

Miaz, Jonathan, "Asylum decision-making and discretion: Types of room for maneuver in refugee status determination," *Sociologia del diritto*, n°3, 2021, pp. 114-139

(Pre-print version)

[p. 114]

Asylum decision-making and discretion:

Types of room for maneuver in refugee status determination

Author: Jonathan Miaz

University of Lausanne, Centre of Comparative, European and International Law, Faculty of Law, Criminal Justice and Public Administration, jonathan.miaz@unil.ch

Abstract:

Asylum decision-making and discretion: Types of room for maneuver in refugee status determination. By mobilizing ethnographic methods to study the Swiss asylum administration, this article analyzes the discretionary powers of Swiss asylum caseworkers in a context characterized by an important sophistication of law.

Starting from the observation that the daily work of asylum caseworkers is strongly oriented and controlled by their superiors and colleagues, by institutional rules and guidelines, as well as by their socialization, the author identifies different types of discretionary powers, on which caseworkers' discretion rests. Consequently, he discusses how caseworkers perceive and use it differently, depending on the situation in which they find themselves. Thus, the article argues that asylum caseworkers have different types of room for maneuver according to their tasks, to the situations they are faced with, to the conditions in which they operate, and to their own characteristics (capitals, attitudes, experience). Eventually, the present contribution shows the relational and collective dimensions of bureaucratic discretion.

Keywords: Discretion – bureaucratic decision-making – street-level bureaucracy – asylum policy – refugee status determination

1. Introduction

Asylum caseworkers who are responsible for making decisions on asylum demands play a key role in the development of Swiss asylum policy. They make decisions on the fate of asylum seekers, by granting or denying protection, or by ordering a removal. Their position and tasks make them crucial actors of migration control, as their decisions directly and deeply impact asylum seekers' lives. Discretion in the refugee status determination (RSD) process is shaped by several elements: not only legal dispositions but also secondary implementation rules, the contents of the files, as well as the institutional controls of caseworkers' decisions (Miaz 2017). Moreover, discretion can vary according to caseworkers' tasks such as interviewing or deciding. This observation of asylum caseworkers' room for maneuver [p. 115] aligns with recent research on European asylum policies on the ground, which also underlines that bureaucratic decision-making over asylum demands is characterized by radical uncertainty and involves significant bureaucratic discretionary power (Dahlvik 2018; Liodden 2020), which is shaped by institutional socialization, norms, and controls (Affolter 2021; Miaz 2017).

This article aims to deepen the analyses of bureaucratic discretionary powers in RSD to show that there are different types of room for maneuver along the whole process of asylum decision-making, from the investigation of asylum demands to the final decision. In Switzerland, asylum caseworkers of the State Secretariat for Migrations (SEM) must investigate and adjudicate asylum demands, deciding who can be granted asylum or temporary admission and who must be removed from the country. Their tasks combine direct contact with asylum seekers during hearings, investigation practices, and legal judgment, and involve writing a decision that is legally argued.

Thus, asylum caseworkers accumulate different kinds of discretionary powers. They have procedural discretion in their investigation tasks, with behavioral and interactional dimensions. They also have decision-making-related discretion in their decision-makers tasks. This article identifies and presents these different types of procedural and decision-making-related discretion, that are defined according to situations, legal dispositions, and, most importantly, secondary implementation rules. Eventually, this article explains that discretion, how caseworkers perceive

their room for maneuver, and how they use them are also defined and shaped by institutional and social mediations, especially middle-managers controls and caseworkers' individual capitals and institutional socialization. This shows the relational and collective dimensions of bureaucratic discretion.

2. Asylum decision-making and bureaucratic discretion

Discretion and room for maneuver are classical and widely discussed questions in the street-level literature, in law, in sociolegal studies, and in the sociology of law. In this theoretical section of the paper, I present why discretion is a central issue in street-level research, and how it has been analyzed in studies of RSD. Eventually, I discuss the definitions and approaches of discretion in these streams of literature.

[p. 116]

2.1 Street-level bureaucrats, discretion, and policymaking

Literature on the implementation of public policies underlines the core role of the public officers working at the frontline, in direct contact with the populations targeted by the public policies, and/or deciding on the fate of these people. In his seminal book on Street-Level Bureaucracy, Lipsky explains that “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 2010: xiii). He points out that street-level bureaucrats (SLBs) have policy-making roles that are built upon their relatively high degrees of discretion and the relative autonomy from organizational authority (Lipsky 2010: 13). Following Lipsky, a flourishing stream of literature continues this approach, studying how SLBs *use* discretion, and how this impacts policy implementation (Evans & Hupe 2020; Hupe 2013; Portillo & Rudes 2014). In this perspective, discretion is neither “good” nor “bad”, but rather a professional attribute, which “should be regarded as a series of gradations of freedom to make decisions” (Evans & Harris 2004: 871) about what should be done in a particular situation. As such, discretion is seen as “an inherent [...] feature of implementation in a devolved and decentralized policy world” (Brodkin 2011: 254), and even as a quasi-necessary condition for high implementation willingness of frontline workers (Thomann, van Engen & Tummers 2018). Thus, Brodkin underlines that discretion is of political

significance deriving from how discretionary practices of street-level organizations effectively mediate policy and politics, for instance “by affecting the boundaries of the possible for advancing contested policy projects, claiming rights and negotiating sociopolitical status” (Brodkin 2020: 63).

2.2 Definitions of discretion

This article is about asylum decision-making and discretion¹. Asylum caseworkers must legally argue their decisions, which can be appealed before the Federal Administrative Court (FAC). In this regard, studying bureaucratic discretion in the RSD process is consistent with analyses of [p. 117] legal decision-making and discretion in law and socio-legal studies (Hawkins 1986). In these fields, as well as in the sociology of law, discretion is a widely discussed notion.

A conventional juridical view makes the distinction between rule-directed behavior and discretion. Thus, to Davis, “a public officer has discretion wherever the *effective limits* on his power leave him *free* to make a choice among possible courses of action and inaction” (Davis 1969: 4). In the same vein, Dworkin’s metaphor puts that discretion “like a hole in a doughnut, does not exist except as an area left open by a surrounding belt of restriction” (Dworkin 1978: 31). To Mascini, this legal paradigm considers discretion as “behavior that is unpredictable because it is not directed by rules and that therefore poses a threat to the consistency and legitimacy of judgments so that discretion can and should be avoided as much as possible by filling gaps in statutory standards and by using legal control instruments” (2020: 124–125).

