other court officials and many other public officials who grant access to government programs and provide services within them (Lipsky, 1980, p. 3).

The conditions of work experienced by street-level bureaucrats, Lipsky argued, were characterized by inadequate levels of resources and agency goals that were often vague, conflicting and ambiguous and, therefore, difficult to specify and measure. As a result street-level bureaucrats worked with high caseloads in a context of uncertainty. They had fragmented contact with their clients, worked with people from diverse backgrounds and needed to make rapid decisions, typically under conditions of limited time and information. Simultaneously, the services that street-level bureaucracies provided were effectively subject to unlimited demand. Resources were never sufficient and any increase in funding was taken up by previously unmet demand rather than improving the quality of service, leaving street-level bureaucrats 'trapped in a cycle of mediocrity' (Lipsky, 1980, p. 32).

This environmental context of uncertainty and scarcity was placed at the centre of Lipsky's understanding of the dilemmas and tensions that impact on the exercise of professional discretion and no doubt this is one of the reasons why his work has continued to have resonance in the intervening period. He saw the problem of scarce resources as compounded by ill-defined organizational goals and unrealistically high expectations of public agencies and their staff. Policy objectives tended to be ambitious, ambiguous, vague or conflicting: 'The ambiguity and unclarity [*sic*] of goals and the unavailability

of appropriate performance measures in street-level bureaucracies is of
fundamental importance not only to workers' job experience, but also to
managers' ability to exercise control over policy' (Lipsky, 1980, p. 40).
Furthermore, he considered that management techniques to control the work
of street-level bureaucrats were difficult to operate because it was impossible
to define a 'good' service and there was the constant risk that imposing crude
performance measures would distort service delivery. Street-level bureau-
cracies are, then, difficult organizations to run and this difficulty is
compounded by street-level bureaucrats' resistance to the development and
application of performance measures (Lipsky, 1980, p. 53). At the heart of this
tension between street-level bureaucrats and their managers are potentially
conflicting concerns: 'Managers are interested in achieving results consistent
with agency objectives. Street-level bureaucrats are interested in processing
work consistent with their own preferences and only with those agency policies
so salient as to be backed by consistent sanctions' (Lipsky, 1980, pp. 18–19).

However, in negotiating this tension, Lipsky considered that the sanctions
available to managers to control street-level bureaucrats are limited and he
regarded managerial control as inherently problematic because of the
significant levels of autonomy that street-level bureaucrats have to have in
carrying out their work (Lipsky, 1980, pp. 161–2). In this context, he identified
three factors that shape street-level bureaucrats' experience of discretion: the
degree of freedom accorded to them by the agency that is necessary in order to
do the job; the practical requirement to make their own practice or policy
decisions because of nebulous agency policy; and the ability on the part of
street-level bureaucrats to subvert policy. We discuss each of these factors in
turn.

Factors shaping discretion

First, Lipsky saw discretion as fundamental in street-level bureaucracies
because street-level bureaucrats work with people who are unpredictable,
varied and have different and dynamic needs. By definition, human service
workers have to be able to respond in different ways, depending on the
particular issues presented for their attention. The situations they face are too
complex to reduce to prescribed responses, despite pressures to do so, because
such responses would render them unable to do the job. Workers operate as
individuals, with individuals, in unobserved (and unobservable) settings that
create a space for them to act with some autonomy (Lipsky, 1980, p. 161).
Moreover, when street-level bureaucrats are professionals, Lipsky maintained,
they are regularly deferred to in their specialized areas of work and are
relatively free from interference by superiors or scrutiny by clients (Lipsky,
1980, p. 14).

The second set of factors promoting the use of discretion arises from the
policy context of street-level bureaucracies. Street-level bureaucrats' autono-

my is circumscribed by organizational rules and occupational norms and practices but, rather than enhancing managerial control, those rules may be an impediment to the supervision of their work (Lipsky, 1980, p. 14). Rules often collapse complex goals, which have many, often conflicting or outright contradictory, aspects. Street-level bureaucrats frequently find themselves in circumstances in which they have to make sense of these rules and procedures and, in applying them, have to interpret them, a situation that involves them in effectively making policy. The nature of human services can also throw up situations for which policy has not yet been developed and which result in street-level bureaucrats having to decide policy for themselves. For Lipsky, this is a sine qua non of street-level bureaucratic life:

> It is desirable to clarify objectives if they are needlessly and irrelevantly fuzzy or contradictory. However, while agency goals may be unclear or contradictory for reasons of neglect and historical inertia, they may also be unclear or contradictory because they reflect the contradictory impulses of the society the agency serves. The dilemma for accountability is to know when goal clarification is desirable, because continued ambivalence and contradiction are unproductive, and when it will result in a reduction in the scope and mission of public services (Lipsky, 1980, p. 165).