Alternatively, to a conventional juridical view, a socio-legal approach considers discretion as inherent to law implementation: “the use of rules involves discretion, while the use of discretion involves rules” indeed, “discretion is heavily implicated in the use of rules: interpretative behavior is involved in making sense of rules, and in making choices about the relevance and use of rules” (Hawkins 1992: 12–13). Thus, a socio-legal approach to discretion focuses on the uses of discretion and,

¹ Besides discretion, I also use the terms of room for maneuver and discretionary power. The notion of room for maneuver refers to the opportunities and possibilities to act or to choose between different ways of doing something. The notion of discretionary powers refers to the result of using discretion, which gives state officials the power to do or decide something in one way or another (in certain limits), the consequence of their action having consequences on the fate of their public, here: asylum seekers.

more generally, on legal decision-making, rather than on how discretion is formally defined (Hawkins 1986; Mascini 2020). In a socio-legal analytical framework, “decisions can only be understood by reference to their embeddedness in interpretative practices, frames, fields and surrounds,” and “a connection needs to be forged between the interpretative processes that individuals engage in when deciding a particular case, and forces in the decision-making environment” (Mascini 2020: 130). In this perspective, the way in which decision-makers use their discretion also has to take into account the other interpretative work and decisions of other actors in the decision-making process, as the decision-maker is only a part of a sequence in the decision process (Tata 2020).

Starting from this perspective, I do not consider that there is a dichotomy between discretion and rule-following (Evans & Harris 2004). Not only, do state agents interpret and redefine law and legal criteria, but they also use their room for maneuver differently according to their dispositions and interests, ranging from a strict implementation to making exceptions (Bourdieu 1990a), or playing *with* the rules, remaining most of the time *within* the rules, by using legal channels (Lascombes & Le Bourhis 1996). [p. 118] However, as the definition of discretion implies the ideas of choice and of freedom (Evans & Hupe 2020), it is important “to consider how far individual ‘free choice’ may be already, collective, ordered, routinised and structured by phenomena other than the law itself” (Campbell 1999: 80). This sociological approach to discretion invites us to consider the social constraints (Feldman 1992), contexts (Buffat 2015)², as well as social and institutional mediations that orient the uses of discretion, such as secondary implementation rules (SIR)³, controls over decisions and practices, structures of accountability, or professional and institutional socialization (Miaz 2017). In a relational analysis of discretion, it is important to pay particular attention to the web of relationships (Dubois 2012) in which decision-makers – here asylum

² Buffat especially shows that contextualizing discretion leads to speak of various sources of discretion according to the type of task, the material economy of cases, and the regulatory framework (Buffat 2015).

³ Following Lascombes (1990), secondary implementation rules can be defined as the practical principles developed by public agents to ensure the mobilization and adaptation of state rules to the social facts that they have to manage, or here to the situations on which they have to make a decision. In the asylum administration, SIR establishes, according to each country of origin, how asylum demands must be investigated and which decision should be made according to categories of treatment, to the profiles of asylum seekers, and to their motives and situations (Miaz 2017, 2019a).

caseworkers – are embedded, which structures the discretionary decision-making process and affects their street-level practices (Miaz & Achermann 2021).

2.3 Discretion in asylum determination

For more than a decade, social scientists increasingly study RSD and asylum policies in European and North American countries “from below,” often taking an ethnographic perspective paying attention to judges’ and bureaucrats’ daily practices, routines, habits, and secondary rules, as well as to their interactions with asylum seekers (Gill & Good 2019). They show that the RSD process involves a number of uncertainties that are notably related to the ambiguities of the legal definition of the refugee and to the assessment of the credibility of asylum claims, and that enable a large degree of discretion (Liodden 2020). Moreover, officials do not only have discretion in deciding on the eligibility and on the credibility of asylum demands, but they also have room for maneuver in their investigation practices (procedural discretion), for instance in interviewing asylum seekers (Dahlvik 2018; Gill *et al.* 2018; Tomkinson 2018). However, studies on asylum decision-making [p. 119] also show that, from asylum law to individual decisions, there are numerous legal, social and institutional mediations, orienting and constraining asylum caseworkers’ practices, such as SIR, controls by supervisors or peers (Miaz 2017), productivity and efficiency pressures, as well as processing priorities and strategies set by middle-managers (Miaz 2019; Poertner 2017). Moreover, through organizational training and institutional socialization, asylum caseworkers internalize an institutional habitus (Affolter 2021) – or an institutional *ethos* (Miaz 2017) –, that shapes discretionary practices, and that is characterized by suspicion and “disbelief,” as observed in other contexts (Bohmer & Shuman 2008; Jubany 2017). Against the idea according to which regularities in administrative work are a consequence of strict rule-following, these studies underline that institutional and social mechanisms contribute to orient, constraint, and, eventually, homogenize bureaucratic practices and decision-making.

3. Methods and fieldwork

This article is based on a policy ethnography (Dubois 2009) conducted between 2010 and 2014, and involved long-term immersion in different fields and with

various actors of the Asylum Act. During this project, I conducted observations in a reception center of the SEM (5 months) and at the central office of the SEM (6 months). I could observe the hearings of asylum seekers by SEM caseworkers, I observed how they work, and I attended trainings, and department and section meetings. I also conducted 59 semi-structured interviews lasting between 1 and 4 hours. This ethnographic research within the SEM is part of a broader doctoral and postdoctoral research that also implied participant observation in a legal aid service for asylum seekers (6 months), 35 interviews with legal assistants and lawyers in different Swiss cantons in 2013 and in 2018–2019, 6 interviews with judges and law clerks of the Federal Administrative Court (FAC), and socio-historical analysis of the Swiss asylum policy, especially focusing on its politicization and its judicialization.

[p. 120]

4. Backgrounds on the Swiss asylum policy

4.1. A sophistication of asylum law

Since the Swiss Asylum Act became effective in 1981, asylum became a central political issue that is characterized by a *sophistication* of law. The term “sophistication” refers here to the process through which the legal frame evolves towards a greater complexity, implying a greater number of interrelated legal texts and normative levels, an advanced degree of (technical) drafting, and an important specification of the law according to the motives of the asylum seekers and to the countries of origin. This sophistication of law is not only due to the numerous legislative reforms of the Swiss Asylum Act but also to the significant judicialization of asylum policy, which results from the important number of appeals against individual asylum decisions (Kawar & Miaz 2021).

4.2. The asylum procedure: a brief presentation

During the Swiss asylum procedure, asylum seekers are usually interviewed twice. The first hearing is about gaining personal data and during the second hearing, caseworkers question asylum seekers on their asylum motives in a more detailed manner. These interviews and their triangulation with other means of proof – such

as medical reports, queries to the embassy, country expertise, linguistic report, etc. – are the main basis for a decision. Then, caseworkers have to determine whether the asylum seekers meet the criteria for being categorized as a refugee according to article 3 of the Swiss Asylum Act (hereafter: AsyLA) and whether the asylum seekers have given enough “credible” proofs to be considered as refugees according to article 7 of the AsyLA. After this first decision, they must decide if the return is demandable, lawful, and possible. If not, the asylum seekers can receive a subsidiary protection through a temporary admission (TA).