The final factor constructing the space for discretion follows on from the previous two. The degree of freedom that street-level bureaucrats need to do their job at all, in responding to individual need, and the space for discretion, created by confusion, conflict, omission or obfuscation in the articulation of policy, give them the leeway not only to work in accordance with their interpretation of organizational goals, but also to operate in ways which contravene or subvert those goals, making it relatively easy for workers to tailor their behaviour to avoid accountability (Lipsky, 1980, p. 163): 'Street-level bureaucrats resist organizational pressures with their own resources. Some of these resources are common to public service workers generally and some are inherent in their position as policy deliverers with broad discretion' (Lipsky, 1980, p. 25). There is a range of tactics which constitute the resources that street-level bureaucrats can use to circumvent supervision: control of information upwards, playing on the essentially private nature of their work and exploitation of management's reliance on their good will and initiative on which continuing service provision depends (Lipsky, 1980, pp. 23–5).

In his representation of the discretion enjoyed by street-level bureaucrats, as a result of the three factors outlined, Lipsky argued that policy on the ground often bears little resemblance to formal public policy: 'The decisions of street-level bureaucrats, 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. xii). For Lipsky, then, discretion is an irreducible component in street-level bureaucrats' work, a component that managers cannot eliminate.

The myth of discretion

Howe (1991) has criticized Lipsky's position because he sees it as offering support to a mistaken view of professional power in an organizational context that has curtailed discretion: 'Most of the writing by social workers about social work is still discussed by its practitioners as if they are a group capable of determining all that they do' (Howe, 1991, p. 203). He saw Lipsky's argument as an 'interesting and clever boost' for the advocates of professional discretion, through its emphasis on the active role of street-level bureaucrats, including social workers, in the implementation and interpretation of public policy (Howe 1991, pp. 203–4). However, Howe is sceptical about the applicability of Lipsky's argument in the changed context of social work that has resulted in what is seen as a decisive shift in power, away from practitioner discretion and towards practice defined by statutes, designed by administrators, and driven by managers (Howe, 1991, p. 220). His contention is that the application of Lipsky's analysis is problematic because practitioners do not have the autonomy that the concept of street-level bureaucracy presents them as having:

> Except in matters of style, all the substantive elements of their work are determined by others, either directly in the form of managerial command or indirectly through the distribution of resources, departmental policies and procedures, and ultimately the framework of statutes and legislation that create both welfare clients and welfare agencies (Howe, 1991, p. 204).

In addition to the power of management, and in support of that power, Howe argues that practitioners are constrained by pressures and definitions of their work and role from politicians, the media and public opinion (Howe, 1991, p. 208). He identifies two exceptions to this experience of constraint. First, he concedes that there are areas of work not open to standardization that call for 'in situ judgement', such as counselling, where the practitioner is the only resource available to meet the need. Second, in areas of work that are not a managerial or political priority, the style and manner of work is left to the worker until service users begin to exhibit behaviours that are of direct relevance to organizational operation, for example, involving resource costs, anti-social conduct or threats to physical or developmental well-being (Howe, 1991, p. 219). The basis of Howe's critical engagement with Lipsky's work is, therefore, firmly in the curtailment camp; he sees discretion as having been curbed and the balance of power as having shifted into alignment with a framework of legal and managerial authority that governs social workers' practice. In this changed context, Howe alludes to the growth of managerialism in public services, with managers being accorded the ultimate power to control and direct the work of practitioners towards managerially imposed goals (Howe, 1991, p. 220).

Thus far, the main findings of the empirically-based literature, which indicates the continuation of professional discretion in social work, have been outlined, Lipsky's argument for the intractability of discretion has been

discussed and Howe's critique of Lipsky's argument—a critique typifying the case made in the curtailment literature for discretion having been curbed—has been set out. In the following sections, the consideration of discretion is opened up through a brief discussion of Dworkin's work and of the three factors Lipsky identified as the keys to the operation of discretion (as discussed above) in order to reconsider the curtailment perspective and to suggest that the conditions of contemporary social work are still conducive to the operation of a significant degree of discretion.

Discretion or discretions?

We observed above that a key component of the curtailment argument is the representation of professional discretion as autonomy, seen as freedom to practise unfettered by rule, regulation or guidance (see, for instance, Lymbery, 1998; Jones, 2001; Smith, 2001). In contrast to this 'all-or-nothing' approach to the analysis of the (alleged non-)existence of discretion, our starting point is the need to recognize the gradations of power that exist in the relationship between managers and professional workers within public services. Once these gradations are recognized, it becomes clear that discretion is not an 'all-or-nothing' phenomenon. Rather, it operates along a gradient, allowing different degrees of professional freedom within a complex set of principles and rules. Dworkin's analysis of discretion is helpful here (Dworkin, 1978). He argued that discretion is not the absence of principles or rules; rather, it is the space between them:

> [Discretion] is out of place in all but very special circumstances. For example, you would not say that I either do or do not have discretion to choose a home for my family [*sic*]. It is not true that I have 'no discretion' in making that choice, and yet it would be almost equally misleading to say that I do have discretion. The concept of discretion is at home in only one sort of context; when someone is in general charged with making decisions subject to standards set by a particular authority. Discretion, like the hole in a doughnut, does not exist except as an area left open by a surrounding belt of restriction. It is therefore a relative concept. It always makes sense to ask, 'Discretion under which standards?' (Dworkin, 1978, p. 31).

Dworkin identified three senses of discretion: judgement that has to be employed to apply a standard (in circumstances where judgement cannot be applied mechanically); the final responsibility for making a decision (within the rules); and discretion in a strong sense, which gives the decisions and the criteria of decision making to professionals. Even in this last case, discretion is not absolute:

> We must avoid one tempting confusion. The strong sense of discretion is not tantamount to license, and does not exclude criticism. Almost any situation in which a person acts (including those in which there is no question of decision under special authority, and so no question of

discretion) makes relevant certain standards of rationality, fairness, and effectiveness. We criticise each other's acts in terms of these standards, and there is no reason not to do so when the acts are within the centre rather than beyond the perimeter of the doughnut of special authority (Dworkin, 1978, p. 33).

This distinction between different types of discretion provides us with an insight into both the curtailment literature's argument against the continuing significance of professional discretion and Lipsky's, and the continuation literature's identification of the centrality of discretion in street-level bureaucracies. The curtailment literature collapses what is meant by discretion into Dworkin's category of 'strong' discretion, seeing the development of rules as the end of discretion itself. In doing so, it ignores the 'weaker' sense of discretion identified by Dworkin—interpretation of and authority to decide within rules. In the context of the proliferation of rules, for example in community care services, this form of discretion is likely to have become increasingly significant.

Lipsky's analysis offers the possibility of filling out Dworkin's typology of discretion. In the messy context of street-level bureaucracy, there is evidence of both weak and strong discretion. However, the nature of street-level bureaucracy, with its imprecise and often conflicting and competing goals and rules of operation, points to the need for care in drawing too tight a distinction between strong and weak discretion in practice. Weak discretion assumes that there are clear structures about the rules to be interpreted, and about who has the authority to interpret them. However, as we have seen, for Lipsky one of the characteristics of street-level bureaucracy is that rules within organizations are often contradictory and the roles and responsibilities of actors can be imprecise. Professional interpretation and decision-making, then, frequently involve decisions about which of a number of different rules should operate, as we shall see later in relation to community care policy and practice. The value of Lipsky's approach is that it points to an understanding of day-to-day discretion that accommodates Dworkin's insights, without placing categories of discretion into hermetically sealed compartments.

Factors in the operation of discretion

We now want to reconsider the curtailment literature, most clearly articulated in relation to Lipsky's work by Howe, in the light of Lipsky's three-part analysis of discretion. As we saw earlier, Lipsky saw the work of street-level bureaucrats as essentially human service in which discretion is necessary to meet unpredictable and variable needs. This is the discretion necessary to do the job. However, the nature of street-level bureaucracies, as a consequence of their vague, ambitious and often contradictory goals, creates another very significant area of discretion: the space in which to translate nebulous policy into practical action. Finally, Lipsky also recognized the discretion street-level

bureaucrats have to create space to advance their own values, interests and needs.