Thus, the asylum caseworkers have several possibilities:

- (until 2014) a decision of dismissing the application without engaging with the substance of the case (DAWES)⁴, which is a decision of non-admissibility (for various reasons) of the demand (some cases unfold in such a way that the asylum seekers do not receive a second hearing); [*p. 121*]
- a negative decision (rejection) – in this case, the expulsion is ordered;
- if the expulsion or the return is not “possible”⁵, not “lawful”⁶ or not “reasonable”⁷, the asylum seekers obtain an F permit, a temporary admission;
- the recognition of the criteria for a refugee, granting a B permit.

4.3. Mediations of law and legal rigor in asylum decision-making

From the abstract legal principles to the decisions, there are different “mediations” orienting and constraining asylum caseworkers’ practices and decisions (Miaz 2017), so that caseworkers’ perceptions of their room for maneuver are limited and oriented by these mediations. To summarize, one can identify the following mediations of asylum law:

⁴ For different reasons, which were enumerated in articles 32–35 of the AsyLA, the caseworker could decide to dismiss the application without engaging with the substance of the case. This opened a shorter appeal deadline: 5 days (while it is 30 days for an “ordinary” decision). This kind of negative decision has been abrogated in 2014. During my fieldwork, DAWES were possible and represented around 15% of the decisions that were made.

⁵ The enforcement of removal is not possible if there are “technical” motives or circumstances that prevent the return.

⁶ According to the law, the enforcement of removal is not lawful if it is contrary to Switzerland’s obligations under international law.

⁷ According to the law, the unreasonableness is related to humanitarian reasons. The enforcement of removal may be unreasonable if the asylum seeker is endangered by the situation prevailing in the country of origin (civil war, war, general violence). The unreasonableness of the enforcement of removal order may also concern “vulnerable persons” and people with medical grounds.

- legal-institutional: the content of the law itself, secondary implementation rules – different guidelines and directives especially “APPA,” which are documents defining a kind of bureaucratic jurisprudence and establishing guidelines for adjudicating asylum demands according to each country of origin –, legal writing constraints, etc.;
- social-institutional: recruitment contributing to select caseworkers according to certain dispositions, and institutional socialization leading to the internalization of institutional categories and logics of treatment, and an institutional habitus leading to relatively stable outcomes of asylum decision-making (Affolter 2021; Miaz 2017);
- situational: especially the content of the files and asylum seekers’ performance and capitals;
- relational: the profile of the caseworker (position in the institution, experience, individual capitals, relationship to their role, social characteristics), the profile of supervisors and of the section (especially of the colleagues), the effectiveness of the controls, the judicial control and the potential appeals.

[p. 122]

All the above mediations set caseworkers’ perceptions of the possible decisions and, consequently, their perceived room for maneuver. They contribute to homogenizing their practices, setting institutional prescriptions against which it can be costly to decide. Thus, if caseworkers perceive room for maneuver under certain conditions and in certain situations, it is interesting to underline that they most often act in conformity with institutional prescriptions and expectations (Miaz 2017). Institutional socialization and internalization of these institutional prescriptions, expectations, and logics of action lead caseworkers to usually act “as they ought” (or as they think they ought). Caseworkers’ discretion has to be analyzed considering all these mediations. We will see that, when they speak about their eventual room for maneuver, they always speak about situations in which they decided against institutional prescriptions (secondary implementation rules and/or supervisors’ prescriptions) in favor of asylum seekers. This indicates that these institutional prescriptions seem to orient their practices towards a suspicious and restrictive application of asylum law.

5. Discretion in the investigation

In this section, I show that procedural discretion (Gill *et al.* 2018) in bureaucratic RSD process can refer at the same time to three dimensions: behavioral – the “manner” caseworkers play their role, their attitude, their “style” or way of conducting hearings and investigations –, interactional – which is related to the way they interact and are in relation to their public (asylum seekers here) –, investigational –, which refers to the ways of investigating the files, asking questions and insisting on certain points during hearings, using (and multiplying) complementary investigation means, and the like.

5.1. Behavioral and interactional room for maneuver in hearing asylum seekers

Asylum hearings are moments during which an asylum caseworker questions an asylum seeker, often with the mediation of an interpreter, in the presence of a representative of civil society organizations⁸, and a secretary writing the minutes. These moments are structurally asymmetric: [p. 123] the caseworker asks questions and orients the story of the asylum seeker according to the elements that are of interest for the procedure. The asylum seeker finally signs the minutes, which become central evidence on the basis of which caseworkers will decide. The asylum hearings are crucial in the asylum procedure and caseworkers will interpret the performance of asylum seekers to assess both eligibility and credibility.

Hearings are a central task of caseworkers’ work. Through internal trainings and the institutional socialization, they acquire a “logic of practice” (Bourdieu 1990b) related to this task: the power and skills to make someone speak. When I question them about their role in asylum hearings, SEM caseworkers refer to a double repertoire in a “role game”, between *listening* and *empathy*, on the one hand, and *interrogation* – “we are, so to say, the police of the interview”⁹ –, on the other hand. Thus, during my fieldwork, I observed various types of behaviors (i.e., of playing their role) with the asylum seekers. The first one is related to the model attitude which is taught during their trainings: *neutrality and distance*. This means not to

⁸ Since the last reform of the Swiss Asylum Act (2019), there is no longer representatives of civil society organizations who are present during the hearings, but legal representatives.

⁹ Interview 1 with an asylum caseworker, SEM, February 2011.

show emotions or feelings and to ask questions with a neutral or even cold tone and with a certain distance *vis-à-vis* what asylum seekers say. This way of performing is explained by caseworkers by the fact that they must “lead” and “conduct” the interview and that they are the ones who represent the authority. The second type of behavior observed is an *empathetic* attitude, consisting of using “kind” words to reassure the person, to make him or her comfortable. When they are asked about how they conduct an interview, asylum caseworkers who usually take an empathetic attitude say that they have to create a certain atmosphere in which asylum seekers feel at ease and free to speak. Finally, the third type of behavior is a *pressuring* and sometimes *annoyed* or *angry* attitude. SEM caseworkers can expressively show asylum seekers that they do not believe them or that they are annoyed or angry at them. This attitude can be used to put pressure on the interviewees.

The way in which asylum caseworkers play their role, show empathy or anger, call people to order or not, also depends on their own profile: their relationship to their own role, their institutional socialization, and their perception of asylum seekers. Their attitude is also related to their perception of the asylum seeker and of his or her behavior. A caseworker observed during an asylum hearing was particularly annoyed when he perceived that someone lied to him:

[p. 124] During an interview on the asylum motives in a reception center, the asylum caseworker, Alexander C.¹⁰, is annoyed by the attitude of the asylum seeker. When the latter looks like he doesn’t understand the question translated by the interpreter, Alexander C. interrupts him and exclaims:

“Do you have a hearing problem? Because the woman (he shows the interpreter) has to repeat each question several times. So now, she is going to ask the question only once. What was your age when your parents died?”