Discretion needed to do the job

Despite Howe's (1991) argument that discretion is limited in those areas that managers consider to be central to organizational concerns, for example the use of resources, public policy continues to identify a significant role for professional discretion. The existence of rules is not inevitably the death-knell for discretion. Rather, by creating rules, organizations create discretion. There is always the question of which rules apply in particular situations; a question that does not always have a clear answer. For instance, social work practitioners are often faced with the question of which legislation applies to a specific situation. If someone has mental health problems and refuses admission to hospital, is this situation best understood as the person's refusal to accept necessary treatment, in which case the Mental Health Act might be appropriate? Or is it a criticism of hospital services and a demand for appropriate community services, in which case community care legislation would be more fitting? And, once the decision has been made about which rules apply, there is the need to interpret the policy and translate it into practice—formal policy statements often explicitly recognize this. For example, professional judgement, seen as the degree of discretion needed to do the job, was acknowledged in the Practitioners' Guide to the community care reforms:

> The practitioner has to define, as precisely as possible, the cause of any difficulty. The same apparent need may have many different causes … having weighed the views of all parties, including his/her own observation, the assessing practitioner is responsible for defining the user's need (Department of Health, 1991, pp. 3.32, 3.35).

Another difficulty with Howe's argument is that, whilst he concedes that until the central interests of the organization are at stake 'the style and manner of work is left to the worker', he does not acknowledge the significance of this concession. Who, for instance, decides when the point has been reached at which the circumstances require a shift from the practitioner's discretionary judgement to falling within procedures? This is in large part a question of how the practitioner understands and interprets the facts of the situation and the procedures. Furthermore, Howe's recognition that decisions about style of provision continue to be a matter for professional discretion undermines his claim that discretion is marginal. Style of work—seen as the way in which it is done—is central to the service that is provided. It is important for someone seeking help from social services that they meet the Department's eligibility criteria in order to receive community care services, but it is equally important to the service user that they get the type and character of service that meets

her/his needs. For example, once someone meets a threshold for residential care laid down by a social services department, the real question about the quality of service is the sort of establishment that best meets her/his needs. Rather than being of secondary concern, the discretion that operates here is of great significance.

Discretion within nebulous policy

Howe depicts rules derived from law and policy as expertly crafted tools of control: 'To operate within codes, laws, and procedures is to think and practise within the knowledge domain of the manager'. He continues (quoting Law): 'documents, devices and drilled people allow those at the centre to control those at the boundaries of an organisation's activities'(Howe, 1991, p. 218). There is certainly evidence of increasing regulation of practice by central government and local managers. Jones (2001), for instance, found that practitioners felt that their work was increasingly governed by paperwork and procedures, and that this had grown excessively since 1997. Smith (2001) is also pessimistic about the opportunity for social work discretion under current conditions, pointing out that while academics argue about uncertainty and the importance of trust in social work practice, the government's modernization agenda sees the world in a much more clear-cut way and focuses on establishing confidence through the regulation of practice, following extensive development of policy and procedures. The full range of available evidence, however, suggests a more complex picture. Continuing space for professional discretion in practice has been identified, amidst concern about the absence, at times, of clear guidance, procedures and practice values in relation to child protection (Horwath and Calder, 1998) and residential work (Horwath, 2000). How can we explain this apparent contradiction? Horwath and Calder's (1998) understanding of the burden of regulation, as stressed in the curtailment literature, suggests the importance of drawing a distinction between managerial and professional regulation. They point out the significant role of policies and procedures as reference points for professional practice (Horwath and Calder, 1998, p. 894). The introduction of a number of policies may limit autonomy and be felt as burdensome, but can be seen as supporting good practice, emphasizing the point that discretion sometimes needs to be regulated in the interests of service-users. While Smith and White (1997, pp. 291–2) have acknowledged the value of procedures in supporting professional practice, elsewhere Smith's argument is that the increased level of regulation in social work has radically reduced the space for discretion (Smith, 2001). Whilst Smith's argument that an important element in increased government regulation is the *intention* to curtail discretion and control practice can scarcely be argued against, it is important to distinguish between this intention and its achievement. In collapsing intention and achievement in relation to the curbing of discretion, the curtailment literature rests on the assumption that

workers do what they are told in response to rules and policies as precise and compelling guides to action. However, there are many examples of workers actively interpreting and using rules and of the failures and confusions of top-down control. Handler's research on social security in America and social work practice in Britain, for example, is a case in point. In relation to discretion in social work, Handler pointed out that rules, even though we often think of them as unambiguous, can contribute to the uncertainty that creates discretion. He noted the imprecision of statute law and the failure of policy makers to make clear rules stemming from statutes. Instead, law and policy are expressed in vague phrases, which are open to interpretation, and this creates wide discretion for the interpretation or generation of policy in the absence of guidance from managers (Handler, 1973, p. 138).

Handler's observations were made in the early 1970s and, as we saw in the discussion of the curtailment literature above, there have been significant developments in the context of social work, not least in relation to the assault on producer power (Alaszewski and Manthorpe, 1990) and professional discretion by successive governments and more recent attempts by managers to handle organizational performance in pursuit of quality standards (see, for example, BJSW special issue, 2001; Harris, 2003, chs 3–5). However, we should retain some scepticism when faced with management claims to have secured social workers' compliance with organizational imperatives: 'a good deal of contemporary joking at work features cynical comments on the validity of managerial claims and the actions and motives of managers. It is no exaggeration to say that it constitutes a continuous undercurrent of satirical debunking of management pretensions' (Ackroyd and Thompson, 1999, p. 103). Furthermore, the idea of clear lines of control from an omnipotent centre is also problematic. Recent evidence suggests that the legal and policy frameworks have, if anything, become more imprecise, with key legal terms such as 'need' being given complex and confusing definition; the House of Lords' decision in R vs. Gloucestershire ex parte Barry (1997) is a case in point. The majority decision, summarized by one commentator, has resulted in the confusing situation where:

> The authority need provide only what it can reasonably afford, and can assess or reassess the individual client in the light of financial constraints. But. ... if the need is found to exist, the authority must meet that need, even if it lacks resources. ... Following the Barry case, the Department of Health issued a Guidance note (LASSL 97/13) telling local authorities not to use the judgement as an excuse to take decisions on resource factors only. Decisions must always be based on a needs assessment (Brayne *et al.*, 2001, pp. 317–18).

Such examples epitomize the problems of realizing centralized control in practice and instead highlight the frequently conflicting (and 'un-joined-up') pressures to which Lipsky sees street-level bureaucrats as being exposed.

Moving on through the levels in the policy implementation process, the specification of procedures can also confuse, rather than clarify, the situation,

thus opening up the space for discretion. For example, in the implementation of the community care reforms, Gostick *et al.*, (1997) found that the work of the Social Services Inspectorate (SSI) grew as it responded to an emergent combination of anxieties that arose in central government and from feedback from reviews that had identified particular problems. In emphasizing certain areas of practice, guidance produced by the SSI focused attention on some aspects of the policy agenda and shifted attention away from others. Guidance material also often tried to square the circle of an agenda of financial restraint and increasing user choice. An example of this is the Laming letter (CI (92) 34) in which the Chief Inspector gave local authorities advice about the practice of recording 'unmet need'. This highly charged and explosive political issue— service users with access to their records pointing to the difference between their identified needs and the services provided—needed careful handling by professionals. Whilst practitioners were enjoined to take a rigorous approach to assessing need they were warned to be careful in their recording practice not to raise unrealistic expectations on the part of users. In this context, despite the efforts of the SSI, there was substantial room for misunderstanding and reinterpretation of the policy being implemented and for professional challenge to policy expectations.

The idea of 'essentially contested concepts' (Gallie, 1955; Weitz, 1977; Freeden, 1998) provides a useful set of ideas to help understand what is going on in such circumstances. The common body of knowledge represented by the policy documents and statements, produced in the process of the implementation of the community care reforms, became increasingly internally complex, with a range of descriptions and evaluations of key aspects of the policy that could be interpreted, ordered and described in significantly different ways. Different but equally valid interpretations of policy could be made by drawing on elements in the same body of knowledge, with these elements being outlined, emphasized or downplayed in different ways by different interpreters. The idea of evaluative and internally complex knowledge characterizes much, if not all, policy and procedure that pertain to social work practice. In the implementation of the community care reforms, different elements— including being user-led in the meeting of needs, increasing choice for service users and controlling the costs incurred by social services departments—could be prioritized and described in significantly different ways by different actors.

Thus, the authors of a policy cannot determine the way in which their statements are interpreted. Policy, like any text, is not fully under the control of its authors. The intended content of any document (what the authors mean) is not necessarily the same as its received content (what the document's 'audience' reads) (Scott, 1990, p. 34). Even if the author takes for granted a certain context of interpretation, the audience(s) does not necessarily share it. For the Conservative governments of the late 1980s and early 1990s, for example, the core principle in the community care reforms was control of spending—this was the context in which the rhetoric of choice and consumer responsiveness needed to be understood. The reforms were: 'Driven by the

need to stop the haemorrhage in the social security budget and to do so in a way that would minimize political outcry and not give additional resources to the local authorities themselves. Most of the rest of the policy was for the birds' (Lewis and Glennerster, 1996, p. 8). However, in their research, Lewis and Glennerster observed a significant difference between 'authorities that implemented the new policy in line with an interpretation of it that fitted an already existing desire to be user-centred and those that responded to a greater or lesser extent to the need to implement the mechanisms that were required, whether of assessment or purchaser—provider splits' (Lewis and Glennerster, 1996, p. 197). Furthermore they found that street-level staff had a significantly different 'take' on the policy from that of central government and some local authorities; the new community care policy was accorded a positive reception by most staff in SSDs because it was perceived as more user-centred (Lewis and Glennerster, 1996, p. 197).