While the asylum seeker answers the question to the interpreter, the secretary, who writes the minutes, and Alexander C. make fun of the fact that the asylum seeker irritates them. During the interview, Alexander C. makes different comments to the asylum seeker to show him that he doesn’t

¹⁰ The names have been changed for confidentiality reasons.

believe what he says. He asks him several questions and points out the contradictions and inconsistencies of his story (Observation notes, SEM reception center, December 2010).

Another SEM caseworker explains to me that she changes her attitude with someone who is disrespectful: “I don’t waste my time with people like that”¹¹.

The interactional room for maneuver can also concern the advice and the comments made to the asylum seekers during or after the hearing. This refers more generally to the commitment in the relationship with the asylum seeker and this is related to the more general attitude they take towards them. During my fieldwork, I observed moments during which caseworkers warn asylum seekers about the consequences of their attitude, or give them advice off the record (this is not transcribed in the minutes), taking time to explain something to them, for example.

Even if this behavioral and interactional room for maneuver is probably marginal regarding its effects on the asylum demand, this can contribute to making people speak of something, to make people feel at ease to speak or, on the contrary, make them feel uncomfortable, preventing them from providing certain details of their stories. In this regard, it can sometimes significantly impact the production of facts and the decision-making process. As caseworkers underline it, this room for maneuver can help to raise certain elements of the story or of the motives that could be relevant for the RSD, or to the contrary, it may prevent certain elements from being mentioned.

[p. 125]

5.2. Procedural discretion in the investigation practices

The most important procedural discretion asylum caseworkers have rests on the way they investigate cases in one way or another, playing on procedural elements in favor or disadvantage of asylum seekers. This manner of investigating the cases can have a potentially significant impact on the decision and, consequently, on asylum seekers’ fate. We can distinguish different types of procedural discretion in the investigation practices.

¹¹ Interview 2 with an asylum caseworker, SEM, February 2011.

The first type is *room for maneuver related to the time of the investigation and of the adjudication*. It concerns the time taken to investigate the case and to make a decision. Asylum caseworkers are faced with institutional productivity pressures (Miaz 2019). Consequently, they are usually pushed to decide quickly. Nevertheless, time may be used strategically either by the institution or by individual caseworkers. During my observations and my interviews, I could observe this room for maneuver used in favor of or against asylum seekers. Hereunder, I discuss some dimensions that this time-related discretion covers. The latter can be collective and institutional. The SEM, through its middle-managers (especially heads of divisions and sections), can strategically use time and prioritization to try to influence the number of asylum demands (“stocks” and “flows” of asylum seekers) (Miaz 2019).

During my fieldwork, the number of asylum demands grew quickly in 2011 and 2012, so that the SEM was overloaded, as well as federal and cantonal reception centers. Hence, SEM middle-managers prioritized deciding rapidly on asylum demands coming from countries of origin for which the asylum praxis provides for negative decisions and for which the enforcement of removals is easy and fast: especially Balkan countries (considered as safe countries), Tunisia and Nigeria. According to a middle manager, they decided to “free the beds that we extremely need,” meaning to free up places in cantonal and federal centers by prioritizing persons that they can enforce fast removals on. This decision pursued two objectives: first, based on the common institutional asylum praxis, deciding rapidly on a great number of asylum demands; second, reducing the number of asylum cases related to these countries and, consequently, deterring people from coming to Switzerland. At the same time, they also decided to reduce the number of positive decisions taken for countries for which the asylum praxis provides to grant a protection, in order to avoid a “pull effect,” which would continue to overload the Swiss asylum system. During a short period of time, these institutional strategies of treatment played on the time of procedures to influence the “stocks and flows” of asylum seekers in Switzerland. Indeed, this had consequences on the statistics and on the overall treatment of asylum demands: [p. 126] the proportion of asylum decisions and temporary admission lowered, respectively from 19% in 2011 to 10% in 2012 and from 10% to 6%, while negative decisions and DAWES increased

respectively from 12% to 14% and from 49% to 56%. (Vignette written from observation notes and from interviews with middle-managers, SEM, 2011–2012).

This time-related room for maneuver can also be used individually by caseworkers by deciding to take some time to decide, to leave the asylum seeker some time to prepare his or her departure, which might also possibly allow him or her to earn some money (salary or social assistance)¹². The use of this procedural room for maneuver can also be to the asylum seekers' disadvantage, for example, if the caseworker decides to wait for a change in the country of origin – which could allow making a negative decision without temporary admission – before deciding¹³.

The second type of procedural discretion in the investigation is the *room for maneuver related to the investigation practices*. This type of procedural discretion concerns how much further caseworkers go in the investigation, on what they focus or decide not to focus on, which can be in favor or disadvantage of the asylum seeker. It can consist of trying to make someone speak about “hidden” (untold) problems, beyond what the asylum seeker first said because the caseworker “feels” that “there’s something”. A caseworker explains:

I find that, when we interview asylum seekers we still have more room for maneuver. Once, if I hadn't insisted with an Afghan woman to make her speak about herself, because she thought that she wasn't important . . . , she would never have spoken. And I insisted and she finally said that it is because she had conflicts because she didn't want to wear the niqab, but only the veil [that she fled Afghanistan]. This is a motive for asylum. If her family has been able to stay [in Switzerland], it is because she said that. Because the husband hadn't any [asylum] grounds. So, there [during asylum hearings], we've got [significant room for maneuver]. Because I could have just said: 'Okay, you just have that to say, very good, we continue the interview, you had the occasion to speak, that's over.' The procedure would have been right this way. (Interview 4 with an asylum caseworker, SEM, February 2012)¹⁴.

This caseworker explained that she has room for maneuver interviewing asylum seekers, and she gives the example of an Afghan woman with whom she insisted, questioning her to make her speak about her problems in [p. 127] Afghanistan. She finally could give her asylum because she pushed her to speak.

¹² Observation notes, SEM, 2010–2012; and interview 3 with an asylum caseworker, SEM, October 2011.

¹³ Observation notes, SEM, 2010–2012; observations notes in a legal defense service, 2011.

¹⁴ Interview excerpts are translated from French or German.

During my observations, I also witnessed caseworkers trying to find if there were asylum grounds beyond the story first told by the asylum seeker, or trying to find elements in the person's situation, which could allow them to grant a temporary admission. An asylum caseworker explains:

If I can find other solutions [than a negative decision], because there's always room for maneuver concerning the removal and the temporary admission, I am ready to make this investment. [...] For example, families for which you try to investigate the file to propose a temporary admission [to your supervisor] for a vulnerable case, you see. But you have to look for [these elements yourself], the reasons and elements for which the case is vulnerable. After that, you have to defend your file [before your supervisor] (Interview 5 with an asylum caseworker, SEM, July 2012).

On the contrary, caseworkers can decide not to look for such elements or to make someone speak, ignoring clues that there could be untold problems. Even if the latter – ignoring clues and looking for more elements allowing to grant asylum or a temporary admission as room for maneuver –, it should also be considered as such.