In contrast to all of the limitations on managerial control identified so far, Howe seems to have assumed that there are clear rules that apply to complex day-to-day work and that they will be adopted in a clear-cut fashion by anyone who has to work with them. However, as we have seen from the example of the community care reforms, this assumption is problematic. Whilst Howe is clearly correct in identifying the broad shape of the social worker's practice as being set within a framework shaped by law, policy and managers, it is an unwarranted assumption to present this framework as coherent, complete and unambiguous and as being understood in exactly the same way by all those involved with it. The framework is extensive, but, inevitably, parts are rickety and ramshackle; it is in the twists, turns and contortions, as Lipsky suggested, that space for professional discretion lies and/or can be made.

In the discussion thus far, we have leaned towards seeing nebulous policy as an inadvertent outcome. However, we need to guard against assuming that the political imperative in the policy process operates uniformly in the direction of reducing professional discretion, with any discretion that remains being the result of happenstance. Retaining varying degrees of professional discretion through nebulous policy can be a useful political strategy (Harrison, 1999, pp. 62–3). Whilst politicians and senior managers may present procedures and rules publicly as being cast-iron, in practice there is often flexibility with tacit acceptance of the need for elbow room in order to allow the system to work. As well as providing the degree of discretion needed to do the job, Harrison points out that such imprecision has two further advantages. First, when an issue blows up in a major way, and it is established that there has been a departure from procedures, blame can be allocated at the street level. Second, it can be in senior managers' and politicians' interests to leave individual decisions about resource allocation to professionals, distancing themselves from the awkward day-to-day consequences of their strategic goals. Wells (1997), for instance, has identified a chain of blame-shifting in mental health policy from the top-down. He points out that while government policy calls for the targeting of specialist mental health services on people with a 'severe and

enduring mental illness', the government has failed to provide a clear definition of the term. The definition provided by the government is a framework within which precise definitions are to be agreed locally: 'The government requires managers to strike a balance between demands, needs and resources but it avoids direct responsibility for what can and cannot be met' (Wells, 1997, p. 336). In turn, 'autonomous professionals' are put in the position of managing individual demands for resources from service users thus 'distancing management and policy makers from the reality of the "felt" experience of policy, which is ultimately left to practitioners to interpret' (Wells, 1997, p. 340). Similarly, in local authorities, Marchant (1993) found evidence of such distancing in the vagueness of the eligibility criteria employed by social services departments to gate-keep access to services. However, in their study, Lewis and Glennerster seemed to identify a change, noting, for instance, that although councillors had been reluctant to make difficult choices they were starting to take responsibility for explicit rationing decisions (1996, p. 160). In their later study of the implementation of the community care reforms, Ellis *et al*., point out that: 'Front-line staff had ultimate responsibility for managing inflated and conflicting policy objectives with inadequate levels of resources relative to demand, yet were subject to low managerial scrutiny' (Ellis *et al*., 1999, p. 276). These findings suggest that whilst policies and procedures are undoubtedly important, they can be left with a degree of uncertainty, for a number of reasons, that then requires the exercise of individual discretion about the meaning, significance and relevance of policy in order to translate it into practice.

Discretion as subversion

In the previous section we saw that policy implementation can be clouded in confusion and contradiction. However, even when the framework is apparently explicit and coherent, there is still room for practitioners to have some freedom of movement in how they exercise judgement in translating policy into practice. Two approaches to discretion are particularly significant here: creatively interpreting the rules to create room for movement and denying that rules allow interpretation in order to reduce room for movement.

   As we saw earlier, research that has looked at the use of discretion has pointed to the power of practitioners to undermine policies (see, for example, Baldwin, 1998, 2000). Lewis and Glennerster's (1996) detailed research provided illustrations of this. Reviewing the application of eligibility criteria by care managers, they point out the room for discretion: 'Where eligibility criteria are drawn tightly, there is an incentive for assessors to classify a client's level of dependency such that she or he will be sure to receive service. . . . This may explain the large numbers of elderly people classified as "high need" . . . ' (Lewis and Glennerster, 1996, p. 157), whom they found in one of the local authorities studied. The potential for this interpretation of eligibility is

suggested in the language of the 'detailed criteria' for residential care that they quote, which includes phrases such as 'danger to life, limb, physical or emotional health' and 'normally require help' (Lewis and Glennerster, 1996, p. 164). However, they also point out that in one authority a risk/needs matrix was adopted which 'called for a considerable degree of standardisation in its use' and though there were concerns that care managers would manipulate matrix scores to secure resources for users, when an 'audit examined 307 cases—four clients at priority 3 from each team—it showed a high degree of consistency in the use of the matrix' (Lewis and Glennerster, 1996, p. 159). Here, though, we have to be careful about interpreting the consistency. Was it consistent compliance with policy or consistent bending of the rules to meet user need? Much of the anecdotal evidence we have encountered would lend weight to the latter interpretation.

We have argued above that policy implementation inevitably involves a degree of discretion in its implementation. Paradoxically, denial of this room for movement can itself be a form of discretion that can be used to subvert policy. Whilst policies may curtail discretion, in order to work they need practitioners to use judgement in interpreting and applying them. Policy makers and managers assume that procedures will not be followed to the letter. This is clearly the message from the Chief Social Services Inspector in her exhortation to practitioners to use their judgement to implement the government's modernization agenda:

> The changes require confident staff supported by confident organisations and a change in social work culture. A culture of care that engages with the hearts and minds, as well as the budgets, of all those involved. A culture of care, which knows that consistency is important but it has to be implemented with intelligence and enterprise, not dogma; a culture of care, which puts an end to checklists that replace thinking and judgment (Social Services Inspectorate, 2001, p. 8).

This quotation provides a glimpse of official acknowledgement of the place of professional discretion, even when the practitioner's role is strongly structured by rules and procedures. Even if discretion were only exercised in knowing how far to take the rules, it would still be significant—working to rule is, after all, one of the most powerful tools in worker—manager conflict.

In contrast, one of Lipsky's other points about street-level bureaucrats was that they can subvert policy by denying their own discretion in order to protect themselves from having to take difficult decisions and being subjected to blame. To those working in settings of severe resource shortfalls, discretion— for example, the freedom to decide which one of a range of equally 'needy' people receives a service—is an unattractive option. Furthermore, in the context of blame that has intensified over the past decade (Parton, 2001), discretion, rather than being sought by practitioners, can be viewed with increasing trepidation and, in these circumstances, it is possible to envisage practitioners denying their discretion in order to protect themselves from blame. The idea of defensive practice illustrates this (Harris, 1987). This idea

was developed in relation to medicine in America, where concern about vulnerability to insurance claims was leading medical practitioners to operate defensively: by over-investigating in making their diagnoses, by curtailing what they perceived as risky behaviour and by undertaking recording practices that were more about protecting themselves than giving a rounded picture of their patients' health needs. Harris applies this notion to social work practice, pointing to the role of fear of blame in leading social work practitioners to follow procedures to the letter in risk situations (even to the detriment of service users' best interests), to practise in an over-cautious way and to approach recording warily. A recent example is provided by Horwath who expresses concern that over-regulation of practice has led to fear and defensiveness amongst practitioners and that this works against the best interests of young people (Horwath, 2000, p. 188).

A broader view of discretion

The preceding argument has pointed to the need to recognize that discretion is present in social work even in areas of practice—such as our main source of illustration, community care—that are bounded closely by policy and guidance. It has also underlined the irony that in some respects the elaboration of policy can create greater discretion through the conflict, confusion and imprecision of multiple rules and procedures—a situation which Lipsky saw as characteristic of street-level bureaucracy. The examination of discretion has also alluded to a range of factors that influence its existence, extent and operation. Our final concern is to locate the way in which practitioners operate, and are allowed and expected to operate, in the wider context that shapes the potential for discretion enjoyed by particular professional groups.

Jamous and Peloille (1970) argued that the achievement of professional status, and the discretion to control an area of service that goes with it, is a political process. Howe's argument against Lipsky's analysis of discretion drew on part of their analysis—their proposition that there is a relationship between the amount of indeterminacy (work characterized by uncertainty and unpredictability of outcome) and the amount of technicality (the capacity to formulate and proceduralize responses) in work content (the I/T ratio) and the level of discretion afforded to workers. Groups claiming professional status are caught on the horns of a dilemma. Their claim to discretion relates to their ability to deliver the goods in areas of work that have the uncertainty and unpredictability (indeterminacy) necessitating their intervention. However, in order to intervene effectively, they need a body of knowledge that explains and makes predictable the problems with which they are dealing. Insofar as this body of knowledge is formulated, it has the potential to be codified and proceduralized and hence to undermine their claims to special qualities and skills. The higher the level of indeterminacy, the more potential there is for the