Thus, procedural discretion related to the investigation practices can also be a disadvantage to asylum seekers. This is also the case when the caseworker concentrates on finding contradictions and inconsistencies by asking a lot of questions – even sometimes to trap the asylum seeker – or by asking for complementary investigation means to check the elements of the story. Affolter also observes this practice, that she called “digging deep”, which refers “to the practice whereby decision-makers interrogate asylum seekers until they have enough arguments to reject an asylum claim on the basis of non-credibility, or are convinced that the applicant's story is true ‘after all’” (Affolter 2021: 100).

Some caseworkers explained to me that they concentrate on contradictions and inconsistencies or on the “logic of the story”¹⁵, and others that they “look for the flaw [in the story] that makes the case incredible, rather than what makes it credible”, because they “have been drilled [or trained] to make negative decisions”¹⁶. I could witness hearings during which asylum caseworkers asked a lot of questions to check if what the asylum seeker said was credible, looking in depth at the different elements of the story:

¹⁵ Interview 6 with an asylum caseworker, SEM, December 2010.

¹⁶ Interview 7 with an asylum caseworker, SEM, February 2011.

[p. 128]

A caseworker, Thierry B., tells me the story of an asylum seeker from an African country who had totally convinced him of the credibility of his story. His story was clear and precise, there was no contradiction. Thierry B. explains that he just asked one more question of precision, because he was curious, which made the credibility fall into pieces. He wanted to know what they ate in prison during the time of his imprisonment in his country. He answered that he hadn't eaten anything, while he had said that he stayed in prison for four weeks of his imprisonment. To Thierry B., this was an indication that made the story inconsistent. "With one question, the decision passed from a positive one to a negative one" (Observation notes, SEM, September 2011).

Even if caseworkers do not always perceive this procedural discretion as such, the significant suspicious and skeptical attitude of caseworkers who concentrate on finding contradictions and inconsistencies is at the core of the investigation of asylum demands. As this section shows, caseworkers' discretionary practices in fact-finding are oriented towards a search for inconsistencies and for lack of credibility in asylum seekers' stories by "digging deep" to test credibility (Affolter 2021; Miaz 2017).

6. Discretion in decision-making

When I asked caseworkers about the room for maneuver they perceive, they first mentioned the fact that they are only "executant" and that they limit themselves to "follow the rules." I analyzed this attitude in terms of "legalist *ethos*:" caseworkers defend and demonstrate a strict implementation of the law, and they always remind that their practices rigorously apply the law and legal criteria (Miaz 2017). Nevertheless, behind this attitude, we can observe variations in caseworkers' decision-making practices, and we can theoretically reflect on their decision-making discretion.

6.1. Room for maneuver within the law

Despite their "legalist *ethos*," caseworkers recognize that there is a certain leeway related to the very "human" type of law that they have to implement, as well as to

the uncertainty characterizing the RSD process (Liodden 2020), the facts, and the situations they have to examine.

It's not the Road Traffic Act. If you drive at 130 [kilometers per hour], you pass [the limit], there is no room for interpretation. On the other hand, in the asylum field, it's a much more complex area [...]. Because we are in an area where the main element of the decision is the person's allegations. So, it's complex (Interview 8 with an asylum caseworker, SEM, October 2011).

[p. 129]

The perception and use of a decision-making room for maneuver are dependent on a series of situational conditions linked both to the file and to the standards to which it refers – SIR, such as institutional “practices” – and to the profiles and capitals of caseworkers, as well as to the configuration in which they are embedded. Here, I would like to show that we can identify types of decision-making discretion according to legal and infra-legal criteria – not only the law but also SIR, especially the institutional “asylum practices” (APPA) giving guidelines for the decisions – and the “facts” or “situations” caseworkers must adjudicate.

Like procedural discretion, caseworkers who are considered *hardliners* concentrate on finding a solution to reject the asylum demand, while those who are considered *softliners* try to use their room for maneuver for cases that are in the “gray zone” (*Grauzonenfälle*), in order to find the most favorable possible outcome for the asylum seeker. The caseworker's leeway is actually twofold. On the one hand, it concerns the legal assessment of cases in relation to the relevance of asylum grounds under Article 3 of the AsylA, as well as the assessment of the reasonableness or the lawfulness of the removal. On the other hand, it concerns believing the applicant or not and rejecting the application by arguing that the story is incredible or inconsistent.

The decision-making discretion is not equivalent to arbitrariness. Caseworkers usually act *within* the rules. Asked about her room for maneuver, a caseworker explains that she can use it while remaining “within the legal frame” and that she must respect the law: the use of the room for maneuver can only be within the possibilities offered by asylum law¹⁷. Thus, my interviews with caseworkers show

¹⁷ Interview 5 with an asylum caseworker, SEM, July 2012.

that their discretion is not only related to the legal and institutional (infra-legal) rules and what they allow, but also to the contents of the files providing (or not, more or less) arguments to support a decision in one way or another. This is especially true for the assessment of the credibility and of the reasonableness of the removal. While some caseworkers use an important inconsistency that they found in the story told during the asylum hearing as an argument to support their decision that the story is incredible, others sometimes find explanations for this inconsistency and won't insist on this element of the story in their decision. As well, while caseworkers look for elements in the situation of the person in his or her country of origin to justify a temporary admission, for example, [p. 130] because of his or her "vulnerability," others ignore these elements or consider them not being significant enough to give a temporary admission. Thus, the way caseworkers weigh the different elements in the files and try to base their decision on certain arguments rather than on other ones opens a certain room for maneuver, which is limited by the varying control of the supervisors.

In the light of this case study on asylum decision-making, new and essential elements can be added to Lascoumes and Le Bourhis' analysis of legal channels¹⁸ (1996): beyond the possibilities and opportunities offered by the law to State officials to use one rule or another, or to interpret the rule, decision-making discretion can also be related to possibilities and opportunities (regarding the law) offered by the case itself, i.e., by the elements that are in the file. The perception of the possible decisions for a case depends on the elements at the caseworkers' disposal in the file to argue and justify a decision, especially towards their supervisors who control and sign off their decisions. Therefore, the above-mentioned discretionary dimension in fact-finding (Hawkins 1992; Galligan 1990) extends to the selection of facts in writing the decision. When they select the facts on which they will build and argue their decision, caseworkers can choose to emphasize, downsize, or ignore them, thus already exercising a kind of decision-making discretion.

¹⁸ The notion of legal channels refers to the opportunities offered by the law to State officials to use one rule or another, or to interpret the rule.

6.2. Types of decision-making discretion

I identified four types of decision-making discretion whose uses are more or less “ordinary” – i.e., integrated into the routinized course of caseworkers’ activity –, “authorized” – i.e., not necessarily creating conflicts between caseworkers and their supervisors – and “subversive” – i.e., contrary to institutional prescriptions and risk generating conflicts with, or calls to order by, peers or superiors.

(1) The *legal leeway* refers to the room for maneuver and its use when legal criteria and SIR are vague, when decision-making and investigation practices are not precisely framed or oriented by legal or secondary rules, and when facts on which caseworkers must decide are relatively complex and are based on asylum seekers’ allegations. In cases of legal blurring and of the complexity of facts, the room for maneuver rests on the fact that the assessment is left to the judgment of individual agents. This is especially the [p. 131] case of credibility assessment and of the reasonableness of the removal when SIR is not very precise on this point.

(2) The *case-related discretion* concerns the situations in which legal and infra-legal criteria (law and SIR) are clear and precise, in which the practices are closely framed, but in which facts to be examined are complex and based on asylum seekers’ allegations. This leaves the possibility of caseworkers basing their decisions on certain elements of the file rather than others. The contents of the file introduce leeway to caseworkers in their choice of a decision. This is especially the case in the assessment of the reasonableness of the removal – when SIR is precise and clear on this point – and the assessment of eligibility when the contents of the files make them enter what caseworkers call “the gray zone” (*Grauzonenfälle* in German) or “limit cases” (*Grenzfälle* in German).

(3) The *subversive discretion* (see: Evans & Harris 2004) refers to the cases in which caseworkers choose to decide contrary to institutional prescriptions (especially SIR) basing their arguments both on elements of the file and on their own individual institutional and legal capitals. In these cases, they are ready to defend their decision before their superiors (who control and sign off their decision) and before their colleagues. In these cases, the adjudication is supposedly “clear,” but caseworkers, based on their assessment of the file, believe they have to decide another way rather than the prescribed one. When they are asked for examples about

room for maneuver, caseworkers usually mention examples referring to subversive discretion, even if it's probably the least frequent one.

(4) The *marginal room for maneuver* refers to situations in which practices are closely framed, legal criteria and SIR are clear and precise, as well as the cases themselves, which gives few elements to argue another decision rather than the prescribed one. In these cases, the room for maneuver is very limited. It concerns a more procedural room for maneuver. As I explained the practices of caseworkers are closely framed and oriented, in lots of cases, they only have very limited room for maneuver and one can witness a certain homogenization of their decision-making practices, especially because of the SIR (asylum practices).

7. A sociological analysis of bureaucratic decision-making

Beyond the legal and institutional criteria, a sociological analysis of the uses of discretion – and more broadly of bureaucratic decision-making – should take into account the social relationships in which caseworkers are [p. 132] embedded (Dubois 2012; Miaz & Achermann 2021) as well as caseworkers' profiles, i.e., their social background, characteristics, capitals and position in the bureaucratic field (Spire 2020), their institutional socialization, their relationship to their role and their institutional habitus (Affolter 2021). This section presents how both individual profiles and institutional configurations and situations orient the ways caseworkers perceive the possible decisions and use their discretion.

7.1. Institutional socialization and various relationships to the role

Caseworkers are recruited for certain dispositions which they have to fulfill their role. During my interviews with middle-managers, they explained to me that, beyond the formal criteria of recruitment (for example, university degree), caseworkers are also recruited according to their "capacity to decide": "so we really test if the person, you have the feeling that she is a bit indecisive or that she is too concerned or that she would find it difficult to decide"¹⁹. Another criterion that middle-managers suggest they consider is their "sensitivity": "not the political sensitivities, but I think that someone who is too right-wing or too left-wing, I don't

¹⁹ Interview 10 with a middle-manager, SEM, April 2012.

know if she is made for this job,” or who are either “extremely naïve”, thinking that everyone needs protection, or “too right-wing”, thinking that everyone coming to Switzerland abuses the system. “I think we need to find a middle ground”²⁰.

Overall, caseworkers share a legalist *ethos*, saying that they are “nor cops, nor shrinks, nor social workers” and that their role is to “apply the law” even if they can find it too strict or too open. This *ethos* involves a strict, or even rigorist, implementation of asylum law and of SEM; strictness in the implementation of legal and infra-legal criteria being often considered as ensuring certain equality of treatment and the “credibility of the system”²¹. This “legalist *ethos*” as well as the institutional habitus analyzed by Laura Affolter (2021) is acquired through institutional socialization (Miaz 2017; 2019) during which caseworkers learn and internalize skills, know-how, ways of doing things, routines, a specific vocabulary, and organizational expectations, and eventually an institutional “logic of practice” (Bourdieu 1990b). This socialization takes place through internal trainings, coaching from peers and supervisors, experience with the controls of their decisions, and the experience of investigating a file and making a decision.

[p. 133]

As Affolter underlines it too, an important professional norm in the SEM is the “suspicion” or “non-naivety” (2021: 176), which confirms the idea of a “culture of disbelief” observed elsewhere (Jubany 2017). Moreover, during my interviews, caseworkers explained that making positive decisions “was not in the culture of the office”²², and that they were “always hesitant to make a positive” decision: “it was much easier to make a negative than a positive”²³. However, several interviewees explain that this culture is changing and that they make more positive decisions today. This is probably in part due to FAC jurisprudence and to SEM asylum practices related to specific countries of origin – which represent a significant share of all asylum demands (for example, Eritrea) –, allowing a caseworker to grant asylum or a temporary admission according to various profiles of asylum seekers

²⁰ Interview 11 with a middle-manager, SEM, March 2012.

²¹ Interview 9 with an asylum caseworker, SEM, July 2012.

²² *Ibid.*

²³ Interview 12 with a middle-manager and former caseworker, SEM, July 2012.

from these countries. Caseworkers also explain this change by the profiles of middle-managers who are now perceived as being not (or less) *hardliners*.

Nevertheless, beyond this institutional selection and socialization of caseworkers, I observed differences among SEM caseworkers in their relationships to their role. In particular, caseworkers differentiate themselves among what they call *Neinsagers* or *hardliners* on one side, and *softliners*²⁴ on the other side: those who represent a rather “hard” line (rigorist line) in the institution, and those who defend a more “human” – both humanist and humanitarian – conception of their role. To *hardliners*, their role is mainly to protect the society and the asylum system, especially against “abuses,” and asylum seekers who do not correspond to a very restrictive definition of a refugee, and asylum seekers who could potentially cause “problems” (criminality, welfare costs, etc.). To *softliners*, their role is mainly to protect asylum seekers and to find the most favorable solution for them, while remaining in conformity with the law. These are two ideal-types, which help to understand the coexistence of various profiles and role conceptions within the SEM.

7.2. Social and institutional shaping of discretion

These differences between caseworkers are perceived and sometimes taken into account by middle-managers. One middle-manager, talking about asylum caseworkers’ room for maneuver, explains that his caseworkers “have a lot of power; they can decide on the destiny of people,” and that he observes differences between his unit’s caseworkers: “there are people with [p. 134] different points of view”. Hence, he takes caseworkers’ profiles when he allocates the files to one or another²⁵. In this sense, middle-managers also have discretionary power in relation to their caseworkers’ power, as they can influence which cases they must decide on, and as such, they control their decisions. Thus, uses of discretion and, more generally, bureaucratic decision-making is always relational and collective.