operation of discretion. Howe uses this argument to undermine the idea that there is discretion in social work: 'to the extent that the occupation can systematically formulate its knowledge, practice, and outcomes, the work is prey to routinisation, de-skilling, and organisational regulation, and these are the strategies of managers' (Howe, 1991, p. 216). However, the points made earlier indicate the need for care to be taken not to confuse the presence of rules with determinacy. Instead, it is useful to consider the broader argument that Jamous and Peloille presented about discretion. They highlighted the influence of the views and values of wider social forces, within which a professional group operates. These views valorize particular conceptions of the profession, the significance of the professional group's contribution to a desired outcome and protection for the perception of significant indeterminacy in the professional group's work. Discretion, then, exists within a political and ideological context. In that context, the professional group itself is a political actor. In addition to its degree of organization, key issues involve the professional group's claim to technical skills (and how much they are 'believed') and supply and demand factors. A shortage of skilled professionals tends to give them more claim to legitimacy and hence strengthens their claims to the exercise of discretion.

This political and ideological context for professional work is characterized by a diverse range of participants and motives. Various actors—such as sections of the public, politicians, managers, lawyers—may view and value the profession in different ways. Harrison (1999, pp. 59–63), for instance, points out that the idea of professionalism's ethical commitment to the primacy of the user is still important in this diverse context, not just to service users but also in terms of its rhetorical significance in the wider political domain. In professionalism's diverse context, different actors may promote or oppose discretion for various reasons; professionalism can be seen as the guarantee of an individually appropriate service by some, while for others it is a buffer to protect them from responsibility for difficult rationing decisions. The political and ideological questions about discretion are, accordingly, complex and multidimensional: how is discretion constructed—by whom and in whose interests? What is the significance of discretion? What form should it take? Although our argument has necessarily focused on an analysis of the range and nature of discretion in social work practice, it has been clear throughout that the existence of discretion raises more general (and political) questions about its use and in whose interest it is exercised. Horwath (2000) and Baldwin(1998, 2000) are concerned about the way professional discretion can sometimes be used against the interests of service users. Ellis *et al.*, (1999) point to collusion between some professionals and managers in their use of discretion to routinize work and ration resources. These are important questions that depend on a recognition of the presence of discretion, if they are to be taken seriously and addressed.

Conclusion

Focusing primarily upon the example of community care, we have sought to show that Lipsky's analysis is capable of opening up our understanding of the way discretion operates in contemporary social work and lends support to the literature that identifies the continuation of discretion. In order to use Lipsky's analysis, we have set aside the implicit assumptions of the curtailment literature that discretion can only be found in circumstances of strong, autonomous, self-regulated practice—the stereotypical notion of professional autonomy. As we have seen, within procedures, social workers are required to make decisions and to interpret rules; the policies themselves are not necessarily as clear as proponents of the curtailment thesis would have us believe; and evidence from the implementation of the community care reforms suggests that policy can be used as much to obfuscate as to clarify. Paradoxically, greater elaboration of rules and guidelines can actually make them more uncertain. Implementation studies and the wider literature emphasize the importance of recognizing the political dimension underpinning and influencing the exercise of discretion in social services organizations. Whilst discretion is often necessary for practitioners to be able to do the job— freedom of movement to deal with uncertainty—it may also involve bargaining about who takes responsibility. The continuation and curtailment literatures' characterization of discretion as an all-or-nothing 'good thing', as a phenomenon that either does or does not exist, closes off consideration of the wide range of significant questions that Lipsky's broader conception of discretion identified. Lewis and Glennerster, for instance, acknowledging Lipsky's work, found 'examples of areas where there are gaps between policy and implementation' (Lewis and Glennerster, 1996, p. 72). And, whilst overall, they found a shift in the centre of gravity in social services from professional to managerial control, they were at pains to make the point that it was a shift in the balance of power, not the elimination of professional power. As we have seen, they pointed out that professionals' fear that care management would 'make their work routine and mechanistic' were not realized (Lewis and Glennerster, 1996, pp. 204–6).

   Lipsky's critics—Howe explicitly and in detail and the remainder of the curtailment literature's authors in passing or implicitly—dismiss his thesis as the product of a bygone golden age of practitioner autonomy. We should perhaps remind ourselves that Lipsky's analysis originated in circumstances in which street-level bureaucrats were often vilified for bias and incompetence, in a context of constrained public services working in a challenging environment. In today's similar circumstances, his work provides a useful set of tools with which to analyse the construction of discretion.

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