The control significantly influences the perception that caseworkers have of the possible decisions. Indeed, during the decision-making process, they anticipate the control of their decision by the supervisor and what he or she expects, or what kind

²⁴ These terms (*Neinsager*, *hardliner*, *softliner*) have a rather negative connotation.

²⁵ Interview with a middle-manager, SEM, March 2012.

of argument can make the decision acceptable. Middle-managers do not control the caseworkers the same way and their own criteria in effectively controlling the decisions and in assessing eligibility and credibility of asylum files may differ.

In this regard, the institutional capitals are a key element to take into account in order to understand how caseworkers perceive the possible decisions they can make for each case, as well as how they are effectively controlled or called to order. The experience – such as a caseworker “having proved oneself” –, the responsibilities and the expertise on an issue or a country of origin, the reputation within the organization (for example as a “naïve person”, as a *softliner*, or as a *hardliner*) as well as the position within the institution shape not only the way caseworkers are perceived by middle-managers and by their colleagues but also the way they can feel “authorized” and “able” to make and argue a decision. Thus, a caseworker explains that “when you begin at the office, you’re ... not under pressure, but ... you do not have the same room for maneuver than the one I have now.” Indeed, today, “let’s say that there is no control or pressure,” all the more so as contrary to the supervisor she had before (who “really was a *Neinsager*”), her current supervisors are not *hardliners* and trust her, “I also have my place here, and it would be really out of place for my superior to tell me that my decision is inappropriate”²⁶.

Besides, legal capitals also shape the ways in which caseworkers can use their room for maneuver. For example, the ability to develop a juridical argument justifying a decision that would be contrary to SEM asylum practice or to middle-managers’ expectations allows caseworkers with such capitals to defend themselves before their supervisors and peers who would call them to order. Nevertheless, the use of the room for maneuver contrary to institutional expectations cannot be unlimited. Wandering too far from the [*p. 135*] line prescribed by the institution can expose one to calls to order as well as to ostracism from their colleagues. That is what an experienced caseworker explained, who refused to make decisions to dismiss the application without entering into the substance of the case (DAWES) at the beginning. She told me that she finally decided to make such decisions because she had to face the reprimands of her colleagues who argued about the equality of

²⁶Interview 13 with an asylum caseworker, SEM, January 2011.

treatment. The ostracism from colleagues, the anticipation of calls to order, the measures of control, the consequences of a career in the administration, and the legalist *ethos*, all contribute to certain conformity of the asylum caseworkers to the institutional prescriptions.

8. Discussion

As Akoka (2020) states, the refugee status is the end of a bureaucratic process of categorization, and not an essence, or a “quality” that would exist by itself and that the administration must “recognize”. This bureaucratic process involves individual and collective discretions, personal interpretations of legal and infra-legal criteria as well as interpretations of asylum seekers’ situations and allegations. This article analyzed bureaucratic decision-making, caseworkers’ room for maneuver, their uses of discretion, and how they are shaped by institutional, social, and (infra-) legal conditions and mediations. Combining a reflection on procedural and decision-making discretion with the analysis of mediations of law orienting decisions of caseworkers (Miaz 2017), I identified types of discretion and I proposed a sociological approach to bureaucratic decision-making, paying attention to the social and institutional conditions shaping the perceptions caseworkers have of the possible decisions for each case, eventually orienting or constraining their uses of discretion.

Different types of discretion according to the caseworkers’ tasks (Buffat 2015) are identified. First, they have room for maneuver in the investigation, not only in how they behave and interact with asylum seekers, but also in how they investigate the files, ask questions, and “dig deep” during asylum hearings. In this regard, asylum caseworkers have procedural discretion in fact-finding (Galligan 1990; Hawkins 1992), “digging deep” to find contradictions or inconsistencies in order to argue a negative decision because of incredibility, as Affolter also shows (2021). This discretion in fact-finding also concerns the investigation (or the non-investigation) of the unreasonableness of the removal because of the “vulnerability” of asylum seekers. [p. 136] This procedural discretion is strongly involved in the decision-making process and significantly impacts the asylum decision.

Second, caseworkers have decision-making discretion. Closely intertwined with procedural discretion, decision-making discretion is shaped not only by the legal criteria and secondary implementation rules (bureaucratic jurisprudence), but also by the elements of the cases. The four types identified show that decision-making discretion – and caseworkers’ perceptions of what decision is possible to make – can strongly vary from one case to another according to the secondary implementation rules, related to the country of origin of the asylum seeker, as well as to the “facts” and elements in the file. While the assessment of credibility and reasonableness of the removal can involve a relatively wide room for maneuver for certain countries of origin (legal leeway and case-related discretion), for others, the latter is very limited and marginal. Finally, according to their profile, certain asylum caseworkers can use subversive discretion, deciding contrary to the institutional prescriptions (which is more difficult).

Then, I proposed a sociological analysis of bureaucratic decision-making. This sociological approach of discretion consists in considering the situations and configurations, or the systems of relationships (Dubois 2012), in which caseworkers are embedded. In this perspective, their profiles and the configuration in which they act shape their perception of the possible decisions: not only the law, the secondary implementation rules, and their institutional socialization – through which they acquire dispositions related to their tasks and to the institutional prescriptions –, but also the contents of the case, their own social characteristics, their role perceptions, their institutional positions, and capitals, as well as the profiles of their direct superiors, of the section/group in which they work, and of the controls of their decisions. This shows that, even if room for maneuver is analyzed at the individual level, bureaucratic discretionary powers in asylum adjudication also have significant collective and relational dimensions.

These institutional, social, and (infra-)legal conditions and mediations strongly orient the decision-making process and tend to homogenize the decisions finally made. The institutional socialization is characterized by a “culture of disbelief” (Jubany 2017) and suspicion (Bohmer & Shuman 2008), and more generally a culture or tendency to deny, consisting of looking for reasons to reject the asylum demands and to make negative decisions. However, this culture seems to be changing, notably because of case law and secondary implementation rules (SEM

asylum “practices”) following it. Thus, the asylum application situation and the judicialized character of the asylum policy – with a key role of FAC case law in street-level practices [p. 137] – create a structure of opportunities to make negative or positive decisions the perceived “norm” in the institution according to the countries of origin.

Acknowledgments

I would like to thank all the interviewees for their time and the information they shared with me. I also wish to acknowledge the very helpful comments on previous versions of this article provided by Eduardo Barberis, Silvia Pitzalis, and the anonymous reviewers.

References

- Affolter, Laura, 2021. *Asylum Matters: On the Front Line of Administrative Decision-Making*. Cham: Springer International Publishing.
- Akoka, Karen, 2020. *L’asile et l’exil. Une histoire de la distinction réfugiés/migrants*. Paris: La Découverte.
- Bohmer, Carol & Amy Shuman, 2008. *Rejecting Refugees. Political Asylum in the 21st Century*. London and New York: Routledge.
- Bourdieu, Pierre, 1990a. Droit et Passe-Droit. Le Champ Des Pouvoirs Territoriaux et La Mise En Œuvre Des Règlements. *Actes de La Recherche En Sciences Sociales*, 81, 1: 86-96.
- Bourdieu, Pierre, 1990b. *The Logic of Practice*. Cambridge: Polity Press.
- Brodkin, Evelyn Z., 2011. Policy Work: Street-Level Organizations Under New Managerialism. *Journal of Public Administration Research and Theory*, 21, Supplement 2: 253-277.
- , 2020. *Discretion in the Welfare State*. In Tony Evans and Peter Hupe (eds.), *Discretion and the Quest for Controlled Freedom*. Cham: Springer.
- Buffat, Aurélien, 2015. *When and Why Discretion Is Weak or Strong: The Case of Taxing Officers in a Public Unemployment Fund*. In Peter Hupe, Michael Hill & Aurélien Buffat (eds.), *Understanding Street-Level Bureaucracy*. Bristol: Policy Press.
- Campbell, Elaine, 1999. Towards a Sociological Theory of Discretion. *International Journal of the Sociology of Law*, 27, 1: 79-101.
- Dahlvik, Julia, 2018. *Inside Asylum Bureaucracy: Organizing Refugee Status Determination in Austria*. New York: Springer.
- Davis, Kenneth Culp, 1969. *Discretionary Justice: A Preliminary Inquiry*. Westport: Greenwood Press.

- Dubois, Vincent, 2009. Towards a Critical Policy Ethnography. The ‘Undeserving Poor’ and the New Welfare State. *Critical Policy Studies*, 3, 2: 219-237.
- , 2012. *The Fields of Public Policy*. In Mathieu Hilgers, Eric Mangez (eds.), *Social Field Theory: Concept and Applications*. Cambridge: Cambridge University Press.
- [p. 138]
- Dworkin, Ronald M., 1978. *Taking Rights Seriously*. Cambridge: Harvard University Press.
- Evans, Tony, & John Harris, 2004. Street-Level Bureaucracy, Social Work and the (Exaggerated) Death of Discretion. *British Journal of Social Work*, 34: 871-895.
- , & Peter Hupe, 2020. *Discretion and the Quest for Controlled Freedom*. Cham: Palgrave Macmillan.
- Feldman, Martha S., 1992. *Social Limits to Discretion: An Organizational Perspective*. In Keith Hawkins (ed.), *The Uses of Discretion*. Oxford: Clarendon Press.
- Galligan, Denis J., 1990. *Discretionary Powers: A Legal Study of Official Discretion*. Oxford: Oxford University Press.
- Gill, Nick, & Anthony Good, 2019. *Asylum Determination in Europe*. London: Palgrave Mac Millan.
- , Rebecca Rotter, Andrew BurrIDGE & Jennifer Allsopp, 2018. The Limits of Procedural Discretion: Unequal Treatment and Vulnerability in Britain’s Asylum Appeals. *Social & Legal Studies*, 27, 1: 49-78.
- Hawkins, Keith, 1986. On Legal Decision-Making. *Washington & Lee Law Review*, 43, 4: 1161-1242.
- , 1992. The Use of Legal Discretion: Perspectives from Law and Social Science. In Keith, Hawkins (ed.), *The Uses of Discretion*. Oxford: Clarendon Press.
- Hupe, Peter, 2013. Dimensions of Discretion: Specifying the Object of Street-Level Bureaucracy Research. *Der Moderne Staat - Zeitschrift Für Public Policy, Recht Und Management*, 6, 2: 425-440.
- Jubany, Olga, 2017. *Screening Asylum in a Culture of Disbelief*. Cham: Springer International Publishing.
- Kawar, Leïla, & Jonathan Miaz, 2021. *Enacting Immigration Politics in a Juridical Register*. In Shauhin, Talesh, Heinz Klug, & Elizabeth Mertz (eds.), *Research Handbook on Modern Legal Realism*. Northampton: Edward Elgar Publishing.
- Lascoumes, Pierre, 1990. Normes Juridiques et Mise En Œuvre des Politiques Publiques. *Année sociologique*, 40, 3 : 43-71.
- , & Jean-Pierre Le Bourhis, 1996. Des Passe-Droits Aux Passes Du Droit. La Mise En Œuvre Socio-Juridique de l’Action Publique. *Droit et Société*, 32: 51-73.
- Liudden, Tone Maia, 2020. Who Is a Refugee? Uncertainty and Discretion in Asylum Decisions. *International Journal of Refugee Law*, 32, 4: 645-667.
- Lipsky, Michael, 2010. *Street-Level Bureaucracy: Dilemmas of the Individual in Public Service*. 30th anniversary Edition. New York: Russell Sage Foundation.

Mascini, Peter, 2020. *Discretion from a Legal Perspective*. In Tony, Evans, & Peter Hupe (eds.), *Discretion and the Quest for Controlled Freedom*. Cham: Springer.

Miaz, Jonathan, 2017. From the Law to the Decision: The Social and Legal Conditions of Asylum Adjudication in Switzerland. *European Policy Analysis*, 3 (2): 372–396.

—, 2019. Entre examen individuel et gestion collective : ce que les injonctions à la productivité font à l’instruction des demandes d’asile. *Lien social et Politiques*, 83: 144–166.

[p. 139]

—, & Christin Achermann, 2021. Bureaucracies Under Judicial Control? Relational Discretion in the Implementation of Immigration Detention in Swiss Cantons. *Administration & Society*, 1–31. doi:10.1177/00953997211038000.

Poertner, Ephraim, 2017. Governing Asylum through Configurations of Productivity and Deterrence: Effects on the Spatiotemporal Trajectories of Cases in Switzerland. *Geoforum*, 78: 12-21.

Portillo, Shannon, & Danielle S. Rudes, 2014. Construction of Justice at the Street Level. *Annual Review of Law and Social Science*, 10, 1: 321-334.

Spire, Alexis, 2020. Discretionary Power as a Political Weapon against Foreigners. *Etikk i Praksis - Nordic Journal of Applied Ethics*, 2: 89-106.

Tata, Cyrus, 2020. *Sentencing: A Social Process: Re-Thinking Research and Policy*. Cham: Springer.

Thomann, Eva, Nadine van Engen, & Lars Tummers, 2018. The Necessity of Discretion: A Behavioral Evaluation of Bottom-Up Implementation Theory. *Journal of Public Administration Research and Theory*, 28, 4: 583-601.

Tomkinson, Sule, 2018. Who Are You Afraid of and Why? Inside the Black Box of Refugee policy ethnography Tribunals. *Canadian Public Administration*, 62, 2: 184-204.